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Panel on Planning, Lands and Works

**Compensation arrangements for land resumption
for urban renewal projects**

Background Brief

Purpose

This paper outlines the compensation arrangements for land resumption for urban renewal projects and Member's concerns on the matter.

Compensation policy of the former Land Development Corporation

2. Before the Urban Renewal Authority (URA) was established on 1 May 2001, urban renewal projects were mainly implemented by the Land Development Corporation (LDC). Under section 15 of the repealed Land Development Corporation Ordinance (Cap. 15), the LDC was required to take all reasonable steps to acquire properties by negotiations with the owners within a project area. The LDC might request the then Secretary for Planning and Lands (SPL) to make a recommendation to the Chief Executive in Council to resume under the Lands Resumption Ordinance (LRO) (Cap. 124) any properties which the LDC had been unable to acquire. However, SPL should not make such a recommendation unless he was satisfied that the LDC had taken all reasonable steps to otherwise acquire the properties, including negotiating for the purchase of the properties on terms that were fair and reasonable.

Domestic properties

3. Under the LRO, owners of domestic properties are eligible for statutory compensation if their premises are resumed by the Government for a public purpose. This statutory compensation will be the fair market value of the resumed premises. Owner-occupiers are also eligible for the Home Purchase Allowance (HPA), which is an ex gratia allowance payable to enable affected owners to purchase a replacement flat of a similar size in the locality of the resumed flat. The amount of HPA is the difference between the cost of a

replacement flat and the amount of statutory compensation. Since January 1998 and up to March 2001, the HPA was calculated on the basis of a 10 years' old replacement flat. Irrespective of the number of flats held by a person, he would be entitled to no more than two HPA payments in a resumption exercise. During the days of the LDC, the Managing Board of the LDC followed broadly the compensation arrangements for land resumption by the Government. However having considered the special background of the Tsuen Wan and Kennedy Town projects, the LDC changed the HPA basis to a five years' replacement flat for these two projects. The major changes in the acquisition policy of the LDC over the years are set out in **Appendix I**.

4. The LDC offered tenants of domestic premises affected by its redevelopment projects a choice of either -

- (a) rehousing provided by LDC or by the Housing Society; or
- (b) cash compensation.

5. Where tenants opted for rehousing, they were also offered a removal allowance. Where tenants opted for cash compensation, the amount was based on the rate of statutory compensation under the Landlord and Tenant (Consolidation) Ordinance (LTO) (Cap. 7), plus an incentive element to encourage tenants to move out early. The formula for the calculation of cash compensation under the LTO is in **Appendix II**.

Commercial properties

6. Until March 2001, owners of commercial properties whose premises were resumed by the Government under LRO were offered:

- (a) the market value of their properties, plus an ex gratia removal allowance; or
- (b) the market value of their properties, plus an amount for business loss, if substantiated.

7. The ex gratia allowance was calculated based on a formula consisting of the rental cost for the removal period, removal costs, decoration costs, stamp duty, legal fees and estate agent's fees. Tenants of commercial premises were offered the same ex gratia allowance as owner-occupiers. Owner-occupiers of tenanted commercial premises were eligible for statutory compensation without any ex gratia allowance payment.

Current compensation policies of the Urban Renewal Authority

Concerns expressed during the deliberations of the Urban Renewal Authority Bill

8. The URA was established on 1 May 2001 after passage of the Urban Renewal Authority Bill (URA Bill) on 27 June 2000. The URA replaced the LDC and may request the SPL to make a recommendation to the Chief Executive in Council for resumption of land under the LRO without first negotiating with the affected owners about compensation. During the deliberations of the URA Bill, members of the Bills Committee formed to study the Bill appreciated that for the overall benefits of the community, the provision was necessary to overcome the problem of protracted land acquisition experienced by the LDC in undertaking urban renewal. They, however, held firmly that affected landowners must be fairly and reasonably compensated. For domestic properties, the Bills Committee considered that the then existing compensation formula for calculating HPA on the basis of a replacement flat of 10 years' old should be enhanced. The majority of members of the Bills Committee were in support of calculating the compensation on the basis of a replacement flat of eight years' old. Since the LDC had revised the HPA basis to a five years' old replacement flat for the Tsuen Wan and Kennedy Town projects in June 1997, some members suggested that a five years' old replacement flat should be used.

9. For tenants of domestic properties, the Bills Committee supported the policy intention to rehouse tenants affected by urban renewal projects instead of offering cash compensation. Members, however, appreciated the need to retain cash compensation as an option. They noted that the amount of cash compensation payable to tenants would be determined by URA. The Administration pledged to the Bills Committee that the amount of cash compensation would not be less than the statutory compensation under the LTO.

