Hong Kong Bar Association

Further Comments on Urban Renewal Authority Bill

Introduction

1. The Hong Kong Bar Association [the Bar] first commented on this Bill in its paper of 1st December 1999 and attended a meeting of the Bills Committee to present that paper on 14th April 2000. That paper raised concerns as to inordinately wide purposes clause and the general, non-urban renewal power proposed for the URA; the prospect of blight and the absence of compensation for blight; inconsistent compensation provisions under the various land acquisition and resumption statutes, of which the URA Ordinance will be one; the removal of compulsory negotiation prior to seeking resumption (cf. the Land Resumption Ordinance, Cap. 124) and various transitional provisions and bylaws.

2. There having been further explanations given by Government, some committee stage amendments proposed (including a statutory Appeal Board, interposed between the proposal of a development project and the decision of SPEL under *s.21* by *ss.23A* and *23B)* and certain changes proposed to the scale of compensation, the Bar was asked on 28th February if it wished to comment further.

3. The Bar's comments below are divided into two: outstanding matters and the new proposals.

Outstanding matters

a. Proposes and powers of the URA; CE's power to direct the URA

4. The Bar has seen no amendments to remedy either the non-specific, non-urban renewal purpose in *s.5(f)* of the Bill or the unduly broad and poorly-drafted power in *s.6(1),* commented on in Part A of our first paper.

5. We have seen no justification for either of these provisions as they stand. They both appear to be contrary to ***principle (b)*** stated by the Bills Committee in para. 9 of its latest Report. They allow the URA to acquire land other than for the *s.6(1)* purpose. The power granted to the Chief Executive by *s.5(f)* to direct the URA as he may wish is not in any way restricted by the undertaking given by SPEL to LegCo on 26th June 2000. Simply stating that any such order must be laid on the Table, as with all other subsidiary legislation, takes the matter no further.

6. The Bar continues to believe and **recommends** that *s.5(f)* be removed from the Bill and that *s.5* and *s.6(1)* be amended to make them congruent and restricted to the specific urban renewal purposes of the URA set out in the second limb of *s.6(1)*.

b. Resumption and compensation; blight.

7. The Bar regrets that the Government does not intend to take this opportunity to make consistent the provisions and procedures for compulsory acquisition of land and for compensation under the various statutes dealing with the matter.

8. It is clear (see paras. 41-43 of the latest Report of the Bills Committee) that Government and Bills Committee members recognise the probability of **blight** as a result of the URA pursuant to the Bill, as pointed out in part B of the Bar's first paper. It is regrettable that Government has chosen not to recognise this deprivation of property rights (in terms of value) by introducing a right to compensation and a procedure for its recovery. SPEL's statement to LegCo on 26 June 2000 that the Government "fully agrees" with the principle of protecting the interests of owners is not borne out by this decision.

c. Transitional arrangements and by laws

9. The Bar's concerns as to transitional arrangements set out in para. 23 of section C of our first paper have still not been addressed. The proposed arrangements remain the same; the accrued rights of persons soon to be, or currently negotiating acquisitions with the LDC are to be taken away, apparently for reasons of expediency, and the new URO procedure applied. This remains *prima facie* wrong. The Bar maintains the concerns and *recommendation* to delete *s.30(8)* set out in paras. 23 and 25(a) respectively of our first paper.

10. Similarly, the Bar maintains its concerns as to by-laws and *recommendation* to amend *s.29(2)* in paras. 24 and 25(b) of our first paper.

New Proposals

d. Compensation formula

11. The bulk of the material recently provided concerns the levels of compensation to be paid upon acquisition by URA in default of a reference to the Lands Tribunal to determine compensation. The Bar notes that by use of the "fair value" plus allowances, Government quietly continues to deny any "development" or "hope" value to existing owners of property in a development area. This feature is more acute given that URA – induced blight may well already have depressed the "fair value" of their property to be paid as compensation; blight for which there is no right to compensation.

e. Appeal Board

12. The constitution of the newly-proposed Appeal Board (para. 46 of the latest Bill Committee report and proposed *ss.23A* and *23B* of the Bill) seems rather odd to the Bar. Once again, these will be persons appointed by and at the pleasure of the Chief Executive to question the decision of SPEL, another appointee of the Chief Executive. There is no requirement for members to have any

qualifications or experience. Notably, there is also no requirement for members to declare any interest they may have on nomination to an appeal board, which has the effect of rendering *ss.23(12)* rather empty.

13. The procedural time limits in *s.23B* are exceedingly short for the preparation of a properly-drafted objection and to obtain and instruct appropriate representation especially given that the statute allows SPEL to sit on a proposal for years before approval. The Bar therefore *recommends* that these procedural provisions be revisited, and the time limits extended; and that the Appeal Board should be given an express discretionary power to extend time for the taking of any step or the doing of any act in the proceedings.

7th March 2001