



THE HONG KONG INSTITUTE OF
SURVEYORS

Your ref.: CB1/SS/5/09

BY FAX & POST
#2869 6794

17 February 2010

The Hon Chan Kam-lam, SBS, JP
Chairman of the Subcommittee on Land
(Compulsory Sale for Redevelopment)
(Specification of Lower Percentage) Notice
Legislative Council Building
8 Jackson Road, Central, Hong Kong

Dear Mr Chan,

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

The Hong Kong Institute of Surveyors (HKIS) welcomes the Administration's proposal to change the application threshold to 80% as specified in the subject Notice in respect of the following three classes of land lots:

- (a) a lot with units each of which accounts for more than 10% of the undivided shares in the lot;
- (b) a lot with all buildings aged 50 years or above; and
- (c) a lot that is not located within an industrial zone and with all the buildings on the lot being industrial buildings aged 30 years or above.

HKIS is of the view that the above proposal can help expedite redevelopment of dilapidated buildings for the benefit of our community and at the same time can strike a balance of interest between the majority owners, accounting for not less than 80% of total ownership of a lot and agreeing to sell their properties for redevelopment, and the minority owners, accounting for less than 20% of total ownership of the same lot and choosing to retain their ownership for whatsoever reasons.

For the interest of the affected owners, in particular the minority owners, HKIS, with co-ordination of the Development Bureau, will provide free information services to the affected owners through public forums to be held by HKIS regularly in addition to answering enquiries by the staff of The Hong Kong Housing Society at their 10 property management advisory centres with professional support by HKIS. The objective of the said free information services is to let the affected owners have a better understanding of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545) and know how their interests can be protected under the Ordinance.



HKIS's previous submissions to the Panel on Development of the Legislative Council are also attached for your information.

Yours sincerely,


Margaret Yung
Senior Manager

Encs.

c.c. Mrs Carrie Lam, Secretary for Development
The Hon Patrick Lau, Legislative Councillor



19 June 2009

The Hon Lau Wong Fat, GBM, GBS, JP
Chairman of Panel on Development
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr Lau,

**Proposals to facilitate redevelopment by the private sector:
Applications threshold under the
Land (Compulsory Sale for Redevelopment) Ordinance**

We note that the Panel on Development will discuss the captioned issue at its meeting on 23 June 2009 and would like to reiterate our stance.

The Hong Kong Institute of Surveyors supports the latest proposal as submitted by the Development Bureau for a lower application threshold of not less than 80% for the following three classes of lots :

- (a) lots with "all units but one" acquired;
- (b) lots with all buildings aged 50 or above; and
- (c) lots with industrial buildings aged 30 or above located in non-industrial zones.

As we raised to you in our submission dated 31 March 2008, copy attached for your easy reference, there is the need of a mechanism to combat "multiple ownership" which is the fundamental blockage to urban redevelopment. The current mechanism is built on the confidence and trust in our judiciary system to ensure that the minority owner will receive fair and reasonable compensation for his interest in a lot. We consider that it is opportune to make such mechanism more efficient. The new proposal on industrial buildings will more effectively address the situation of underutilized industrial sites that are ripe for redevelopment for other non-industrial uses being cramped with building fabrics in dilapidated conditions.

Thank you for your attention.

Yours sincerely,

Francis Leung
President

Encl.

cc. Mrs Carrie Lam, Secretary for Development
The Hon Patrick Lau, Legislative Councillor



THE HONG KONG INSTITUTE OF
SURVEYORS

31 March 2008

The Hon Lau Wong Fat, GBM, GBS, JP
Chairman of Panel on Development
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

(By Post and
by Fax no: 2185 7845)

cc:
Mrs Carrie Lam, JP
Secretary for Development
Development Bureau
8/F West Wing, Central Government Offices
11 Ice House Street
Central
Hong Kong

**Re: Proposals to lower the compulsory sale threshold for specified classes of lots
under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545)**

In order to remain as leader of economic development in the region and maintain the robust local economy, we have to put our most scarce resource of our community – land, to the optimum use. Furthermore, private owners holding assets in properties would be striving for the opportunities to release the potential of these assets, which very likely are the greatest investment in their lifetime, that they have been hanging on for long time.

