

# OFFICIAL RECORD OF PROCEEDINGS

**Tuesday, 7 April 1998**

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## **Second Reading of Bill**

### **Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Land (Compulsory Sale for Redevelopment) Bill.

### **LAND (COMPULSORY SALE FOR REDEVELOPMENT) BILL**

#### **Resumption of debate on Second Reading which was moved on 21 January 1998**

**PRESIDENT** (in Cantonese): Does any Member wish to speak? Mr IP Kwok-him.

**MR IP KWOK-HIM** (in Cantonese): Madam President, urban renewal is not a recent topic. As buildings in the urban area age and land resources in the urban area becomes insufficient, urban renewal becomes a hot topic in the community. At present urban renewal is carried out mainly by two organizations: the Housing Authority and the Housing Society when they redevelop the housing estates under their management. Redevelopment of buildings in the private sector is done mainly by the Land Development Corporation (LDC) and private developers. Through the Government invoking the Crown Lands Resumption Ordinance the LDC may force owners to sell their properties in the areas under redevelopment. However, private developers may only acquire land by negotiation. When faced with "unscrupulous punters" or owners who cannot be found, private developers are

restricted in the contribution they can make towards urban renewal.

Madam President, the Bill aims at helping private developers in urban renewal and in quickening the pace of urban renewal. The Democratic Alliance for Betterment of Hong Kong (DAB) supports the spirit of the Bill. But by compelling minority owners to sell their properties, the Government may to a certain extent have infringed upon the rights of these owners. Therefore a principle upon which the DAB has scrutinized the Bill is that compulsory sale should only be done when the interests of minority owners are well taken care of.

During the period when the Bills Committee considered the Bill, a number of controversial topics were raised. An example is the minimum percentage of shares required for an application for an order for sale to be made. A major hurdle for redevelopment is, in the view of the DAB, "unscrupulous punters" or owners who cannot be found. The number of these people should be small. So, if the percentage of ownership of an application for an order for sale is too low, it would be unfair to minority owners. Hence, the DAB insists that applications can only be made when developers possess 90% or more of the undivided shares. In special circumstances, the percentage can be lowered to 80% after seeking approval from the Chief Executive in Council.

Moreover, to protect the interests of minority owners, the Lands Tribunal must give them a chance of presentation before deciding whether to grant an order for sale, so that any decision made by the Lands Tribunal is fair and impartial. Meanwhile, to avoid unnecessary loss suffered by minority owners as a result of failure to complete the sale after an order is made, the DAB agrees that in those cases where the sale cannot be completed after being put on auction sale the expenses incurred should be borne by the applicant. As regards apportionment of the proceeds of sale, the DAB considers that it should be done on a *pro rata* basis in accordance with the value of the properties. This may avoid disputes arising from an uneven distribution of ownership.

Now I would like to speak about tenants. As most tenants in old buildings are usually short of means, they would be hardest hit by a compulsory sale of their premises. I have received complaints from a group of old tenants affected by redevelopment and their position saddened me. They lacked

retirement protection and had to economize on every aspect, living off the hard savings they had made. They lived in dilapidated buildings under terrible conditions. This was not fair. But then the rent was affordable as the buildings in which they dwelled were old buildings. At least they could find shelter there. It was bad news for them when the buildings in which they lived had to be redeveloped. With a meagre compensation on eviction from their dwelling places, how can they pass their old age in dignity? Although it is not practical to ask developers to relocate all tenants, the DAB holds that tenants must be fairly compensated. That is why we agree with the proposal in the Bill for the Lands Tribunal to refer to the Landlord and Tenant (Consolidation) Ordinance and to heed the views of tenants when adjudicating on compensation, so that the difficulties of tenants can be addressed by way of the compensation.

Madam President, the Bill can undoubtedly overcome the many hurdles encountered by private developers in their redevelopments. But the Bill only provides for a lot to be treated as a unit in an application for an order for sale. This limits the possibility for mass redevelopment. In addition, private developers must use a commercial approach by selecting lots with development potentials. They will in all likelihood ignore lots with low development potentials. In the opinion of the DAB, as far as urban renewal is concerned, the Bill is helpful. The real solution to the problem of urban renewal lies in the LDC and the proposed Urban Renewal Authority, the function of which must be enhanced. With further assistance from the Housing Authority and the Housing Society to handle rehousing, we can truly accomplish urban renewal with good planning and environmental improvement as the objective.

