

立法會
Legislative Council

LC Paper No. CB(1)1515/09-10
(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 fourth meeting held on
Tuesday, 25 February 2010, at 4:30 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

Mr Paul PANG
Assistant Director/ Existing Buildings(1)
Buildings Department

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 Confirmation of minutes of meeting
(LC Paper No. CB(1)1230/09-10 -- Minutes of meeting held on 9 February 2010)

The minutes of the meeting held on 9 February 2010 were confirmed.

II Meeting with the Administration
(LC Paper No. CB(1) 1229/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 23 February 2010

LC Paper No. CB(1)1229/09-10(02) -- Administration's response to CB(1)1229/09-10(01)

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)1229/09-10(03) -- Report of the Bills Committee on Land (Compulsory Sale for Redevelopment) Bill
- LC Paper No. CB(1)1229/09-10(04) -- Extract of Hansard of Provisional Legislative Council meeting on 7 April 1998
- 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)1261/09-10(01) -- Submission from Dr Lawrence POON (English version only) (*tabled at the meeting and subsequently issued via e-mail on 26 February 2010*)

LC Paper No. CB(1)1261/09-10(02) -- Submission from a member of the public (Chinese version only) (*tabled at the meeting and subsequently issued via e-mail on 26 February 2010*)

LC Paper No. CB(1)1261/09-10(03) -- Submission from Community Alliance for Urban Planning (Chinese version only) (*tabled at the meeting and subsequently issued via e-mail on 26 February 2010*)

LC Paper No. CB(1)1261/09-10(04) -- Submission from a member of the public (Chinese version only) (*tabled at the meeting and subsequently issued via e-mail on 26 February 2010*)

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

Follow-up actions required to be taken by the Administration

3. The Administration was requested to provide the following information in response to members' requests raised at the meeting:

- (a) The number and distribution of buildings by districts, among those listed in Annex I to CB(1)1229/09-10(02), which were "dangerous" or "liable to become dangerous" in the opinion of the Building Authority.
- (b) With regard to the past 20 cases of compulsory land sale orders granted up to January 2010 as listed in Annex III to CB(1)1229/09-10(02),

- (i) the respective dates on which the "total existing use value" and the "transaction price" of the lots were determined/made;
- (ii) comparison of the plot ratio of the existing developments and the redevelopments on the lots concerned; and
- (iii) the total transaction costs, including the professional valuation fees and legal costs, if any, involved in each of the applications, together with the legal principle(s) adopted by the Lands Tribunal in awarding costs to parties.

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on Monday, 1 March 2010 at 4:30 pm.

III Any other business

5. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 1
Legislative Council Secretariat
30 March 2010

**Proceedings of the fourth meeting of
the Subcommittee on Land (Compulsory Sale for Redevelopment)
(Specification of Lower Percentage) Notice
on Tuesday, 25 February 2010, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000330 – 000546	Chairman Administration	The Chairman's introductory remarks. Confirmation of minutes of meeting on 9 February 2010 (CB(1)1230/09-10).	
000547 – 004014	Chairman Administration	Briefing by the Administration on its response to the concerns and requests raised by members at the meeting on 23 February 2010 (CB(1)1229/09-10(02)).	
004015 – 004702	Chairman Ms Miriam LAU Dr Margaret NG Administration	<p>Referring to part (f) and Annex III of CB(1)1229/09-10(02) that the transaction price of the lot(s) in past compulsory sale orders was on average about 2.5 times the existing use value (EUV) of the lot(s), Ms Miriam LAU expressed concern why some minority owners still claimed that they had suffered loss.</p> <p>The Administration responded that the Lands Tribunal, which included a member who was a qualified surveyor, would take into account prevailing market information when assessing the EUV of the units in question by making reference to comparable transactions in the building and those nearby. The Tribunal then worked out the adjusted unit price per square feet (/sq. ft.) and the estimated EUV of each individual unit, as in the case of Kam Kwok Building and National Building (Appendices II and III of Annex IVA to CB(1)1229/09-10(02)). The sales proceeds (where the reserve price was the minimum price which had reflected redevelopment value of the lots as well) would be apportioned among the majority and minority owners on a pro-rata basis according to the estimated EUV of their respective units. As such, the amount should suffice to cover the cost for the purchase of a comparable property in the same district. Dr Margaret NG queried about this view as she observed that in the recent compulsory sale of the lot at the Upper Kai Yuen Lane, North Point, the transaction price amounted to less than \$4,000/sq ft, which appeared to be much lower than that of comparable units in the district.</p>	
004703 – 005442	Chairman Dr Margaret NG Administration	<p>Dr Margaret NG held the view that –</p> <p>(a) Cap. 545 could not address, directly or indirectly, building safety problem, as building age and safety could be independent of each other since an aged building under proper maintenance could remain structurally safe, whereas private developers usually chose lots with high redevelopment potential for making compulsory sale applications irrespective of the conditions of the buildings therein. In fact, the lots</p>	The Administration to provide information as requested in paragraph 3(a) of the minutes

