

Information Paper for Legislative Council Panel on Home Affairs

Resumption and Repair of Private Streets

Purpose

This paper briefs Members of the progress of the Private Street Resumption Programme which Government has been implemented since 1986 under the Roads (Works, Use and Compensation) Ordinance, Cap. 370 for the resumption and repair of those private streets with poor conditions and environmental nuisances.

Background

2. The purpose of resumption of private streets is to enable Government to upgrade the condition of those private streets which are in disrepair and lack proper management. Such streets are only resumed and upgraded for overriding public interests. Government has since 1986 been implemented a programme for the resumption and repair of private streets under the Roads (Works, Use & Compensation) Ordinance (RWUCO), Cap. 370, for the purpose of better management and maintenance of these streets.

3. The Private Street Resumption Committee (PSRC) was established in 1986 to co-ordinate departmental efforts in drawing up the resumption programme and overseeing the progress of resumption. Membership of the PSRC includes the following :- Home Affairs Department (Chairman), Highways Department, Transport Bureau, Buildings Department, Lands Department, Housing Department, Leisure and Cultural Services Department, Fire Services Department, Drainage Services Department and Transport Department.

4. The resumption efforts of the programme have concentrated on private streets under multiple-ownership which suffer a number of environmental problems such as littering, illegal parking, obstruction by abandoned vehicles, hawker stalls and shop operators and water leakage

or flooding caused by lack of management and maintenance. Based on the advice of the 18 District Officers, we have identified 166 private streets in the urban areas as targets for resumption under the Private Street Resumption Programme (PSRP). Among them, 75 streets have been deleted from the programme (please see below), and the resumption and improvement works for the other 62 streets have been completed. Of the 29 streets outstanding in the programme, 8 streets are now at various stages of resumption/repair work and will be taken forward to completion. (6 streets are expected to be completed in 2000-2001.) The remaining 21 streets will continue to be dealt with under Lands Department's quota system of allocating staff resources for resumption/clearance work of 4 streets at any one time and will be taken forward in the normal manner in accordance with established policies and procedures.

Problems encountered in the Resumption Programme

5. 75 private streets have been deleted from the resumption programme due to various reasons, including -

- (a) **Protruding balconies problem** - the resumption of private streets with balconies above the streets will give rise to "trespassing problem", whereby property owners who maintain their balconies after resumption will constitute trespass under law. We have thoroughly examined various alternatives to address the trespassing problem. An amendment of the Crown Land Ordinance, Cap. 28 for the deemed granting of statutory licences to ensure no change to the owners' rights to maintain their overhanging balconies over the resumed streets was legally unworkable. An amendment of the RWUCO, Cap. 370 to enable "strata resumption" so as to exclude the overhanging balconies was rejected after consultation with the Department of Justice and the government departments/bureaux concerned as too resource intensive and legally complicated. No feasible solution was found to overcome the trespassing problem without the input of additional Government resources, despite our original intention to find a swift and simple legal mechanism to allow us to continue resumption of private streets

with overhanging balconies. If we press hard with the resumption of private streets with protruding balconies, the owners may sue the Government for loss of legal title. The other alternative is to confirm the legality of these overhanging structures and issue individual licences. But we did not have the staff resources to implement this. The proper owners, if they maintain the balconies over the private streets after resumption, will constitute trespass under s.4 of the Crown Land Ordinance, Cap. 28 and there will be a consequential risk of enforcement action under s.6 thereof. There will also be disputes on the right of owners in future redevelopment of the affected properties and the land status problem will be uncertain in sale transactions due to the resumption.

- (b) **Compensation implications arising from reduction in site area** - upon the advice of the Buildings Department, some private lanes to be resumed provide a right-of-way but are not required to do this under the Building (Planning) Regulation 28. The area of the lane may be included in the site area calculation on redevelopment by way of modification of Building (Planning) Regulation 23 (2)(a). This means that some of the service lane areas are now of value because resumption of the lane would reduce the site area and hence incur valid compensation claims for loss of site area. The Government is not prepared to pay compensation on this count.

- (c) **Compensation implications arising from turning resumed private streets into emergency vehicular access** - some private streets cannot be converted into public carriageway after resumption (e.g. they are too narrow). They can only be turned into pedestrian and emergency vehicular access and will be closed to normal vehicular access. Examples are the eight “Wan” streets in Kowloon City. This will incur valid compensation claims for loss of vehicular access which owners/occupiers of abutting premises enjoyed before resumption. Again, Government is not prepared to pay compensation on this count.