Most oppositions raised against the recent revision, in deed improvements, to the current Cap 545 operations claimed that this system of “private compulsory purchase” should be built on an enhanced and “human based” town planning mechanism. To this, we would remind them that there are certain districts in our urban area already under modern planning control with well instituted infrastructure yet because of the problem of “multiple ownership” in the land title, redevelopment has been frustrated and the building fabric are now left to deteriorate. Examples are some old industrial areas which experienced their prosperity in the times of “manufacturing economy” back in the 60’s and 70’s and now moving into their stage of “economically obsolete”. With a diminished functional value and coupled with the low incentive for repair and maintenance, these buildings are slowly stepping into their stage of “physical obsolete”.



There is the need of a mechanism to combat “multiple ownership” which is the fundamental blockage to urban redevelopment. There is a need for such mechanism as the life span of all buildings are limited though could be extended with all owners concerted efforts of repair and maintenance. After 10 years of operation of the Cap. 545 mechanism, we have seen slow progress of facilitating urban renewal. We are now expecting more redevelopment projects of certain decaying blocks and underutilized sites coming up with the increased number of “collective sales”. Most of such projects are in fact initiated by the owners themselves who are seeking realization of the potential of their property right on top of the strong desire of improving their living environment.

The lowering of the threshold from 90% to 80% will certainly increase the chance of such projects coming into fruition. In such cases of collective sale, we do not see the situation or the accusation of “extortion by developers”, instead we normally find certain minority owners taking obstruction against the majority owners. Our fair remark is that the rights of both of the “majority” and “minority” have to be respected as all their rights are interlocking and interactive.

After all, we have the full confidence and trust in our judiciary system in the operation of such Cap. 545 mechanism. In this regard, we would highlight a few points addressed by the Court of Final Appeal in the case of Capital Well Limited vs Bond Star Development Limited (Final Appeal No. 4 of 2005)(Civil).

The judgment confirmed that the objective of the Cap. 545 aims to facilitate urban renewal by preventing the infinite obstruction of a redevelopment by any minority owners who may seek to extract a wholly unreasonable price or “ransom” for permitting the redevelopment to proceed.

It was also acknowledged by the Court of final Appeal that the Ordinance aims to ensure that the minority owner received fair and reasonable compensation for his interest in the lot. Such compensation may be that which the minority owner agrees to accept or that which represents his share of the market value of the lot, reflecting its redevelopment value, as determined at a public auction, subject to a reserve price approved by the Lands Tribunal.

Before the Lands Tribunal can make a compulsory order, the majority owner should try to reach agreement with the minority to purchase the latter’s interest on fair and reasonable terms, the Court further clarified these basic principles.



The Court pointed out that if duly satisfied that the rejected offer of terms, from the majority owner, was fair and reasonable, the Lands Tribunal may make the order, leaving the value and level of compensation to be determined by the public auction. On this, we would point out that there was an actual case whereby the final price achieved from the auction was 40% over the reserve price approved by the Lands Tribunal. Under the provisions of the current mechanism, the enhancement was shared by all the owners.

In short, we are in support of the latest proposals to lower the threshold to 80% for the two classes of lots namely "all units but one" and "aged 40 years or above". There is a need for such mechanism in Hong Kong and that it is opportune to make it more efficient.

Yours sincerely,

Yu Kam Hung
President
The Hong Kong Institute of Surveyors



香港測量師學會對
促進私人參與土地重新發展的建議 —
《土地(為重新發展而強制售賣)條例》下的申請門檻
之意見
2009年7月9日

『土地(為重新發展而強制售賣)條例』於1998年提交立法會審議，自此，香港測量師學會曾多次深入研究這課題，發表意見及立場，表示支持。只因我們的會員，在政府、發展商，及顧問等不同範疇，都有參與舊區重建的工作，對箇中問題和情況，都有相當的認知和體驗。

條例於1999年實施後，在2005年，學會知悉土地審裁處，及其他級別法院對有關申請作出之裁決後，對條例的執行和市場反應再作出研究和檢討，其後提出降低申請門檻的建議。及後，當局於2006年提出諮詢文件作出實質建議。

今年六月，當局作出修正建議，並已進入立法程序，引發市場及社會議論紛紛，我們就此作出如下意見:-

- (一) 一個文明社會，都尊重私有產權，本港亦然。但這種私有產權制度，是建基於一眾業權人互相尊重和互惠互利的理念和前提，更不是「你有你，我有我」，「各顧各」等自私行為背後的護身符。這種「相互關係」在同一樓宇內個別單位持有富「香港特色」的「分層樓契」(strata-title)的情況下尤其顯著。

