

立法會
Legislative Council

LC Paper No. CB(1)1514/09-10
(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 third meeting held on
Tuesday, 23 February 2010, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon Audrey EU Yuet-mee, SC, JP
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
- Members absent** : Hon Albert HO Chun-yan
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
- Public Officers attending** : Agenda item I

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

Action

I Meeting with the Administration

(LC Paper No. CB(1) 1193/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 19 February 2010

LC Paper No. CB(1)1193/09-10(02) -- Administration's response to CB(1)1193/09-10(01)

LC Paper No. CB(1) 1172/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 9 February 2010

LC Paper No. CB(1)1172/09-10(02) -- Administration's response to CB(1)1172/09-10(01)

LC Paper No. CB(1)1193/09-10(03) -- Judgment of the Court of Final Appeal (FACV No. 4 of 2005) (English version only)

LC Paper No. CB(1)1193/09-10(04) -- Dr Hon Margaret NG's letter dated 22 February 2010 to the Secretary for Development

- L.N. 6 of 2010 -- Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice
- LC Paper No. CB(1)1182/09-10(01) -- The Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545)
- LC Paper No. CB(1)1163/09-10(01) -- Administration's information paper on profile of old buildings in Hong Kong
- LC Paper No. CB(1)1163/09-10(02) -- Administration's information paper on optimising the use of industrial buildings to meet Hong Kong's changing economic and social needs
- LC Paper No. CB(1)1163/09-10(03) -- Administration's information paper on protection of minority owners under the Land (Compulsory Sale for Redevelopment) Ordinance
- LC Paper No. CB(1)1172/09-10(03) -- Administration's information paper on summary of key issues covered in past Lands Tribunal Judgments on Applications for Compulsory Sale under the Land (Compulsory Sale for Redevelopment) Ordinance
- LC Paper No. CB(1)1223/09-10(01) -- Submission from Democratic Alliance for the Betterment and Progress of Hong Kong
(tabled at the meeting and subsequently issued via e-mail on 23 February 2010)
- LC Paper No. CB(1)1223/09-10(02) -- Submission from Owner of Ka Kwok Building
(tabled at the meeting and subsequently issued via e-mail on 23 February 2010)
- LC Paper No. CB(1)1223/09-10(03) -- Submission from 舊樓業主支持修改八成關注小組
(tabled at the meeting and subsequently issued via e-mail on 23 February 2010)

LC Paper No. CB(1)1223/09-10(04) -- Submission from Study Group on
*(tabled at the meeting and subsequently issued via e-mail on
23 February 2010)* Old Building Crisis

LC Paper No. CB(1)1223/09-10(05) -- Submission from People
*(tabled at the meeting and subsequently issued via e-mail on
23 February 2010)* Planning in Action)

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

Follow-up actions required to be taken by the Administration

2. The Subcommittee requested the Administration to provide information/written response to the following:

- (a) Information requested by Hon Margaret NG (CB(1)1193/09-10(04) in relation to the 2582 residential/composite buildings of 50 years or above, as mentioned in Annex IV to LC Paper CB(1)1163/09-10(01), that would be affected by the Notice if and when it came into effect on 1 April 2010;
- (b) Information on distribution of the buildings in (a) by districts, compared with that of those buildings included in the ongoing territory-wide building inspection of about 4 000 buildings aged 50 years or above undertaken by the Buildings Department following the collapse of an old tenement in Ma Tau Wai Road;
- (c) The relevance/compatibility or otherwise of "age or state of repair of a building" as referred to in section 4(2)(a) of the Land (Compulsory Sale for Redevelopment Ordinance (Cap. 545) (the Ordinance) to/with the definition of "dangerous buildings" or reference of "liable to become dangerous" under the Buildings Ordinance (Cap. 123);
- (d) Information on the transaction price in terms of per square foot saleable area in past compulsory land sale cases vis-à-vis that of the value of the redevelopments on the lots concerned; and
- (e) Information, with reference to past Lands Tribunal judgments, on whether and how the Lands Tribunal conducted professional and independent assessment of the existing use value and redevelopment value of subject lots in determining compulsory land sale applications.

3. The Subcommittee also requested the Administration to consider the following as raised by members at the meeting:

- (a) Revising the proposed second class of lot under the Notice to specify that the lower application threshold of 80% would be applied to those buildings aged 50 years or above which in the opinion of the Building Authority had been rendered dangerous or liable to become dangerous;
- (b) Reviewing the Ordinance in respect of rights and compensation to tenants affected by compulsory land sale;
- (c) Designating areas which warranted redevelopment for implementation of the Ordinance; and
- (d) Providing owner participation arrangements such as flat-for-flat/shop-for-shop arrangements for affected owners in the Ordinance to protect minority owners' interests.

