LC Paper No. CB(1)571/02-03(03)

LegCo Panel on Planning, Lands and Works
"Comprehensive Development Area" – zoning on statutory plans

1.0 There are two major problems associated with the CDA zoning: these are ownership / land assemble and incentives to attract re-development. In the Government paper on CDA, 5 categories of CDA sites have been identified. These are:

1.1 Sites designated in response to requests of quasi-government bodies and private developers;
1.2 Sites designated to meet objections to statutory plans;
1.3 Sites on Government land which has been/will be disposed of for private development;
1.4 Sites designated to ensure comprehensive control especially for environmental reasons; and
1.5 Sites originally designated for environmental improvements in the rural area but their development intensity and land use are subject to review.

2.0 For the first 3 categories, the above mentioned problems are not relevant. It is therefore quite easy for these sites to be developed. However, for the last two categories, the above-mentioned problems have prevented these sites to be redeveloped. Consequently, from Table 2-Status of the 114 "CDA" Sites in the Government paper, it can be seen that none of these sites have the MLPs approved. It is for these two categories of CDAs that we would like to express our views.

3.0 In practice, it is almost impossible for all the owners within a CDA to form a joint venture. Some of the major hurdles which prevent joint ventures being formed include the following:-

3.1 Agreeing on the shares of the owners in the joint venture;

3.2 The owners can never agree on the Before Value of each property;

3.3 Some properties may be subject to long leases and the relocation of tenants may call for substantial compensation;

3.4 The financial ability of the owners to contribute towards the payment of the premium;

3.5 Obtaining finance for the redevelopment, particularly in the present economic climate and providing the necessary guarantees for obtaining such finance;

3.6 The lack of expertise amongst the owners and lack of understanding of

the planning application, land exchange and redevelopment process;

3.7 The financial ability of the owners to see the redevelopment through until completion. In many cases, the total period for the redevelopment will be a minimum of six years from the time that the owners execute the joint venture agreement to completion of the development. In many cases, the period is likely to be substantially longer;

3.8 There could be legal problems with the title due, for example to an owner passing away intestate;

3.9 If one of the units has a title problem, the whole redevelopment could be brought to a standstill; and

3.10 In addition, there are many other comparatively minor problems, either of a social or sentimental nature, which are equally difficult to resolve.

4.0 Assisting the Private Sector in Land Assembly

4.1 To facilitate urban renewal by the private sector in an area which is dilapidated, and where the Government has decided that urban renewal should take place, the URA should consider acquiring or resuming the properties which obstruct comprehensive developments by the private sector,.

5.0 Land (Compulsory Sale for Redevelopment) Ordinance

5.1 It is a well-known fact that assembling land is a long and tedious process. The Government is appreciative of the problem and has enacted the Land (Compulsory Sale for Redevelopment) Ordinance (the "L(CSR)O"). However, the HKIS has identified certain draw backs with the current provisions of the L(CSR)O.

6.0 Existing Provisions of the L(CSR)O

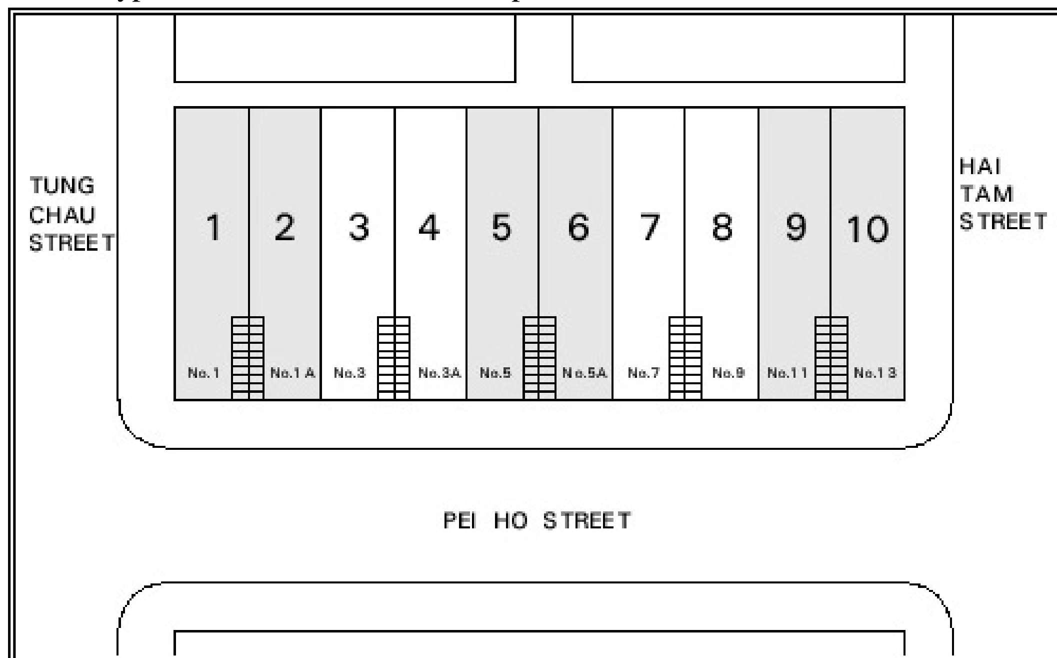
6.1 The L(CSR)O came into effect on June 7, 1999. As presently drafted, the L(CSR)O only applies to a lot forming the subject of a Government Lease or a section of a lot (the "Lot"). The majority owner (as explained below) can apply to the Lands Tribunal for an order to sell all the undivided shares in the Lot for the purposes of redevelopment. The majority owner is defined as the owner or owners who own more than 90% of the undivided shares in the Lot, or in the case of two buildings standing on two Lots connected by a common staircase, the majority owner can own 90% of the undivided shares in the two Lots. This very narrow application creates a lot of difficulties and substantially restricts the application of the L(CSR)O.