而本港現時亦有『分劃條例』(Partition Ordinance, Cap 352)提供法律程序，以公開拍賣模式去處理「共有權」業主(聯權共有人 joint tenant, 分權共有人 tenants in common)在業權上的紛爭。

要知道，任何周詳的維修保養計劃，只可有限地延長建築物的生命週期，最終都要重建。再者，基於其他因素如經濟週期、土地應用等，重建計劃亦可作為靈活使用土地資源的方法。在推行重建計劃時必須要有機制處理業權分散而防礙重建的困擾和問題。相對『分劃條例』，強制售賣條例可以視作一種法律程序和工具，以處理整幢樓宇全部共權擁有人在考慮重建時所產生的紛爭。

- (二) 每一個先進社會都會在可持續的原則下，因應發展需要，例如基建或公用設施，徵收私有產權。基於尊重產權，在憲法層面都有完善機制，列明在什麼條件下才可用行政手段取得私產，更有公平賠償機制。聯合國糧食及農業組織(FAO)有清晰指引列明這種種機制的要素和考慮，其中指明要立法確保詳盡的過程和公平程序 (protection of due process and fair procedure)。

強制售賣條例對業權人的實質作用亦可視作等同於強制徵收。在審視這種



「轉移業權」的行為和操作機制時，同樣要顧及與強制徵地和『分割條例』相類似的理念、思維和要求，要考慮的是機制的合理性和完善性。

- (三) 現在的機制，建基於由土地審裁處和其他法庭把關，對本港司法制度把關能力的質疑，我們不敢苟同。自法例施行以來已有不少個案通過審裁處檢視，更有部份個案將一些法律和估值觀點提升到更高的法院，甚至終審庭，去辯釋。

當然，沒有人可以斷言現有機制已是最完善。從我們的專業角度來看，這機制已是包含了所必需的合情、合理及公平元素以確保公權介入私權是否恰當，與及利益分配是否公正。

有批評指依條例作出申請者大多是財雄勢大，有資源聘用專家提交專業報告予審裁處，以支持申請，小業主難有資源提出抗辯，對申請者的行動，小業主處於極不利的被動位置。

事實上，現時的法例，亦已顧及這方面，雖然小業主未有提出專業報告，亦不代表審裁處會對申請人的申訴照單全收，實際安排是審裁處按法例應要自行作出審議和研究，申請人的報告只是作為參考。這種「不交報告便放棄權益」的疑慮，是沒有根據的。

- (四) 在接受了這種「轉移業權」行為通過立法程序便可以存在的思想後，要考慮的是利益分配的公平性問題。現時法例機制是以「現樓價」的比例去分攤整體發展潛力，這種比例相對用年代久遠訂下的業權份數或其他比例，是更公平和合理。

因為個別業權單位的狀況不同，業主的期望不同，甚至專業人士的意見亦會有差別，在一個尊重司法制度的社會，交由法院作最後裁決應該可以接受。

- (五) 社會上有意見批評條例實施以來只有約 20 宗案件通過審裁處，表示對條例的效用有所保留。

從我們的工作上認知，條例實施後，最大成效是令一些俗稱「落釘」的行為，經濟成本大為提高。法例實施前，只要購買一個單位，以「守株待兔」行為模式，便可控制整個地盤的重建機會。法例實施後，這種行為的成本和風險便大為提高，亦即減少「壟斷」或「合法阻撓」的情況，一些有實際發展意願的項目，便可在合理的市場經濟和財務條件下操作實現，全體業主合理地分配地皮發展的潛在利益。降低申請門檻會進一步提高「守株待兔」的成本，使更多有條件的重建項目順利啟動，舊區的土地會更適當地使用，環境衛生亦隨之改善。



- (六) 亦有另一種意見指出本港規劃未盡完善，應先將舊區規劃落實，包括降低地積倍數及樓高等等。同時，亦有意見指條例只施行十年，案例數目不足以作出檢討，應等待多些時間和個案去分析。

要明白，規劃是隨著市場和社會狀況不斷演進的，我們不相信規劃會有完善或「做妥」的一天。

現在香港處理舊區更生的速度，從兩個數字可以了解，市建局自 2001 年至今已處理項目，只有 550 幢舊樓，而舊樓的老化速度，每年有 500 幢。今天政府及有關機構負責的舊區重建和更生目標，多是五十年代(3-4 層)的舊樓，往後香港社會整體要處理的舊區，將會是六十年代(4-6 層)的和七十年代(6-10 層)的。