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		<p>involved in past compulsory land sale cases did not fall in those districts where most of the aged buildings aggregated, like Sham Shui Po, Yau Tsim Mong and Kowloon City. As such, it was irrelevant to specify the age requirement of 50 years or above for the second class of lot for redevelopment, and the lowering of threshold for these buildings would only lower their market value; and</p> <p>(b) the objects of Cap. 545 and Cap. 123 in fact contradicted each other, as owners were required to carry out proper maintenance and repair to ensure building safety in compliance with Cap. 123, yet they might refrain from doing so if their buildings met the age criterion specified in the Notice.</p> <p>The Administration responded that –</p> <p>(a) the age criterion for the second class of lot specified in the Notice was set on the bases that the design working life of an ordinary reinforced concrete building in Hong Kong was 50 years although this could be extended with proper repair and maintenance; and</p> <p>(b) the Buildings Department would monitor the progress of repair works on order of the Building Authority (BA). BA might carry out or cause to be carried out the work specified in an order served under Cap. 123, the cost of which would be recoverable from the owner. As such, owners could not deliberately leave their properties in disrepair state to justify redevelopment.</p>	
005443 – 010300	Chairman Mr Albert HO Mr James TO Administration	<p>Clarification on "total EUV" and "transaction price" of the lots stated in Annex III to CB(1)1229/09-10(02).</p> <p>Mr Albert HO was concerned that the time gap between the dates on which the "total EUV" and the "transaction price" of the lots were determined/made and the increase in the plot ratio in redeveloping the lot in question would affect consideration whether the transaction price was reasonable.</p>	The Administration to provide information as requested in paragraph 3(b) of the minutes.
010301 – 011045	Chairman Mr James TO Administration	<p>Mr James TO expressed dissatisfaction that the Administration would not consider the suggestion to revise the second class of lot in the Notice by specifying that the lower threshold would be applied to those aged buildings which had been considered by BA as "dangerous" or "liable to become dangerous".</p> <p>The Administration reiterated that in considering compulsory sale applications, the Lands Tribunal would need to be satisfied that "the age or state of repair" of a building would justify the redevelopment of the lot.</p>	

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011046 – 011904	Chairman Mrs Regina IP Administration	<p>Sharing Dr Margaret NG's concern, Mrs Regina IP observed that most lots involved in the past compulsory sale cases were on Hong Kong Island but not in those Kowloon districts having a greater number of aged buildings and requiring renewal, such as Sham Shui Po, Yau Tsim Mong and Kowloon City. Hence, the Administration's argument that the object of Cap. 545 was to help address the problem of building dilapidation was unconvincing.</p> <p>Mrs IP expressed further concern about the big gap between the value of the existing development and that of the redevelopment on the lots in past compulsory land sale cases as referred in the submission from Community Alliance for Urban Planning (CB(1)1172/09-10(05)). She considered that the Administration should assist those elderly owners who were not familiar with the compulsory land sale procedures in asserting their rightful claims for a reasonable transaction price for their properties. She opined that the Administration should gear its policy towards the interests of the affected owner residents, and not the developers whose primary aim was to maximize profit. Referring to the recent remarks made by Richfield Realty Limited on Cable TV News that price negotiation in the acquisition of properties had become less difficult after the collapse of a tenement in Ma Tau Wai Road, she queried whether it was still necessary to lower the application threshold as market force had come into play.</p> <p>The Administration responded that –</p> <p>(a) the so called big gap had a relationship with the merged value of all the lots brought together for a single redevelopment; and</p> <p>(b) the purpose of the Notice was meant to enhance the ability of private owners who own more than 80% of the undivided shares of a lot and had difficulty in reaching the 90% threshold to proceed to apply for compulsory sale of their lot, for the purposes of redevelopment.</p> <p>Mrs IP considered that the Administration should address the issue relating to the sale in respect of a composite site. The Chairman's remark that when the issue was brought up during the scrutiny of the Land (Compulsory Sale for Redevelopment) Bill in 1998, some members were concerned that should such an approach be adopted, there might be situations in which the applicants had not acquired any undivided shares in one of the lots notwithstanding the holding of 90% of the aggregate undivided shares in respect of all the lots involved.</p>	
011905– 012310	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO expressed dissatisfaction about the Administration's ambiguous position about the object of Cap. 545 in relation to building safety, and requested that it should be clearly spelt out in the Ordinance. Pointing out that most compulsory land sale cases in the past had taken</p>	