10. As regards non-domestic properties, the Administration also pledged to the Bills Committee to review the compensation mechanism. Since disputes on business loss was one of the major obstacles in land resumption, the Bills Committee noted the Administration's intention to explore the viability of fixing business loss at a certain percentage of the value of the non-domestic properties.

11. Since any change to the compensation formula for domestic and non-domestic properties affected by land resumption had to be approved by the Finance Committee (FC), members of the Bills Committee agreed that the matter could be further pursued in that context. It was also agreed that the URA Bill would only come into operation after the revised package of compensation was approved by the FC. The URA Bill was passed by the LegCo on 27 June 2000.

Government's revised compensation package for land resumption

12. After the enactment of the URA Ordinance and before the URA was established, the Administration put forward in February 2001 a package of proposals to revise the ex gratia allowance payment for all land resumption exercises under any relevant ordinances. The major proposals were as follows:

- (a) to revise the basis for calculating HPA from a replacement flat of about 10 years' old to a replacement flat of about seven years' old;
- (b) to retitle HPA for owners of tenanted flats as Supplementary Allowance (SA) and to revise the basis and eligibility criteria for SA; and
- (c) to revise the ex gratia allowances payable to owners, owner-occupiers and tenants of commercial properties on the basis of the amount of rateable value of the resumed properties.

The details of the proposals are set out in **Appendix III**.

13. The PLW Panel held a series of meetings to examine the proposals in February and March 2001. Twenty organizations representing residents' organizations and professional institutes attended the meetings to present views on the proposals. Many organizations expressed dissatisfaction with the proposal to calculate HPA on the basis of a seven years' old replacement flat and requested that a five years' old replacement flat should be adopted. The Administration remained of the view that it was fair to use a replacement flat of seven years' old which was reasonably modern.

14. The Administration submitted the proposals to revise ex gratia allowance payment for land resumption by the Government to the FC for consideration on 30 March 2001. The proposal to revise the basis for calculating HPA was heatedly debated by members. The Administration considered it inappropriate to recommend to the URA to use a five years' old flat as the basis for calculating HPA. However, it undertook to recommend to the URA that its acquisition offer should be more favourable than the Government's land resumption offer as an incentive to flat owners to sell their properties to the URA. The proposals were put to vote and approved by the FC.

Acquisition policy of the URA

15. Following the approval of the FC on the revised ex gratia allowance payment for land resumption by the Government, the Board of the URA approved in principle on 22 November 2001 the acquisition policy for owners as well as the compensation package for tenants affected by URA projects. The URA decided to adopt the Government policy of a 7 years' old flat as the basis for calculating the HPA payable to owners of domestic properties. The URA

will also offer an incentive for owner-occupiers and owners of tenanted flats to cover removal costs and expenses related to the purchase of a replacement property. Details of the incentive will be announced for each individual projects.

16. As for eligible domestic tenants, the URA will offer rehousing. Where cash compensation is paid in lieu of rehousing, the cash compensation will be based on the statutory compensation under the LTO. A special incentive will be given to tenants who accept within one month of the offer.

Removal of statutory compensation under the Landlord and Tenant (Consolidation) Ordinance

17. In June 2003, the Administration introduced the Landlord and Tenant (Consolidation) (Amendment) Bill 2003 (the Amendment Bill) to relax the security of tenure provisions under the LTO. Apart from removing the security of tenure, the Amendment Bill also sought to remove the existing provisions for payment of statutory compensation by landlords, including developers and the URA, to tenants in acquisition of domestic properties for redevelopment. Members of the Bills Committee on the Amendment Bill were gravely concerned that the removal of tenancy security and the provisions for statutory compensation would run contrary to the legitimate expectation of tenants, particularly those of the remaining projects announced by the former LDC who had been waiting for redevelopment for a long time. Although the compensation arrangements after the passage of the Amendment Bill have yet to be decided by the URA Board, after detailed discussion with the Bills Committee, the URA made the following undertakings -

- (a) Domestic tenants affected by future URA projects commencing after enactment of the Amendment Bill would be offered rehousing in estates of the Housing Authority or Housing Society or in URA owned accommodation if eligible; and
- (b) Where the remaining projects announced by the former LDC in January 1998 are concerned, the URA will adopt the then existing compensation formula under the LTO on an ex gratia basis. The URA will retain the minimum payments then currently payable under URA policy viz. \$70,000 for a one-person household and \$80,000 for a household of two or more persons.

18. Members of Bills Committee welcomed the undertakings which could deal with the part on statutory compensation and suggested that the part on non-statutory compensation offered by the URA to encourage affected tenants to move out early be followed up by the PLW Panel. The Amendment Bill was enacted on 9 July 2004.

