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BY FAX

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(Attn. : Mr Stephen Fisher
Deputy Secretary)

Dear Mr Fisher,

Urban Renewal Authority White Bill

I am scrutinizing the legal and drafting aspects of the above White Bill on behalf of Members and shall be grateful if you would clarify the following :

Clause 5 Purposes of Authority

Clause 5(e) provides that the Authority may engage in such other activities and perform such other duties as the Chief Executive may by order published in the Gazette permit or assign to it. Please clarify whether such order is subsidiary legislation to be laid on the table of the Legislative Council. To remove any doubt, the Administration may wish to consider stating whether or not the order is subsidiary legislation in that sub-clause.

At the Subcommittee meeting on 9 November 1999, you have mentioned that the intention of Clause 5(e) was to guard against some accidental omission and not to extend to purposes of a wholly different kind. Would you have referred to the principle of ejusdem generis, i.e. a principle of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character? For this principle to apply there must be a sufficient indication of a category that can properly be described as a class or genus. Please identify the class that would restrict the scope of other activities and duties that the Chief Executive may permit or assign.

Clause 7 **Members to declare interests**

Clause 7(5)(c) prohibits a member of the Board of the Authority to vote or otherwise act as a Board member in relation to any matter in which he is directly or indirectly interested unless he is permitted by the person presiding at the meeting, or if he is the person so presiding, by the majority of the other members present. Please explain the reason for creating this exception. Pursuant to paragraph 6 of the First Schedule to the Land Development Corporation Ordinance (Cap. 15) ("the repealed Ordinance"), an interested member of the Land Development Corporation is prohibited from voting in any event.

Clause 11 **Borrowing powers**

Clause 11(6) enables the Authority with the approval of the Financial Secretary to charge all or any part of its property as security for the repayment of money borrowed. Even though this provision follows section 7(4) of the repealed Ordinance, please consider whether the charge should be extended to secure payment of interest on the amount borrowed.

Clause 21 **Objections to projects to be implemented by way of a development project**

Does the Authority need to submit the development project to the Secretary for authorization if it has not received any objection within the publication period? How would the Authority deal with objections received after the publication period? If authorization by the Secretary is required in any event, is it necessary to provide in Clause 24(1) and (2) the time limit by which the Authority has to apply to the Secretary requesting him to recommend resumption of land under such circumstances?

Has the Administration considered imposing a time limit in Clause 21(4) for the Secretary to consider the development project and the objections to determine whether or not to authorize the Authority to proceed with the project?

Would the Secretary's decision made under Clause 21(4) be subject to review or appeal?

Clause 22 **Development schemes**

I note that Clause 22(3) to (9) follows sections 13 and 14 of the repealed Ordinance and that references have been made to the Town Planning Ordinance (Cap. 131) and its specific provisions (sections 3, 4, 9 and 16). You may well be aware that a bill would be introduced to repeal that Ordinance soon. At the Subcommittee meeting, you have mentioned that no amendment to the subject Bill would be necessary consequential upon the repeal of the Town Planning Ordinance. Please explain in detail.

Sub-clause (5) provides that the Authority may submit a plan to the Town Planning Board for approval. Sub-clauses (6) to (9) refer to an approved plan. However, under the existing provisions of the Town Planning Ordinance, an approved plan is one that is approved by the Chief Executive in Council under section 9. The Town Planning Board is only empowered to approve master lay-out plans under section 4.

Section 5 of the Town Planning Ordinance refers to a draft plan which "the Board deems suitable for publication". Please consider whether drafting could be improved, for example, by replacing "for approval" with "for consideration" and "approve it" with "consider it suitable for publication".

Clause 24 **Power of Secretary to recommend resumption**

Under Clause 24(1), the Authority may apply to the Secretary requesting him to recommend to the Chief Executive in Council the resumption of land under the Lands Resumption Ordinance (Cap. 124). In this regard,

- (a) unlike the repealed Ordinance, there is no restriction that the Authority has been unable to acquire such land before application. Please clarify whether the Authority has an unfettered right to apply to the Secretary (subject only to the time restraint in sub-clause(2)).
- (b) reference is made to section 9 of the Town Planning Ordinance in sub-clause (1)(a) in relation to a development scheme and to the authorization of the development project by the Secretary in sub-clause (1)(b). My comments on Clauses 21 and 22 are also relevant in these contexts.

Unlike the repealed Ordinance, the Administration has deliberately removed the criteria that the Secretary must be satisfied all reasonable steps have been taken to otherwise acquire the land including negotiating for the purchases thereof on terms that are fair and reasonable. Is it the policy intent for the Secretary to recommend resumption irrespective of whether the Authority has taken any steps to acquire the land?

Sub-clause (3)(a) anticipates that the Authority may sell the land

resumed in pursuance of a recommendation by the Secretary to any other person or persons. Since resumption of land so made is deemed to be a resumption for a public purpose within the meaning of the Lands Resumption Ordinance, how would the Authority justify that the sale accords with the public purpose presumed?

Clause 6(2)(o) confers on the Authority the power to sell or otherwise dispose of any land on such terms and conditions as the Authority thinks fit and Clause 5(c) sets out that one of the purposes of the Authority is to make land available to meet various development needs. Is obtaining the approval of the Chief Executive in Council under Clause 25 the only check and balance when the Authority proposes to exercise its power of sale?

Clause 25 **Disposal of land resumed under Lands Resumption Ordinance**

Under Clause 25, the Authority shall not sell or dispose of land it has assembled including land resumed unless prior approval has been granted by the Chief Executive in Council. What would be the criteria for approving such sale or disposal? Is the decision subject to review or appeal?

Under section 5 of the Lands Resumption Ordinance, on the expiration of 1 month or any longer period authorized by the Chief Executive after publication of the resumption notice in the Gazette, the land would vest in The Financial Secretary Incorporated where it is an undivided share in land, and in all other cases, revert to the Government. By what mechanism would the Authority be able to obtain title to the resumed land in order to sell to other person or persons?

Clause 26 **Power to enter and inspect**

Clause 26(1) is similar to section 16(1)(a) of the repealed Ordinance except that the latter specifies that the power may only be exercised at any reasonable time during daylight, with the consent of the occupier thereof, or of the owner thereof if there is no occupier or if the occupier cannot be found. Please explain the reason for excluding this restriction.

Clause 30 **Repeal of Land Development Corporation Ordinance**

Please confirm that Parts II to VIII would come into operation on the same day.

Explanatory Memorandum

Paragraph 6(b) inadvertently specifies that the business plans to be prepared by the Authority are 5-year forward plans.

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser

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