With these remarks, Madam President, I support the Bill on behalf of the DAB.

**PRESIDENT** (in Cantonese): Mr Edward HO.

**MR EDWARD HO** (in Cantonese): Madam President, as buildings in some urban areas age the quality of our living environment deteriorates. Many factors, including a lack of community facilities or a lack of basic facilities in some old areas, cause traffic congestions and other problems. In addition, the sanitary conditions of a number of buildings are poor. Their structures are badly in need of maintenance and can be hazardous to safety. Therefore, the

Government must urgently review its urban renewal programme. Although since its establishment in 1988 the LDC has carried out urban renewal work for some parts of the urban areas, progress has been slow and disappointing.

The Bill before us today may solve some of the problems connected with urban renewal. It benefits in particular urban renewal plans undertaken by private developers. Naturally, urban renewal has a profound effect on the people. Some owners are forced to sell their properties. Both owners and tenants need to move. Commercial activities are thus affected. All these are complicated issues that require careful attention.

The Bills Committee has held 12 meetings to scrutinize the Bill. This shows the Bill is a complicated one. Basically, I support the Bill, but I would like to make several points.

First, the Bill only allows the "majority owner", that is, an owner who owns not less than 90% of the undivided shares of the lot to make application to the Lands Tribunal for an order for compulsory sale of all the undivided shares of the lot by public auction for the purposes of the redevelopment of the same.

The key lies in the Bill being applicable to single lots only. It is therefore not applicable to consolidated redevelopment plans for buildings straddling several lots. As a result, development of pencil buildings will result. From the angle of town planning and of increasing space and basic community facilities for an area, "pencil buildings" are far from being satisfactory. Hence I hope the Government can look into other ways, which better conform to town planning principles, to help the private sector to conduct redevelopments.

Second, in the discussions of the Bills Committee, I pointed out some buildings sit on more than one lot. This is especially true for some old buildings in which many units share one common staircase. In such cases, redevelopment cannot be limited to a single lot. For this reason, the Government will move an amendment at the Committee stage, suggesting the inclusion of subclause 1(A) in clause 3(b) to tackle the problem I have just mentioned. I welcome the amendment.

Another issue is that under clauses 4(2)(b)(ii) and 12(b) the Secretary for

Planning, Environment and Lands (SPEL) may provide one or more grounds specified in the regulation for the Lands Tribunal to consider at the hearing on the subject of the application for an order for sale.

The question is clause 12 does not state clearly the rationale on which the Secretary may specify the grounds. For example, it is not specified the Secretary for Planning, Environment and Lands must act in the interest of the public. So, I think the grounds must be clear. But since the grounds specified by the Secretary have to be scrutinized and approved by the future Legislative Council, we hope the latter can monitor the grounds and approve the same only if they are good enough and in the interest of the public.

Third, the Bill has not stated clearly the correct spirit for urban renewal, such as improvement of the environment. The Bill only stresses the development of buildings with good economic potential using the idea of undivided shares. This deviates considerably from the aims of urban renewal. As urban renewal affects the interest of minority owners, the Government should take account of the effect urban renewal has on the community and see whether the greatest benefit to the community can be achieved after renewal.

Madam President, today's Bill is just a part of the greater issue of urban renewal. I think the Government should continue to review the overall strategy for urban renewal. In the process of renewal, a number of people and shops will have to be moved inevitably. This will cause great disturbance to the social structure. So, to improve the community environment, the Government should not limit its attention on renewal. Instead, it should also consider promoting building maintenance and preserving buildings of value.

With these remarks, Madam President, I support the Bill.

**PRESIDENT** (in Cantonese): Mr Ronald ARCULLI.

**MR RONALD ARCULLI:** Madam President, I wish to say a few words on behalf of the Liberal Party on this important Bill which is particularly timely.

I say important and timely because it will do much in assisting the much

needed environmental improvement in some of our rather unsightly, unhygienic and dilapidated areas of Hong Kong, as well as in assisting the provision of housing for the community. The Liberal Party supports the essential elements contained in the Bill, but we do have some concerns of which I will highlight later.