19. A list of relevant papers with their hyperlinks at the LegCo website is in **Appendix IV**.

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22 November 2004

**The major changes in the acquisition policy of the
Land Development Corporation over the years**

(a) Pre-November 1991

The HPA was granted on an ex gratia basis in addition to the existing use value of the property to enable the owner to purchase a brand new replacement flat of a similar size in the locality. Full HPA was payable irrespective of whether the flat was owner-occupied or tenanted.

(b) From November 1991 to June 1997

The HPA was determined having regard to a newly built replacement flat of one to three years' old and of a similar size in the same locality as the acquired property. Full HPA was payable for both owner occupied and tenanted properties.

(c) June 1997

In April 1997, the Government changed the basis for calculating the HPA to a replacement flat of 10 years' old. Having considered the special background of the Tsuen Wan and Kennedy Town projects, the LDC changed the HPA basis to a five years' old replacement flat. However, this was applicable to the Tsuen Wan and Kennedy Town projects only. Following the Government's revised policy, full HPA was paid to owner-occupiers only. Owners of tenanted flats only received 50% of the HPA for the first tenanted flat.

(d) January 1998 to March 2001

The LDC revised its acquisition policy in January 1998. The HPA was calculated on the basis of a 10 years' old replacement flat, which was similar to that of the Government.

**Formula for the calculation of cash compensation
under the Landlord and Tenant (Consolidation) Ordinance**

- (a) A basic offer based on five times the current rateable value of the premises, or the amount of statutory compensation under section 119F(4) of the Landlord and Tenant (Consolidation) Ordinance, or a specified minimum according to household size and type of accommodation, whichever is higher; and
- (b) An incentive payment of 70%, 50% or 30% of the basic offer in addition to the basic offer if settlement is achieved within one month, two months or three months respectively from the date of the compensation offer.

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Proposals regarding the ex gratia compensation policy put forward by the Administration at the request of the Bills Committee on Urban Renewal Authority Bill

- (a) The basis for calculating the HPA be revised from a replacement flat of about 10 years' old to a replacement flat of about seven years' old;
- (b) The HPA for owners of a tenanted flat (or tenanted area) be retitled as the Supplementary Allowance (SA) to avoid confusion or misunderstanding;
- (c) Owner-occupiers of commercial properties be offered an ex gratia allowance of four times the amount of the rateable value of the resumed properties, partly in lieu of the right to claim disturbance payments consisting of loss or damage to the business conducted in the resumed properties under section 10(2)(d) of the Lands Resumption Ordinance (Cap. 124), removal costs under section 10(2)(e)(i) and professional fees in relation to the claim for business loss under section 10(2)(e)(ii) of the same Ordinance (disturbance payments), and partly as a solatium^(Note 1);
- (d) Tenants of commercial properties be offered an ex gratia allowance of three times the amount of the rateable value of the resumed properties in lieu of the right to claim disturbance payments;
- (e) Owners of tenanted or vacant commercial properties be offered an ex gratia allowance of the amount of the rateable value of the resumed properties as a solatium;
- (f) The revised HPA for owner-occupiers of domestic properties and owners of domestic properties which are occupied by their immediate family members; the new SA for owners of tenanted/vacant domestic properties, and the new ex gratia allowance for owners and tenants of commercial properties be applicable to all land resumption exercises under any ordinance;
- (g) The HPA/SA be payable for a maximum of three flats per owner per resumption exercise (instead of two per owner as at present)^(Note 2);
- (h) The full HPA be paid to an owner-occupier (i.e., an owner who is occupying the entire flat);

^(Note 1) A solatium is a sum of money paid over and above the open market value as a solace for injured feelings or for being compelled to part with the resumed property.

^(Note 2) The number of persons owning three or more flats in a project area is very small.

- (i) The full HPA be paid to an owner if he can prove that the entire flat is occupied by his immediate family members^(Note 3);
- (j) An owner, who partially occupies his flat and lets out part of it, be paid the HPA for the area he occupies and the SA at 75% of the HPA for the tenanted area on a pro rata basis;
- (k) For a flat partially occupied by an owner's immediate family members and partially tenanted, the HPA be paid for the area occupied by the immediate family members and the SA at 75% of the HPA for the tenanted area on a pro rata basis;
- (l) The SA be paid at 50% of the HPA for a first wholly tenanted flat;
- (m) The SA be paid at 25% of the HPA for a second wholly tenanted flat; and
- (n) No SA be paid for a third wholly tenanted flat.

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^(Note 3) Immediate family members include children, parents and dependent brothers and sisters, grandparents, grandchildren, step-parents, spouse's parents and spouse's step-parents.

