



THE HONG KONG INSTITUTE OF SURVEYORS

25th April 2003

Land and Building Advisory Committee
20/F North Point Government Offices
333 Java Road
North Point
Hong Kong

Dear Sirs/ Madams

Proposal for the Review of the Land (Compulsory Sale for Redevelopment) Ordinance

The Hong Kong Institute of Surveyors ("HKIS") believes that the public as well as the industry has gained familiarity and experience in the application of the Land (Compulsory for Redevelopment) Ordinance ("Ordinance") after more than four years of its enactment.

We consider that it is high time to review the Ordinance and relax certain provisions so that the Ordinance can be more effective in facilitating urban renewal projects. We have the pleasure in submitting herewith our proposal for your consideration.

A hypothetical example in our proposal highlights how the Ordinance fails to bring in more redevelopment projects with better environmental enhancement value to the society because of the very narrow application criteria stipulated in the Ordinance.

The HKIS calls for endorsement of the "Scheme" concept in the Ordinance in order to encourage more socially desirable redevelopment projects.

Should you have any queries about our proposal, please feel free to contact the undersigned at 2526-3679.

Yours faithfully

Kenneth CHAN
President



**The Hong Kong Institute of Surveyors
Proposal for the Review of the Land (Compulsory Sale for Redevelopment)
Ordinance**

Introduction

Since the enactment the Land (Compulsory Sale for Redevelopment) Ordinance ("the Ordinance") on June 7 1999, four cases have been reportedly filed to the Lands Tribunal under the Ordinance (statistics from the Judiciary website), with two granting the order of sale.

The Hong Kong Institute of Surveyors ("HKIS") considers that the Ordinance has helped facilitate redevelopment of the urban area by private sector though on a small and piecemeal scale.

Before the enactment of the Ordinance, the HKIS had expressed the concern that the Ordinance would not be able to cater for many old blocks, though with strong redevelopment merits, due to the very restrictive criteria for application laid down in the Ordinance.

With the familiarity and experience gained by the public and the industry in the past few years, the HKIS believes it is high time to review the Ordinance and relax certain provisions so that the Ordinance can be more effective in facilitating urban renewal projects.

This review will focus on three main areas:

- To reconsider relaxation of the application criteria to include lots or a scheme and whether such conditions of relaxation be specified by the Chief Executive (pursuant to Section 3 (5) and (6) of the Ordinance)
- To specify more grounds for the redevelopment justifications for which the Secretary for Housing, Planning and Lands has the power to make regulation (pursuant to Section 4(2)(a)(ii))
- To clarify certain ambiguous clauses as highlighted in the judgments, for example the wording of "existing development" (pursuant to Section 4(2)(a)(i))

A. Application criteria

1. Existing Provisions of the Ordinance

The Ordinance 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 of the Lot. 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 difficulty and substantially restricts the application of the Ordinance.

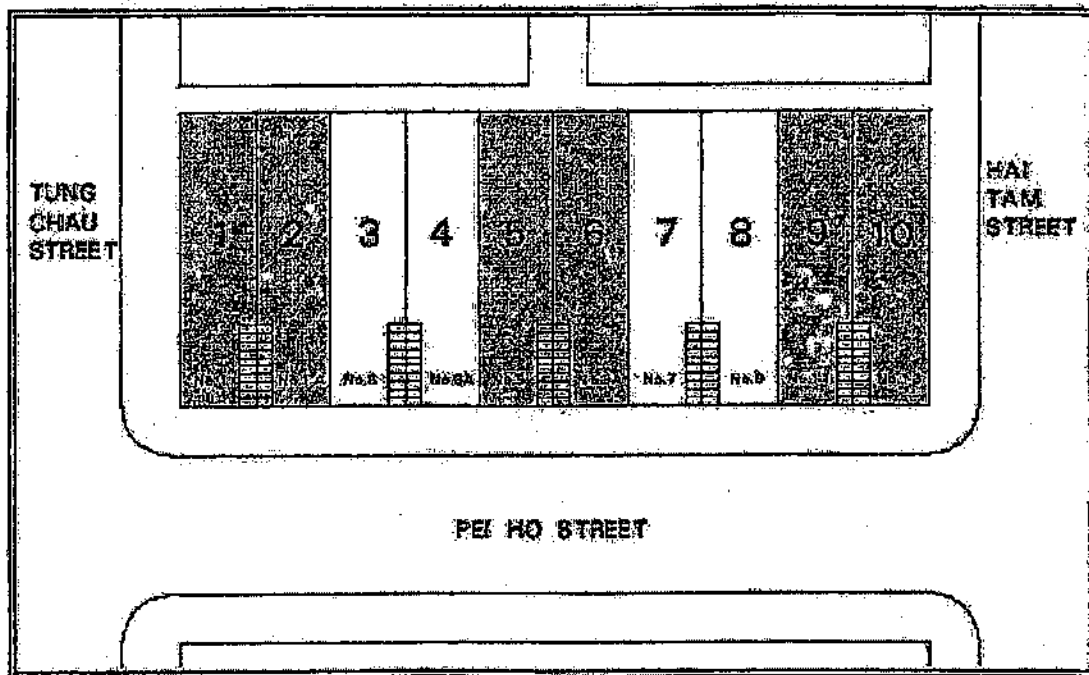


2. A Hypothetical Example

In our previous submission on the Urban Renewal Authority Bill in 1999, we used a hypothetical case to illustrate how this narrow definition could not help in otherwise desirable redevelopment projects. We would like to re-iterate the example below.