As colleagues are no doubt aware, historically, housing production in the private sector has relied essentially on two sources for land: first, land sold by the Government; and second, redevelopment of old areas in the form of urban renewal or change of land use, namely for example, from agricultural use to residential use. The rough proportion was about half of our private housing came from government land sales, with the second source, that is redevelopment and change of land use, providing the other half.

As for redevelopment of old areas, the situation got progressively difficult as the assembly of old buildings got more and more difficult. The private sector experienced serious delays and difficulties for a variety of reasons. The private sector, however, could not redevelop a site unless the developer owned 100% of a site, a lot or a building. Sometimes, it was due to professional investors, if I could put it that way, who would hold the developer to ransom. Other difficulties included the disappearance of owners or, perhaps, complicated situations of adverse possession and so on.

Madam President, some years ago, the property sector sounded warning bells over the dwindling land resources from the redevelopment of old and dilapidated buildings. Indeed, the experience of the Land Development Corporation in this respect demonstrates the difficulties and the resources needed to redevelop such areas of Hong Kong. So, whilst we welcome the new procedure for compulsory sale for redevelopment that will be available to the private sector in very limited circumstances, the Liberal Party would like to register one or two of our concerns.

One concern we have is that, due to the stringent requirement that an applicant for an order for compulsory sale will have to own 90% of the undivided share of the lot or lots which may be the subject of an application, this might result in pencil rather than comprehensive redevelopment. We should keep this issue under scrutiny and see whether it achieves good results. If not, we should not be afraid to review the situation.

Another concern is that of professional investors and tenants. Whilst we believe in a free market, we should be watchful so as to ensure that this new

policy will produce a fair and balanced result.

Another concern is the displacement and perhaps, the rehousing of tenants which will again need to be watched carefully so as to avoid the creation of other social problems.

Madam President, no one in this Council takes the lawful and compulsory deprivation of private property rights lightly. In our attempt to provide Hong Kong with a key to environmental improvement and assist in providing the much needed housing, we owe it to the community to ensure that it not only works, but that it works fairly and properly.

With these remarks, the Liberal Party will support the Bill.

**PRESIDENT** (in Cantonese): Mr NGAN Kam-chuen.

**MR NGAN KAM-CHUEN** (in Cantonese): Madam President, urban renewal in Hong Kong and its progress have been subject to severe criticisms. Many residents in the old areas are still living in poor conditions and even dangerous buildings. Up to now, their living condition has not been improved. The Land Development Corporation has devoted a lot of efforts in urban redevelopment but to little avail. For those who are living in the old areas, they have almost been forgotten. Buildings which have redevelopment value will see a bright future, but no one would like to be engaged in programmes which will certainly lead to a loss.

The Democratic Alliance for Betterment of Hong Kong (DAB) welcomes the Land (Compulsory Sale For Redevelopment) Bill for at least it can help private developers expedite the acquisition of old buildings for redevelopment, particularly buildings with fragmented title shares. A private developer with not less than 90% of the undivided shares of a building can apply for an order for compulsory sale from the Lands Tribunal even though some of the owners are missing. This mechanism can ensure that the developer will not acquire a "useless" building.

But I would like to reiterate here that the DAB supports this Bill not because we want to help the developers to remove the so-called "coffin nails", meaning the professional investors. Nor do we want to help them oppress the

minority owners. With the objective of improving the environment of old areas, we hope this will encourage redevelopment of these areas by the private developers. Under the Bill, the minority owners' interests are safeguarded as they can dispute the assessed market value of their units and the majority owners' units and the trustees' expenses are also paid by the majority owners. In case the sale of the lot by public auction is not successful, the expenses of the auction will also rest with the majority owners solely. As to those missing owners, their interests are also protected. The proceeds of sale due to them will be held by court and paid into the Government's General Revenue upon the expiration of three years. Any person who claims to be entitled to those proceeds may make a claim against the Government.

Apparently, the Bill can help improve the environment of the old areas. But will all problems be solved by this Bill? The answer must be in the negative due to the limitation of the Bill itself. Members should bear in mind that redevelopment programmes are led by private developers as they are businessmen and their top priority must be profits. For programmes which are not lucrative, basically they are not interested, let alone wasting the time in negotiating with the minority owners and applying for compulsory sale orders from the Lands Tribunal.