6. The PSRC's approach on payment of compensation is that statutory compensation under the RWUCO, Cap. 370 will only be paid if the claim is unforeseen before the resumption and is subsequently found justifiable. If it is envisaged that the street to be resumed will incur valid compensation claims, it will usually be deleted from the resumption programme. It will therefore be up to the owners to initially take up the responsibility to maintain and upkeep the private streets.

7. It would not be practical for Government to sound out the owners on the proposed terms of the resumption so that they could consider surrendering the streets to Government voluntarily in view of the problem of multiple-ownership and the ever changing pattern of ownership. In this regard, we have gained valuable experience from District Officer(Kowloon City)'s opinion survey for the "Wan" streets in Kowloon City. It was found to be impracticable to trace all owners and even when owners were known, not all would agree to surrender the land to Government. Also, other difficulties exist :-

- (a) searching for all owners, mortgages and registered prospective purchases or changes etc. is complex and time consuming;
- (b) correspondence kept by the Land Registry may be outdated;
- (c) people who have emigrated to other countries will further complicate the search; and
- (d) it is uncertain whether owners will agree to surrender the land after the search is completed.

Not all property owners/tenants will agree to unconditionally surrender their titles to the private streets to the Government. Some may even claim compensation for diminution in the value of their interest in the land and economic loss in the event that the streets are taken back by the Government.

Private streets not to be resumed

8. For streets not to be resumed under the resumption programme, the PSRC is of the view that the responsibility for the management and maintenance of private streets primarily rests with the owners themselves. Government will provide assistance to the owners in exceptional cases

when public interest/safety is involved. We are taking steps to promote and publicize the concept of self-management and maintenance of private streets to the owners and residents. We intend to publish an information pamphlet on the subject to help the owners and residents realize and fulfill their responsibility for the maintenance and management of private streets.

9. When multiple ownership is involved in private streets, District Officers will encourage and help property owners and residents to form Mutual Aid Committees/Owners' Corporations so that they are better organized to manage their properties, including private streets. Where the owners and residents have difficulty in managing their private streets, District Officers will liaise with relevant departments to provide basic support for the owners and residents concerned in the upkeep of the streets in the public interest on a case by case basis, including safety to the pedestrians. Recently, re-surfacing works have been carried out by the Highways Department and Home Affairs Department to two private streets in Eastern District (Jupiter Street and Hei Wo Street) which were in dilapidated conditions (the streets had been deleted from the resumption programme due to the protruding balconies problem). Examples of assistance rendered to the property owners/residents of the "Wan" streets by the departments concerned since November 1997 is at Annex I.

10. There are other private streets including those in large-scale private developments or residential estates where, because of good management, there is no problem of management and maintenance. These form the vast majority of private streets in Hong Kong.

**Assistance Provided by Various Departments
to Owners/Residents of the Eight “WAN” Streets
November 1997 - October 1998**

Department	Assistance Provided
Home Affairs - Kowloon City District Office	<ul style="list-style-type: none"> • assist property owners to form MACs and OCs - 2 MACs have been formed in the past 12 months. There are altogether 25 MACs at present • attend MAC meetings to advise and assist owners regarding management of the streets concerned • enlist further assistance and support from relevant departments in improving the environmental conditions of the streets concerned
Urban Services (USD)	<ul style="list-style-type: none"> • provide street sweeping services in private streets area twice per day without charge • issue nuisance notices and/or take prosecution action against nuisance makers as appropriate • sanitary nuisance complaints were received in the past 12 months and 6 complaint cases were satisfactorily settled. The rest will need to undertake property owners search
Drainage Services (DSD)	<ul style="list-style-type: none"> • clear choked drains inside private streets area without charge upon receipt of complaints • carry out drainage clearance under the preventive maintenance programme (i.e. a proactive approach) • minor chokage complaints were received in the past 12 months and all were satisfactorily resolved

Department	Assistance Provided
Water Services (WSD)	<ul style="list-style-type: none"> • water pipe bursting - provide emergency water supply and let owners have an option of repairing burst pipes by private plumber or requesting the WSD to repair at cost • provide tel. no. of contact officer for emergency situations or technical advice • attend MAC meetings to advise and assist owners regarding water pipe problems • complaint case regarding water pipe bursting was received in the past 12 months and was satisfactorily resolved
Buildings (BD)	<ul style="list-style-type: none"> • investigate any reports on unauthorized buildings works (UBWs) and take immediate enforcement action against new UBWs and those which pose an imminent danger to the buildings or life • complaint cases against UBWs were received in the past 12 months. BD put 7 complaint cases under prioritized enforcement list which pose no imminent danger to the buildings or life. The other 6 cases were already satisfactorily resolved as a matter of top priority
Highways (HyD)	<ul style="list-style-type: none"> • inspect the streets upon receipt of complaints about road conditions and consider whether the road surface conditions require emergency surface repairs