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on Thursday, 25 February 2010 at 4:30 pm.

II Any other business

5. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 1
Legislative Council Secretariat
30 March 2010

**Proceedings of the third meeting of
the Subcommittee on Land (Compulsory Sale for Redevelopment)
(Specification of Lower Percentage) Notice
on Tuesday, 23 February 2010, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000142 – 001958	Chairman Administration	<p>The Chairman's introductory remarks.</p> <p>The Administration briefed members on its response to the concerns and requests raised by members at the meeting on 19 February 2010 (CB(1)1193/09-10(02)). It clarified that although the primary object of Cap. 545 was to facilitate private sector's redevelopment efforts, the Ordinance was indirectly related to building safety, as the state of repair of developments on the lot was one of the factors the Lands Tribunal would consider in determination of the applications.</p>	
001959 – 003945	Chairman Dr Margaret NG Mr James TO Administration	<p>Dr Margaret NG requested the Administration to provide response to her letter (CB(1)1193/09-10(04)) about information relating to the 2 582 residential/composite buildings of 50 years old or above which would be affected by the Notice if and when it came into effect, and consultation with owners of these affected buildings.</p> <p>Noting from recent media reports that the Henderson Land Development Company Limited would submit compulsory land sale application(s) for certain lots in Sheung Wan and the Western District once the application threshold for specified lots was lowered to 80%, Dr NG expressed grave concern whether the Administration had consulted the affected owners in buildings of 50 years old or above in these two districts before the Notice was published in the Gazette.</p> <p>The Administration responded that the proposal to lower the application threshold for specified lots to facilitate private-sector redevelopment efforts had undergone thorough consultation with the Panel on Development and the public in the previous years. Pursuant to a related public opinion survey by telephone in 2008, the age limit of buildings in the proposal was raised from 40 years or above to 50 years or above. As not all the buildings on the lots specified by the Notice would be immediately included in compulsory land sale, it might not be appropriate to consult all the owners in the buildings concerned. Mr James TO disagreed and considered that they would be immediately affected and subject to a lower application threshold if and when the Notice came into effect.</p> <p>Mr James TO referred to the Lands Tribunal judgment in the application for compulsory sale of the lot at 44-46 Haven Street (Annex VI to CB(1)1172/09-10(01)). Despite the owners of the building had completed the essential repair works in 2007 to comply with the Building Order which was subsequently lifted, the Tribunal had ruled in 2009 that the building had reached the end of its economic lifespan and had</p>	The Administration to provide information as requested in paragraphs 2(a), and 3(a) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>become economically unworthy to repair as the cost of repair substantially exceeded the enhancement value. He was gravely concerned that when economic value was the primary consideration, even buildings newly undergone repair works would be taken to compulsory land sale for redevelopment. The Democratic Party considered that building safety should be a factor of consideration and the new threshold should only apply to those buildings aged 50 years or above which in the opinion of the Building Authority had been rendered "dangerous" or "liable to become dangerous".</p> <p>The Administration advised that the repairs in 44-46 Haven Street in 2007 were mainly "essential" in nature and no improvements had been made to the underground drainage, electrical, fire services and lift installations of the building.</p>	
003946–004702	Chairman Mrs Regina IP Administration	<p>Mrs Regina IP considered that the lower threshold of 80% should apply only to those buildings aged 50 years or above having building safety concerns.</p> <p>The Administration stressed that the Lands Tribunal had given regard to the age and state of repair of the existing development(s) on the lot when considering compulsory land sale application.</p> <p>Referring to some media reports that the values of old properties had dropped and transactions of aging properties had increased after the collapse of a tenement in Ma Tau Wai Road and the implementation of the Administration's measures (e.g. Operation Building Bright (OBB), Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS)) to enhance building safety, Mrs IP queried whether it was still necessary to lower the application threshold as market force had come into play. Her view that market intervention by legislation would undermine the interests and bargaining power of the minority owners, adversely impact on the value of affected properties, and aggravate the polarization of the rich and the poor.</p> <p>The Administration advised that it had carefully reviewed the existing legislation before drawing up the Notice, taking into account public acceptability, balance of interests between the majority and minority owners, as well as concerns of aggrieved owners about the difficulty to acquire adequate undivided shares of their lot under the 90% threshold to proceed to compulsory land sale application.</p>	