如果我們要認真地處理實質環境老化，機能衰退的舊區，要用什麼速度呢？時間的合適性是如何判定呢？是否要不斷以公眾資源投放舊區重建的工作呢？

面對這兩種「未到合適時間」的論點，我們想起「人生有多少個十年」這句流行語。

- (七) 至於「最後單位」的定義，學會日前已發表意見，我們確認先前立場，並希望小心處理，以防有「取巧」或灰色地帶。當然最後仍是要依賴司法機制把關。
- (八) 同時，新規條亦應清楚列明樓齡的計算，是以該樓宇最後由屋宇署或有關當局發出的「入伙紙」作準。

總的來說，我們認為強制售賣條例可以進一步深化，以加強對小業主的保障，但同時更應盡快降低門檻，鼓勵和利用市場力量去加快舊區更生。順帶一提，這種市場力量會為有關業主帶來可分享發展權益和潛力的機遇，更是可以由業主自行啟動的。我們並不認為降低門檻會令機制傾斜。

在過去這議題的討論中，有很多意見關注到在可持續及環保考慮下，復修亦應該鼓勵，我們亦有同感，故此我們建議政府要聯同專業界別和業界(包括發展商)，大力推行和協助市民組成業主法團，加強樓宇的維修保養，更要擴大宣傳，教育市民樓宇維修保養的意識。另外亦要全面檢討現行全港的潛建物情況，重新訂定務實的理順政策和手段。



**Submission to
Legislative Council Panel on Development
Proposal to Facilitate Private Redevelopment**

Purpose

This paper expresses the views of the Hong Kong Institute of Surveyors (the Institute) on the proposals of Development Bureau to lower the compulsory land sale application threshold under the Land (Compulsory Sale for Redevelopment) Ordinance, Cap. 545 (the Ordinance).

Background

2. In August 2005, the Institute released a paper outlining the position and recommendations of the Institute relating to the Ordinance to the Government. In March 2006, the Government issued a public consultation document seeking views on the practicability of 3 proposed classes of lots to enjoy a relaxed threshold.

3. The Institute has widely consulted its members and in general the consensus was in support of a legislated mechanism to curb the problems of site assembly caused by multi-ownership in Hong Kong as a means to facilitate urban renewal. The then Government's proposal of 3 classes of lots to enjoy lowered threshold was welcomed.

Current Proposal of Government

4. It is noted from the paper of January 2008 to LegCo that the Development Bureau intends to proceed with designating the following two classes of lots in a Gazette Notice, as subsidiary legislation, for a lower application threshold of not less than 80% :-

- a. lots with "all units but one" acquired; and
- b. lots with all building(s) aged 40 or above.

Institute's Views

5. A Working Group has been formed within the Institute and the latest proposals have been studied.

6. The Institute considers the latest proposals a step forward to foster the urban renewal process by the market forces. The proposal would create a greater degree of certainty for implementation of redevelopment project. This would serve to encourage more collective sales of buildings that are in need of redevelopment as well as enhancing the chance of success for similar exercises.



7. Through collective efforts, owners of individual units will be rewarded with an amount reflecting not only value of the individual units but also their shares in redevelopment value of the site. It is evident that the Ordinance serves its function as a catalyst in the urban renewal process. The provisions also helped to check the unjustified extortions of the minority on the majority yet generating opportunities of "win-win" to all the owners whilst having better use of the scarce land resources of the community and resurrecting urban decay.

8. There is the belief and trust that the Lands Tribunal has sufficiently been empowered under the provisions of the Ordinance to adjudicate and safeguard the interests of the minority owners over the valuation of properties and to consider whether redevelopment is justified having regard to the age and state of repair of the existing buildings. The Lands Tribunal will also consider whether the majority owner ie the applicant, has taken reasonable steps to acquire all the undivided shares in the lot before applying for an order for sale.

9. As for defining the "unit" in the "all but one" class, we have the following suggestion :

"An existing entry in the Land Registry which corresponds to an accommodation which has been shown on the approved building plans based on which an Occupation Permit has been issued, or the subsequent amended building plans approved by the Building Authority."

10. Although the latest proposal of the Development Bureau is welcomed and supported, yet there were views expressed that more in depth review of the provisions of the Ordinance to improve efficiency and encourage urban renewal course be made.