6.2 In the older parts of Hong Kong, there are many buildings still standing on very small lots of less than 100 sq. m. and sharing a common staircase. Many examples of this can be found on Shanghai Street, Reclamation Street, and Wanchai, for example.

7.0 A Hypothetical Example

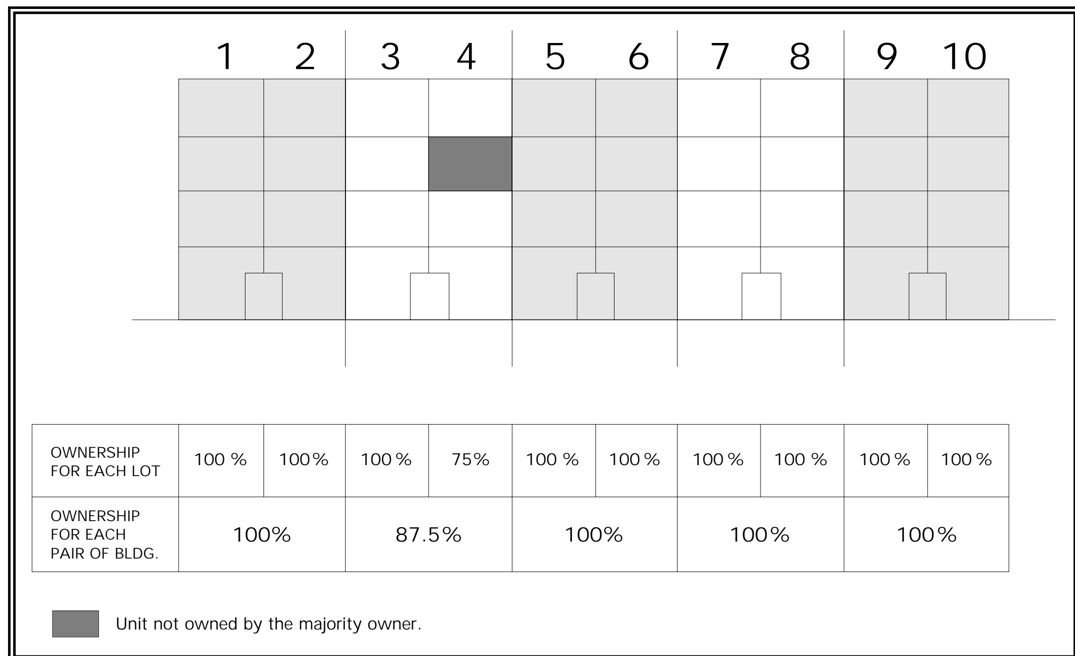
7.1 We have identified a street block at the junction of Tung Chau Street, Hai Tan Street and Pei Ho Street, which consists of a row of ten buildings, all 4 storeys in height and sharing common stair cases. We would like to use this as a hypothetical example of the problems associated with the L(CSR)O. The plan of this street block is shown below. The numbering of these buildings is quite complicated and, therefore, we will refer to them as buildings Nos. 1 to 10:

7.2 Hypothetical Residential Development in Sham Shui Po



7.3 All the buildings in the example are four storeys and there are altogether 40 interests for the whole block. If the developer owns 39 of the 40 interests, the L(CSR)O will not apply. The diagram below shows the ownership pattern.

