

For discussion
on 25 April 2006

**LEGISLATIVE COUNCIL
PANEL ON PLANNING, LANDS AND WORKS**

**A Proposal to Lower the Compulsory Sale Threshold
for Specified Classes of Lots under
Land (Compulsory Sale for Redevelopment) Ordinance**

PURPOSE

This paper seeks members' views on the Government's proposal to lower the compulsory sale application threshold for three specified classes of lots under the Land (Compulsory Sale for Redevelopment) Ordinance (LCSRO) (Cap 545).

ISSUES FOR CONSULTATION

2. To further facilitate private redevelopment efforts so as to arrest the aggravating problem of building deterioration, the Government has published for consultation on 8 March 2006 a proposal to make use of an existing mechanism under the LCSRO to specify, by way of Gazette notice, the following three classes of lots to enjoy a threshold of not less than 80% when applying to the Lands Tribunal for a compulsory sale of the whole lot for the purpose of redevelopment –

- (a) a lot with “all units but one” acquired;
- (b) a lot with building(s) aged 40 years or above; or
- (c) a lot with missing/untraceable owners (with the number of missing/untraceable owners accounting for at least 10% of undivided shares of the lot).

The Gazette notice is a subsidiary legislation.

3. The justifications behind the above three proposed classes of lots are set out in the consultation document attached. The consultation exercise will last until the end of May 2006.

4. Subject to the community's consensus on the proposal, the Government intends to take forward the subsidiary legislation in the 2006/07 legislative session.

VIEWS SOUGHT

5. Members are invited to give their views on the contents of the consultation paper.

Housing, Planning and Lands Bureau
April 2006

**Proposals to Lower the Compulsory Sale Threshold
for Specified Classes of Lots under
Land (Compulsory Sale for Redevelopment) Ordinance**

PURPOSE

This paper sets out three proposed classes of lots to be designated under section 3(5) and (6) of the Land (Compulsory Sale for Redevelopment) Ordinance (LCSRO) to be subject to a compulsory sale threshold of not less than 80% in order to facilitate redevelopment of these classes of lots.

BACKGROUND

2. The Government is committed to arresting building deterioration. As part of the Government's holistic strategy to tackle the problem, we attach great importance to facilitating private sector's redevelopment efforts.

3. In this regard, the Land (Compulsory Sale for Redevelopment) Ordinance (LCSRO) (Cap. 545) was enacted in 1998 and came into operation in 1999. In a nutshell, the LCSRO provides for a person (other than as a mortgagee) who owns not less than 90% of undivided shares in a lot to apply to the Lands Tribunal for a compulsory sale of the whole lot for the purpose of redevelopment. As at end-2005, there were 19 applications for order for sale under the LCSRO, of which five have been granted by the Lands Tribunal, four are being processed and the others have been discontinued/suspended. The Lands Tribunal does not keep information on the reasons for discontinuation, but our understanding is that some of the cases have been discontinued because agreements for sale of the remaining interests have been reached between the respective owners and the applicants.

4. Noting that a protracted and uncertain acquisition process in redevelopment is one of the major obstacles faced by private developers, we consider there is scope under the existing LCSRO to further facilitate the land assembly process. Section 3(5) and (6) of the LCSRO provides that the Chief Executive in Council may specify by notice in the Gazette certain classes of lots for which a lower threshold of not less than 80% will apply. The Gazette notice is subsidiary legislation and requires the approval of the

Legislative Council. We consider that we could make use of this mechanism to further facilitate redevelopment efforts by the private sector. A copy of the relevant provisions is at the Appendix.

PROPOSED CLASSES OF LOTS

5. In working out our proposals, we are mindful of the need to strike a careful and fine balance between facilitating private redevelopment efforts and protecting individual property rights. In this connection, Article 6 of the Basic Law stipulates that the right of private ownership of property shall be protected in accordance with law.

6. In the light of the above, we have proposed the following classes of lots as possible candidates to be subject to a lower compulsory sale threshold of not less than 80% under the LCSRO –

- (i) a lot with “all units but one” acquired;
- (ii) a lot with building(s) that are aged 40 years or above; or
- (iii) a lot with missing/untraceable owners.

A Lot with “All Units But One” Acquired

7. There have been concerns that private redevelopment of buildings with 5 to 9 units often come to a deadlock when only one remaining owner refuses to sell due to various reasons, as the last unit would account for more than 10% of the total undivided shares of this type of buildings. As such, we propose to designate “a lot with ‘all units but one’ acquired” to enjoy a lower compulsory sale threshold of not less than 80%. This should help the redevelopment of some typical old buildings with 5 to 9 units¹. There is no readily available data on the number of buildings falling under this category. Nonetheless, there are over 20,000 private buildings with 9 storeys or less.

¹ For buildings with more than 9 units, the remaining unit will take up 10% or less of the undivided shares of a building. For buildings with less than 5 units, the remaining unit will take up more than 20% of the undivided shares of a building (this is on the assumption that the percentage of the last unit over the total number of units roughly equals to the percentage of the undivided shares attributable to the last unit over the total number of undivided shares).