Secondly, the Bill provides that a developer can apply for an order for compulsory sale only when it has acquired 90% of the undivided shares of a single lot. We foresee the thriving of "pencil" developments which is not conducive to comprehensive urban redevelopment. So the DAB reckons that the Bill will only play a complementary role in environmental improvement of the old area and it is just better than none.

In view of this, the DAB would like to urge the Government to set up an Urban Redevelopment Authority as soon as possible in order to expedite the progress of urban renewal and to create a better environment for residents in the old areas.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Secretary for Planning, Environment and Lands.



**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS:** I am very grateful to the Honourable Ronald ARCULLI and members of the Bills Committee for their very hard work and patience in examining the provisions of this Bill.

The Bills Committee met 12 times between early February and late March and has received representations from the Real Estate Developers' Association of Hong Kong, the Law Society of Hong Kong, the Hong Kong Institute of Planners, the Hong Kong Institute of Surveyors and the Land Development Corporation. The long hours spent and the wide consultation conducted reflect the importance we all attach to the Bill and the objective of speeding up urban renewal. We are grateful for the Committee's support for the general principles of the Bill. Furthermore, through thorough clause-by-clause discussion in a spirit of co-operation, the Committee has examined together with us in great detail many technical aspects of the Bill and has helped us greatly in drawing up amendments which will improve the proposed operation of the Bill.

We have reached consensus with the Committee on these amendments which I will explain further when they are introduced at the Committee stage. I will now address some of the more important technical issues which we have discussed with the Bills Committee.

First, the Bill stipulates that the majority owner or owners must own a minimum of 90% of the undivided shares in the lot before he or they can apply to the Lands Tribunal for an order for sale. The Chief Executive in Council can specify a lower percentage which cannot be less than 80% in respect of any class of lots. In the representations received by the Bills Committee, there were suggestions that the 90% threshold stipulated in the Bill should be lowered. However, we feel that it is very important to strike a balance between facilitating urban redevelopment and protecting individual owner's rights, and have reached consensus with the Bills Committee that the stipulated minimum percentage should not be amended.

Second, the Lands Tribunal shall not make an order for sale unless it is satisfied that certain criteria have been met, including criteria that the redevelopment of the lot is justified and that the majority owner has taken reasonable steps to acquire all the undivided shares in the lot.

The question has been raised as to whether the Lands Tribunal should take into consideration whether compulsory sale of the lot would cause undue hardship to the minority owners.

I wish to assure Members that the criteria specified in the Bill are not exhaustive and that the relevant clause has been purposely drafted to allow the Lands Tribunal to take into account other relevant factors, including that of undue hardship on the part of the minority owners. However, we have also reached consensus with the Bills Committee that the factors to be considered shall not include hardship on the part of tenants, as they are entitled to fair compensation as ordered by the Lands Tribunal.

Third, the question arises as to how title disputes, such as those arising from adverse possession, should be dealt with. Our original intention was that any title disputes should be settled through the usual proceedings in the Court of First Instance and that the Lands Tribunal should have no role to play under the Bill in this regard. However, after careful consideration together with the Bills Committee, we agree that provision should be made for the Lands Tribunal to direct the trustees appointed under an order for sale to set aside parts of the proceeds of sale in view of any pending action, or *lis pendens*, affecting the lot registered under the Land Registration Ordinance for payment to persons concerned upon the settlement of such disputes.

Finally, the Bill gives the purchaser of a lot ordered for sale the right to terminate tenancies in respect of any premises on the lot. In this regard, we accept the Bills Committee's advice that complications which may be involved in terminating contractual tenancies and vacating tenants will be a deterrent to potential purchasers of the lot. I will, therefore, move amendments to the effect that all tenancies are terminated upon the purchaser becoming the owner of the lot, that the purchaser must serve notice to the tenants in a specified form and that the tenants must deliver up vacant possession within six months.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Land (Compulsory Sale for Redevelopment) Bill be read the Second time. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Land (Compulsory Sale for Redevelopment) Bill.

Council went into Committee.

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