7.4 Ownership Pattern of Residential Development in Sham Shui Po



OWNERSHIP FOR EACH LOT	100 %	100%	100%	75%	100 %	100%	100%	100 %	100%	100%
OWNERSHIP FOR EACH PAIR OF BLDG.	100%		87.5%		100%		100%		100%	

7.5 If the developer fails to obtain one of the units, his ownership in the relevant Lot will only be 75%. If we take a pair of Lots, the developer's interests will only be seven-eighths or 87.5%. This still falls 2.5% short of the 90% threshold stipulated in the L(CSR)O. Therefore, the provision in the L(CSR)O cannot apply.

8.0 Ownership Threshold can be Lowered to 80%

8.1 There is a provision [in Section 3 (5) and (6)) of the L(CSR)O] for the Chief Executive in Council to specify that the percentage of ownership of the majority owner should be lower than 90%, in respect of a Lot or a class of Lots, provided that the percentage specified is not lower than 80%. Whilst this is a reasonable provision, and may resolve the problem described above, such notification has hitherto not been made by the Chief Executive in Council.

9.0 The HKIS Proposal

9.1 The HKIS proposes that the L(CSR)O be amended so that for cases where the majority owner owns more than 90% of the shares in the Lot or the Lots, the LT will be obliged to give the order to sell, if it is satisfied that the majority owner intends to redevelop the Lot or the Lots at the compulsory sale, or that any other party, who may acquire the Lot or Lots, will be likely to redevelop the Lot or Lots.

9.2 In cases where the ownership is between 80% to 90%, the LT will, in addition to the provisions described in the last paragraph, also have to be satisfied that the redevelopment will bring about planning gain and benefit to the public, in terms of urban renewal. If the LT is satisfied with all the above, then the LT will make a compulsory sale order.

10.0 The Redevelopment 'Scheme'

10.1 In addition to the above suggestion, the HKIS also recommends that the concept of a 'Scheme' be introduced.

10.2 In the example quoted above, buildings numbered 1-4 will have to be excluded from the re-development proposal. Only buildings numbered 5-10, consisting of six lots with a total site area of about 600 sq. m., could be redeveloped as one project. In spite of the fact that the developer owns all but one unit in buildings numbered 1-4, these four lots cannot be amalgamated to form part of the redevelopment scheme. The result of this would be what is commonly known as a "pencil development".

10.3 When the developer eventually acquires the outstanding unit in building number 4, there will be another even smaller "pencil development" on numbers 1-4. If the site is going to be redeveloped as two towers, the efficiency ratio for both towers will be reduced, as each will have to have staircases and a lift core. From a broader perspective, this is not desirable, as resources will be used to erect common areas in buildings, which are not living space.

10.4 The HKIS proposes to replace the definition of “Lot” in the L(CSR)O with “Scheme“ (the “Scheme”). The Scheme can consist of as many buildings as the majority owner proposes, but the extent of the Scheme will have to be approved by a tribunal, which may or may not be the Lands Tribunal (please see Section 12.0 below). Whilst the majority owner is free to propose the boundary of the Scheme, he will have to demonstrate to the Tribunal the planning gain and the public benefit of his proposal.

10.5 In the example quoted above, one would have thought that the Tribunal would see the merit in approving the limit of the Scheme to cover the whole block i.e. from buildings numbered 1-10. We believe that to be the original intention of the L(CSR)O.

11.0 Examples of Application of the Scheme

11.1 In Figure 1 on Page 7, we have taken certain hypothetical cases to demonstrate the benefit of incorporating the spirit of the Scheme in the L(CSR)O.

11.2 Case 1 shows that the majority owner is unable to acquire certain interest in the properties shaded. Therefore, he will not be able to carry out a comprehensive development, which would otherwise be a major improvement to the area.

11.3 In Case 2, the ownership pattern will render it impossible for the majority owner to apply to the Government to extinguish the lane at the North side of No. 2 Ui On Lane. It also renders it impossible for all the lots within the black broken line to be redeveloped as one building.

11.4 In Case 3, the ownership pattern will render it difficult for the full potential of No. 1-7 Kwong Hing Lane to be realised. Also, all the lots within the black broken line cannot be developed together.

QUEEN'S ROAD WEST

Tak Lee Building

Good Times Building

Tai Yik House

Hing Yip Building

FIRST STREET

YU PO LANE WEST

CASE 1

Tung Cheung Building

SECOND STREET

Sai Ying Poon Market

Tung Nam Mansion

CASE 2

CASE 3

THIRD STREET

San Hey Lee

Fung Yat Building

CHEUNG ON LANE

UN SHING LANE

High House

Kam Lee Mansion

Ko Wang Court

HIGH STREET

Cheung King Court

YING WAH TERRACE

Wah Fung House

Clinic

CENTRE STREET

EASTERN STREET

TITLE: FIGURE 1

SCALE: N.T.S.