A Lot with Building(s) Aged 40 Years or Above

8. In general, the physical conditions of a building will deteriorate with the passage of time although the degree of deterioration depends in turn on the state of maintenance. Given that building components have a definite lifespan, we consider building age an objective starting point for assessing redevelopment need.

9. There are at present over 7,500 private buildings (about 20% of the total number of private buildings) which are aged 40 years or above in Hong Kong. About 40% of the Buildings Department's statutory repair orders² in 2003 and 2004 were issued to these old buildings. While the actual building condition is highly dependent on how well an old building is maintained, the enforcement figures have revealed that dilapidation is more common among these older buildings. It is also likely that 40-year-old buildings fall short of the latest standard of modern buildings in the provision of a comfortable and convenient living environment.

10. Designating buildings aged 40 years or above as a class of lot will also facilitate redevelopment of buildings without basic sanitary facilities as this type of buildings are most likely to be pre-war buildings. Since these buildings fail to provide the most basic hygienic amenity, we consider their early redevelopment to be desirable. Buildings aged 40 years or above which are either monuments or proposed monuments are protected against demolition under the Antiquities and Monuments Ordinance (Cap 53). The Lands Tribunal will play a gatekeeper role and will only make an order for sale if it is satisfied, among other things, that the redevelopment application is justified.

A Lot with Missing/Untraceable Owners

11. Another common difficulty encountered by private developers during land assembly is that the relevant owners cannot be reached. We therefore propose to designate buildings with missing/untraceable owners as a class of lot for a lower compulsory sale threshold of not less than 80%.

² Orders issued under sections 26 and 28 of the Buildings Ordinance (Cap 123) in respect of rectification of dangerous and dilapidated buildings and defective drainage.

12. In this connection, we consider that the minimum percentage of undivided shares involving missing/untraceable owners should be set at 10% so that a majority owner will not be better off just when there happens to be a missing/untraceable owner³ and the majority owner would still need to acquire as many interests as possible through negotiation and agreement.

OTHER SUGGESTIONS RECEIVED REGARDING THE LCSRO

13. We are aware that there are calls, in particular from members of the industry, some professional bodies and individual owners, for more fundamental changes to the LCSRO, including lowering the threshold to not less than 80% across the board and changing the basis for calculation of threshold from a lot basis to a “site/scheme” basis. Nonetheless, we have reservation on these proposed changes given that the Legislative Council came to a consensus on the current 90% threshold on a lot basis in 1998 after very extensive debate. In particular, the proposed “site/scheme” basis may result in undesirable situations where a majority owner is unable to acquire any of the undivided shares in one of the lots in the “site/scheme” notwithstanding his holding of not less than 90% of the aggregate undivided shares. There is a need to strike a careful balance between facilitating redevelopment and protecting private property rights.

14. There are also requests that other than the age or state of repair of the existing development on the lot, the Government should, by way of regulation, specify further grounds on which the Lands Tribunal may take into account when considering whether the redevelopment of a lot under application is justified or not. We believe that such further grounds should be acceptable to the community, relatively objective and practicable. We welcome suggestions in this regard.

WAY FORWARD

15. The Government would like to hear views on the proposals. In particular, we would like to seek the views of the professional bodies and the industry on the practicability of the three proposed classes of lots as set out in

³ If the number of units with missing owners only accounts for, say, 2% of the total undivided shares in a lot, designating such lots for a lower (not less than 80%) compulsory sale threshold will be tantamount to helping a majority owner to acquire an additional 8% of undivided shares.

paragraph 6 above. We will gauge the views of the community through appropriate channels, including holding public forums and group discussions with owners as well as gauging the views of the middle-class through the Government's Public Affairs Forum on the internet. Subject to the community's consensus over the proposed classes of lots, we will proceed with the submission of the necessary legislative proposals to the Legislative Council.

Housing, Planning and Lands Bureau
March 2006

**LAND (COMPULSORY SALE FOR REDEVELOPMENT) ORDINANCE
(Chapter 545)**

Section 3(5), 3(6) and 3(7)

Section 3(5)

Subject to subsection (6), the Chief Executive in Council may, by notice in the Gazette, specify a percentage lower than the percentage mentioned in subsection (1) in respect of a lot belonging to a class of lots specified in the notice and, in any such case, subsection (1) and the other provisions of this Ordinance shall be construed as if, in relation to a lot belonging to that class of lots, that percentage so specified were substituted for the percentage mentioned in subsection (1).

Section 3(6)

No percentage may be specified in a notice under subsection (5) which is less than 80%.

Section 3(7)

It is hereby declared that-

- (a) without prejudice to the generality of the definition of "minority owner" or the operation of subsection (1)(b) or section 4(1)(b)(i), for the purposes of this section, in the calculation of any percentage of undivided shares in a lot owned by a person or persons (and whether or not he is or they are the person or persons referred to in subsection (1)), there shall be disregarded any undivided shares which are undivided shares in respect solely of any common parts of the lot;
- (b) a notice under subsection (5) is subsidiary legislation.