004703 – 005157	Chairman Mr Andrew LEUNG Administration	<p>Mr Andrew LEUNG enquired about the measures to be taken to expedite urban renewal/revitalization after the collapse of the tenement in Ma Tau Wai Road, especially for old buildings in a deadlock situation failing to reach the 90% application threshold.</p> <p>The Administration explained that as part of the holistic strategy to tackle urban decay, the Ordinance was the only statutory channel to encourage private sector-led redevelopments to complement the slow pace of the work of</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Urban Renewal Authority (URA). In parallel, enhancement of public sector-led redevelopments would be considered under the ongoing Urban Renewal Strategy (URS) Review, together with other measures to tackle problems arising from aging buildings, such as OBB, MBIS, MWIS, the minor works control system, implementation of various assistance schemes to promote building maintenance and repair, etc.</p> <p>In reply to Mr LEUNG's further enquiry, the Administration advised that there was no information about the anticipated number of compulsory land sale applications following the lowering of the application threshold.</p>	
005158 – 005853	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO disagreed that all buildings aged 50 years above should be relegated as they might still be structurally safe and fit posing no dangers to the public. She considered that there should be more sound and solid reasons, such as missing of owners and building safety concerns, to justify compulsory land sale.</p> <p>The Administration reiterated that the purpose of lowering the application threshold was mainly to facilitate owners to proceed to compulsory land sale applications which might otherwise remain in deadlock situation.</p> <p>Ms HO was concerned that the Administration should strengthen statutory town planning requirements, such as capping of building height, conduct of traffic and social impact assessments, so that redevelopment projects would be taken forward in a controlled and sustainable manner. The public would suffer from the adverse environmental impacts in the long run.</p> <p>The Administration responded that issues relating to improvement in town planning should be considered in the context of relevant legislation.</p>	
005854 – 011421	Chairman Dr Margaret NG Mr James TO Administration	<p>Referring to the Lands Tribunal judgment on the case of Haven Street (Annex VI to CB(1)1172/09-10(03)), Dr Margaret NG observed that the Tribunal had based mainly on the enhancement value of repairs, rather than the age or state of repair of the building, in considering compulsory land sale applications. As such, the objects of Cap. 545 and the Buildings Ordinance (Cap. 123) contradicted each other, as owners were required to carry out proper maintenance and repairs to ensure building safety in compliance with Cap. 123, yet they might refrain from doing so if their buildings met the age criteria for compulsory land sale application. She requested the Administration to clarify the compatibility or otherwise of Cap. 545 and Cap. 123.</p> <p>Mr James TO shared her view and it appeared that buildings that had been rendered "dangerous" or "liable to become dangerous" did not form the core definition of "state of repair" among the past Tribunal judgments for compulsory land sale orders. He suggested that the 80% application threshold should only be applied to deadlock situation when</p>	The Administration to provide written response as requested in paragraph 2(b), 2(c) and 3(b) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>the owner of the last un-acquired unit was missing.</p> <p>The Administration agreed that the consideration of economic value of the lot in question was in line with the object of Cap. 545, and advised that the "state of repair" of a building in Cap. 545 was not equivalent to "dangerous buildings" as defined in Cap. 123.</p> <p>In response to Dr NG's request, the Administration agreed to coordinate the attendance of representative(s) of the Buildings Department to the next Subcommittee meeting, and provide the information as requested in paragraph 2(b) of the minutes.</p> <p>In response to Mr TO's enquiry, the Administration advised that according to section 8(1)(a) and (b) of Cap. 545, compensation to tenants affected by compulsory land sale orders was borne by the owner of the property in question (the majority or minority owner whichever applicable). Mr TO requested for reviewing the Ordinance in this regard as it was unfair for the affected minority owners to make the compensation since compulsory land sale was not initiated by them or was against their wish.</p>	
011422 – 012233	Chairman Mrs Regina IP Administration	<p>Mrs Regina IP referred to the speech of the then Secretary for Planning, Environment and Lands during the Second Reading debate on the relevant Bill, which highlighted the serious threat which might be posed to public and residents' safety by the state of disrepair of buildings in their districts.</p> <p>As the Lands Tribunal had not taken into account the "merged value" of lots in assessing compulsory land sale application, Mrs IP expressed concern that the Tribunal had disregarded important factors such as owners' sentiment. To balance the interests of majority and minority owners, Mrs IP's suggestion that mediation and owner participation arrangements (such as flat-for-flat/shop-for-shop arrangements) should be made before compulsory land sale applications were brought before the Tribunal for consideration.</p> <p>The Administration held the view that the existing mechanism was designed to protect the interests of all owners on the lot concerned. The Lands Tribunal, with a professional surveyor in the panel, had to be satisfied, amongst other conditions, that the assessed existing use value of each property on the lot and its redevelopment value as set out in the valuation reports were reasonable before granting the sale orders for auction, although the Tribunal could not take into account the merged value of lots under the existing legislation.</p> <p>At the request of Mrs IP, the Administration agreed to provide information as requested in paragraph 2(d) of the minutes. It remarked that the transaction price was on average more than 2 times the existing use value of the property.</p>	The Administration to provide information as requested in paragraphs 2(d) of the minutes.