Compensation arrangements for land resumption for urban renewal projects

List of relevant papers

Council/Committee	Date of meeting	Paper
Bills Committee (BC) on Urban Renewal Authority (URA) Bill	1999-00	LegCo Brief (PLB(CR)150/78 (99) VIII) (http://www.legco.gov.hk/yr99-00/english/bc/bc09/general/89_brf.pdf) LC Paper No. CB(1)1924/99-00 (http://www.legco.gov.hk/yr99-00/english/bc/bc09/reports/a1924.pdf)
Planning, Lands and Works (PLW) Panel	28 October 1999	LC Paper No. CB(1)1026/99-00 (http://www.legco.gov.hk/yr99-00/english/panels/plw/minutes/pl1281099.pdf)
PLW Panel	19 December 2000	LC Paper No. CB(1)288/00-01 (http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/a288e.pdf) LC Paper No. CB(1)664/00-01 (http://www.legco.gov.hk/yr00-01/english/panels/plw/minutes/pl1191200.pdf)
PLW Panel	27 February 2001	LC Paper No. CB(1)630/00-01(01) (http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/a630e01.pdf) LC Paper No. CB(1)630/00-01(02) (http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/a630e02.pdf)

Council/Committee	Date of meeting	Paper
		LC Paper No. CB(1)667/00-01(02) (http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/a667e02.pdf) LC Paper No. CB(1)2063/00-01 (http://www.legco.gov.hk/yr00-01/english/panels/plw/minutes/pl270201.pdf)
PLW Panel	1 March 2001	LC Paper No. CB(1)692/00-01(05) (http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/692e05.pdf) LC Paper No. CB(1)692/00-01(10) (http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/a692e10.pdf) LC Paper No. CB(1)692/00-01(12) (http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/a692e12.pdf) LC Paper No. CB(1)723/00-01(02) (http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/a723e01.pdf) LC Paper No. CB(1)723/00-01(03) (http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/a723e03.pdf) LC Paper No. CB(1)2045/00-01 (http://www.legco.gov.hk/yr00-01/english/panels/plw/minutes/pl1010301.pdf)
PLW Panel	2 March 2001	LC Paper No. CB(1)711/00-01(02) (http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/a711e02.pdf) LC Paper No. CB(1)711/00-01(03) (http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/a711e03.pdf)

Council/Committee	Date of meeting	Paper
		<p>LC Paper No. CB(1)711/00-01(05) http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/a711e05.pdf</p> <p>LC Paper No. CB(1)711/00-01(06) http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/a711e06.pdf</p> <p>LC Paper No. CB(1)711/00-01(08) http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/a711e08.pdf</p> <p>LC Paper No. CB(1)854/00-01 http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/a854e.pdf</p> <p>LC Paper No. CB(1)2047/00-01 http://www.legco.gov.hk/yr00-01/english/panels/plw/minutes/pl020301.pdf</p>
Finance Committee meeting	30 March 2001	<p>FCR(2000-01)83 http://www.legco.gov.hk/yr00-01/english/fc/fc/papers/f00-83e.pdf</p> <p>FC135/00-01 http://www.legco.gov.hk/yr00-01/english/fc/fc/minutes/fc300301.pdf</p>
BC on Landlord and Tenant (Consolidation) (Amendment) Bill 2003	2003-04	<p>LC Paper No. CB(1)357/03-04(01) http://www.legco.gov.hk/yr02-03/english/bc/bc15/papers/bc151120cb1-357-1-e.pdf</p> <p>LC Paper No. CB(1)509/03-04 http://www.legco.gov.hk/yr02-03/english/bc/bc15/minutes/bc151120.pdf</p>

Council/Committee	Date of meeting	Paper
		<p>LC Paper No. CB(1)585/03-04(09) (http://www.legco.gov.hk/yr02-03/english/bc/bc15/papers/bc151218cb1-585-9-e.pdf)</p> <p>LC Paper No. CB(1)706/03-04 (http://www.legco.gov.hk/yr02-03/english/bc/bc15/minutes/bc151218.pdf)</p> <p>LC Paper No. CB(1)792/03-04(01) (http://www.legco.gov.hk/yr02-03/english/bc/bc15/papers/bc150119cb1-792-1-e.pdf)</p> <p>LC Paper No. CB(1)914/03-04 (http://www.legco.gov.hk/yr02-03/english/bc/bc15/minutes/bc150119.pdf)</p> <p>LC Paper No. CB(1)993/03-04(01) (http://www.legco.gov.hk/yr02-03/english/bc/bc15/papers/bc150216cb1-993-1-e.pdf)</p> <p>LC Paper No. CB(1)1236/03-04 (http://www.legco.gov.hk/yr02-03/english/bc/bc15/minutes/bc150216.pdf)</p> <p>LC Paper No. CB(1)1371/03-04(01) (http://www.legco.gov.hk/yr02-03/english/bc/bc15/papers/bc150326cb1-1371-1-e.pdf)</p>
Council meeting	28 April 2004	Hansard http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm0428ti-translate-e.pdf