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		<p>place at lots of greater redevelopment value (e.g. Castle Steps, Villa Splendor, Shiu Fai Terrace and those at Wood Road, Shan Kwong Road (Annex III to (CB(1)1229/09-10(02))), she commented that the mechanism had not only affected the grassroots, but also the middle class owners as well.</p> <p>While agreeing to the participation of the private sector in urban renewal work, Ms HO held the view that this should be taken forward on the consensus of all the affected owners to redevelop their lot, and on the condition that owner participation (e.g. shop-for-shop and flat-for-flat arrangements) was in place, given that the owners had to bear the risks too if they so opted.</p> <p>The Administration reiterated that Cap. 545 did not preclude the owners from making owner participation arrangements, as in the case of the Lai Sing Court redevelopment. It was considered inappropriate for the Government to mandate any form of collaboration in respect of sale of properties between private owners.</p> <p>Ms Cyd HO urged that the Administration should withdraw the Notice or consider revising the second class of lot, implementing a mediation mechanism and incorporating owner participation arrangements.</p>	
012311 – 013807	<p>Chairman Mr James TO Mr Abraham SHEK Administration Assistant Legal Adviser (ALA)</p>	<p>Noting the Administration's reference to the deliberations of the Bills Committee on whether compensation to tenants might be payable by the purchaser or majority owners, and whether the Lands Tribunal could order the purchaser or majority owners to pay compensation to the tenants of the minority owners (paragraph 2 of Annex II to CB(1)1220/09-10(02)), Mr James TO enquired about the Administration's current position. While the Bills Committee had considered it inappropriate to pass the onus of terminating contractual tenancies to the purchaser or the majority owner(s), his disagreement with the Bills Committee that the said arrangements would run the risk of letting tenants control the entire situation, and he requested the Administration to review the relevant provisions in the Ordinance.</p> <p>The Administration responded that Mr TO's request entailed amendments to the Principal Ordinance which were outside the scope of the Notice. The Administration had taken on board the view of the Bills Committee (paragraph 19 of CB(1)1229/09-10(03)) that "without the assistance from the Government, it is unrealistic to expect the purchaser of the lot to provide rehousing to affected persons". The Bills Committee members had identified loopholes in the provisions of the Bill regarding the payment of compensation to tenants by any relevant parties as was directed by the Lands Tribunal, i.e. "the possibility of ordering compensation payable by the majority owners or the purchaser may tempt unscrupulous minority owners to create spurious tenancies to maximize benefits". As such,</p>	

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		<p>the Administration had agreed that compensation payable to tenants should be paid out of the apportioned share of the proceeds of sale receivable by the tenants' landlord.</p> <p>Mr TO considered it legitimate for the purchaser to pay the compensation to tenants, given that the tenancy was caused to be terminated by the purchaser.</p> <p>The Administration advised that according to section 8(1)(b) of the Ordinance, the tenancy of any property on the lot would be terminated "immediately upon the day on which the purchaser of the lot becomes the owner of the lot it shall be deemed". ALA echoed of the view and observed that the purpose of section 8 was meant to protect the purchaser from any liability of the previous owner of the lot by, among other things, stipulating that compensation payable to tenants should be made by the tenants' landlord.</p>	
013808 – 014010	Chairman Mr Abraham SHEK	Mr Abraham SHEK considered that the Ordinance had given due regard to protection of minority owners, noting that the compensation arrangements under private sector-led redevelopments were already more favourable than those in URA's redevelopment projects.	
014011 – 014405	Chairman Mr WONG Kwok-hing Administration	<p>Mr WONG Kwok-hing enquired about the progress of the Administration's consideration of establishing a mediation mechanism.</p> <p>The Administration advised that it was actively examining, in consultation with the relevant agencies, the feasibility of introducing mediation on voluntary basis under Cap. 545.</p> <p>Mr WONG urged the Administration to prescribe the mediation arrangements through administrative procedures, instead of purely on voluntary basis.</p>	
014406– 015553	Chairman Mrs Regina IP Mr James TO Administration	<p>Mrs Regina IP opined that the lowering of the application threshold would reduce the market value of aged properties and undermine the bargaining power and interests of their owners. She shared members' suggestions that mediation and owner participation should be put in place to protect the interests of minority owners and minimize conflicts arising from compulsory land sale.</p> <p>Mr James TO shared Mrs IP's concern that the Notice would not genuinely help needy owners, particularly the elderly owners and those who were ignorant of the Ordinance as well as uninformed about their rights and interests under the compulsory sale of their properties. He highlighted the different tactics of acquisition of properties for compulsory land sale in the market, some of which were undertaken in a low profile manner with the owners being kept in the dark about the underlying redevelopment plan. Mr TO suggested that the Administration should consider engaging social workers who were familiar with the</p>	

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		<p>compulsory land sale process in providing assistance and information service to needy owners.</p> <p>The Administration reiterated that –</p> <p>(a) the object of the Notice was to provide a mechanism enabling interested owners having aggregated 80% of undivided shares of their lot to proceed to compulsory land sale application, and the proceeds from compulsory land sale had taken into account the redevelopment potential of the lot involved; and</p> <p>(b) the Hong Kong Housing Society and Hong Kong Institute of Surveyors would provide free information service on the compulsory land sale process and other related issues to enhance the minority owners' understanding of the mechanism.</p>	
015554 – 015650	Chairman Mr Frederick FUNG Administration	Mr Frederick FUNG enquired whether the Administration would defer the implementation of the Notice until the Urban Renewal Strategy Review had completed. The Administration advised that the arrangements in the Notice had undergone thorough consultation and there was no plan to delay the implementation.	
015651 – 020030	Chairman Mr James TO Mr Andrew LEUNG Mrs Regina IP Administration	<p>Mr James TO indicated that he would move amendments to the Notice.</p> <p>Discussion on meeting arrangements.</p>	