Time marker	Speaker	Subject(s)	Action required
012234– 012912	Chairman Dr Margaret NG Administration	<p>Dr Margaret NG observed that in assessing the reasonableness of the offer made by the majority owner, the Lands Tribunal did not conduct any valuation exercise (paragraph 33 of the judgment of the Court of Final Appeal (FACV no. 4 of 2005)).</p> <p>Dr NG expressed concern that the right of property ownership could not be taken away by the majority consent of compulsory land sale, as some minority owners might wish to continue residing in their existing properties and pay for their repair and maintenance. The Administration highlighted that applications under Cap. 545 would only take place where private property owners who owned more than 80% of the undivided shares in a lot preferred redevelopment. Dr NG pointed out that most majority owners were in fact developers, and her urge for them to provide owner participation arrangements such as shop-for-shop and flat-for-flat arrangements for minority owners.</p>	The Administration to provide written response as requested in paragraph 2(e) of the minutes.
012913 – 013542	Chairman Ms Starry LEE Administration	<p>Ms Starry LEE suggested designating areas which warranted redevelopment for implementation of the Ordinance, so that redevelopment efforts would be focused on needy areas. The Administration responded that it would consider the suggestion in the context of the ongoing URS Review.</p> <p>Ms LEE suggested providing mediation and owner participation arrangements such as flat-for-flat/ shop-for-shop arrangements for affected minority owners to protect their interests. The Administration opined that it was not appropriate for the Government to mandate any form of collaboration in respect of sale of properties between private owners. Nevertheless, it would take note of the suggestion for consideration in future review of the Ordinance.</p>	The Administration to provide written response as requested in paragraph 3(c) and 3(d) of the minutes.
013543 – 014110	Chairman Mr James TO Administration	<p>Mr James TO urged the Administration to repeal the Notice first and conduct the review in question before lowering the application threshold. He stressed the importance to set thresholds for considering compulsory land sale applications in public interests and wider acceptability so that buildings aged 50 years or above but in good state of repair would not be indiscriminately taken to compulsory land sale.</p> <p>The Administration responded that the Government had given thorough consideration in coming up with the Notice, notwithstanding the controversy surrounding related issues. It reiterated that the Lands Tribunal would exercise its gate-keeping role in preventing abuse of the system.</p>	
014111 – 014205	Chairman Mrs Regina IP Administration	Mrs Regina IP remarked that as the Administration had time and again indicated that the Ordinance was not aimed at addressing building safety concerns, she saw no urgency in the implementation of the Notice which in her view would only heighten the dissatisfaction in the community.	

Time marker	Speaker	Subject(s)	Action required
014206 – 014834	Chairman Prof Patrick LAU Administration	<p>Prof Patrick LAU noted that certain minority owners were reluctant to go for redevelopment and demanded unreasonably high acquisition price. He was concerned about the time gap between the assessment of property value and the auction of the lot in question, as minority owners might not be able to purchase a flat of similar size after receiving the sale proceeds due to fluctuation in the property market.</p> <p>The Administration responded that under the existing mechanism, the Lands Tribunal had to determine the reserve price not earlier than three months before the auction took place.</p>	
014835 – 015829	Chairman Ms Audrey EU Administration	<p>Ms Audrey EU opined that -</p> <p>(a) the Administration's claim that buildings aged 50 years or above in good state of repair would not be put to compulsory sale was misleading, given that the specification of the second class of lot in the Notice (section 4(1)(b)) was "a lot with each of the buildings erected on the lot issued with an occupation permit at least 50 years before the relevant date" without any reference to the state of repair; and</p> <p>(b) the auction system was unfair in view that the majority owner would have already acquired 90% of the undivided shares in the lot, the minority owners or new purchaser would be in a disadvantaged position during such auctions if they intended to bid. The two sides were obviously unequal in terms of purchasing and bargaining powers.</p> <p>The Administration responded that the Notice did not entail changes to the existing mechanism and not all the lots belonging to the second class of lot would be subject to automatic compulsory land sale as the Lands Tribunal would continue to exercise stringent considerations in approving the applications or otherwise.</p>	
015830 – 020510	Chairman Ms Audrey EU Dr Margaret NG Mr James TO Ms Cyd HO Administration Assistant Legal Adviser (ALA)	<p>Discussion on whether amendments to revise the second class of lot would be outside the scope of the Notice.</p> <p>Discussion on the procedures and timeframe for making amendments to the Notice.</p>	
020511 – 020448	Chairman	Date of next meeting	