DRAWING NO:

DATE: JAN 2000

Indicate portion of lots not owned by the majority owner

11.5 One additional advantage of the HKIS proposal is that it will also facilitate redevelopment of land in the New Territories. In figure 2, on the following page, if the developer fails to acquire a number of lots, the land grant will be very complicated. An example of this is the stilted huts standing on the pond in the Palm Springs development at Wo Sang Wai at Yuen Long. The pond in this case is actually a pool of still water, which also receives the waste or even sewage from the stilted huts.

11.6 In short, the art of setting the boundary of the Scheme will be complicated and there can be no hard and fast rules. The developer will have to demonstrate the planning gain and the benefit to the community of his proposed boundary.

12.0 Scheme Boundary to be Approved by Tribunal

12.1 The HKIS proposes that the Tribunal should consist of a lawyer, a surveyor, and possibly a planner, so that the overall benefit to the community can be assessed from the various perspectives. Alternatively, the LT or the Town Planning Board could be entrusted with such a task.

13.0 The Majority Owners

13.1 More thoughts will have to be given to the details of the procedures, to ensure that the interests of the minority owners are well protected. In any case, it is likely that at the open sale, the purchaser (who is likely to be the developer) will have to pay a price reflecting the redevelopment potential of all the properties forming the Scheme, rather than the existing use values of the individual properties. The redevelopment values in such cases are usually quite substantially higher than the existing use values. The minority owners in such case may even receive prices higher than those offered by the URA, or the Government under the URA Bill. As far as the minority owners are concerned, there may be financial benefit, although they may still be unwilling to dispose of their property, even if the sale price is more attractive.

28.9

Fence

N

FAN KAM ROAD

40.2

40

Fence

蓮塘尾菜

Lin Tong

Tsoi Yue

Fence

24.6

28.6

粉錦公路

Fence

堰

Weir

Weir

Pipeline

34.7

50

68.7

MS 3

Wall

Fence

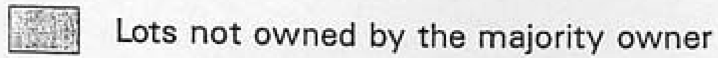
50

TITLE: FIGURE 2

SCALE: N.T.S.

DATE: JAN 2000

DRAWING NO:



Lots not owned by the majority owner

14.0 Comparison with the URA

14.1 Whilst the HKIS understands the concept of the Scheme may cause the Government and the public concern on depriving property owners' of their right to own property, through the right of compulsory sale, the HKIS would respectfully suggest that, as far as the minority owners are concerned, there is actually no difference between sale of their properties to a private developer or to the URA.

14.2 In the case of sale under the L(CSR)O, the minority owner may even have the opportunity of enjoying a sale price reflecting the redevelopment potential of the Scheme. Therefore, we suggest that the Government and the Legislative Council should draw up a balance between the protection of property rights and the public benefits derived from urban renewal.

15.0 Previous study by the Government

15.1 In June 1994 the Task Force Report on Land Supply and Property Prices prepared by the former Planning, Environment and Lands Branch of Government suggested assistance could be given by way of resumption if the following criteria were met:-

a) have to demonstrate significant planning gains and public benefits from the development, such as better use of under-utilized land, improvements to the infrastructure of environment, and so on;

b) have to have acquired, say, at least 85% of the individual property interests first and must demonstrate, to the satisfaction of the Town Planning Board or ExCo, that he has taken all reasonable steps to acquire the remaining interests on terms that are considered reasonable and fair;

c) be required to provide at his own expense a relocation package for all affected tenants at terms which are no less favourable than that provided by the Land Development Corporation on resumption;

d) have to pay a premium at full market value for the exchange site, including the resumed properties;

These were suggested possible guidelines and the Report acknowledged that given the sensitivity and complexity of the issues involved that a more thorough and detailed discussion would be needed before they were finalized.

16.0 Conclusion

16.1 The above are very real problems associated with redevelopment of land in the urban area. The CDA zoning will not facilitate in the redevelopment of the urban areas. On the contrary, it will actually sterilize the area so zoned. The ways described above will assist to, at least partially resolve the problem. We hope the Government will seriously consider our proposal. If further information should be required, please contact Mr David C Lee, Chairman of Town Planning / Sustainable Development / Urban Renewal Committee of the HKIS at 2802-9339.

Hong Kong Institute of Surveyors

7 August 2002

DCL/mw/h:urnewal:CDA