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 storey in height and each pair of buildings is connected by a common stair-case. The plan of this street block is shown below. The numbering of these buildings are quite complicated and will have therefore referred to them as buildings no. 1 to 10:-

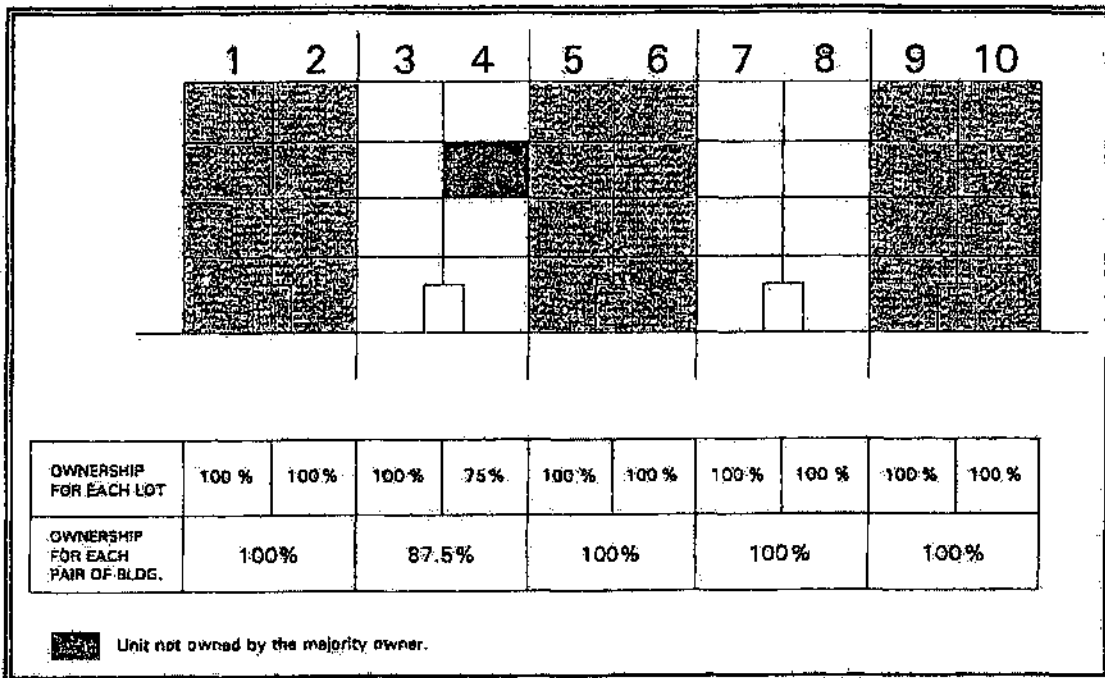
Hypothetical Residential Development in Sham Shui Po



There are altogether 40 interests for the whole block. If the developer owns 39 of the 40 interests, the Ordinance will not be able to help in the overall redevelopment of the block . The diagram below shows the ownership pattern.



Ownership Pattern of Residential Development in Sham Shui Po



If the developer fails to obtain one of the units, his ownership in the 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 Ordinance. The provision in the Ordinance cannot therefore apply

4. Ownership Threshold can be Lowered to 80%

The Chief Executive in Council may specify that the percentage of ownership of the majority owner to be lower than the 90% in respect of a Lot or a class of Lots, provided that the percentage specified is not lower than 80% (Section 3 (5) and (6)). This can be a useful provision and may help to resolve the problem described above. However, so far the Chief Executive in Council has not made any specifications on that.

5. The HKIS Proposal – The Redevelopment "Scheme" Concept

The HKIS proposes that the Government to consider again the Ordinance be amended so that for cases as illustrated in the above hypothetical example can be included in the application criteria.

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

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



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.

The HKIS proposes to replace the definition of Lot 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. 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.

In the example quoted above, one would have thought that the Tribunal would see merit in approving the limit of the Scheme to cover the whole block of ten buildings.

B. The Secretary to make regulations on the conditions of justifications for redevelopment

The Lands Tribunal shall not make an order of sale unless it is satisfied with the justifications for redevelopment under Section (4) (2) (a) , which reads:

(2) The Tribunal shall not make an order for sale unless, after hearing the objections, if any, of the minority owners of the lot the subject of the application under section 3(1) concerned, the Tribunal is satisfied that-

- (a) the redevelopment of the lot is justified (and whether or not the majority owner proposes to or is capable of undertaking the redevelopment)-*
 - (i) due to the age or state of repair of the existing development on the lot; or*
 - (ii) on 1 or more grounds, if any, specified in regulations made under section 12;*

In some situations the reasons that render the building ripe for redevelopment may not just confine to the age of building or state of repair. It could be that the existing use of the building is no longer compatible with the current zoning use stipulated in the relevant Outline Zoning Plan, or its use would cause an ongoing environmental nuisance to the nearby areas. The HKIS considers these are valid justifications for redevelopment and their redevelopments are in the best interests of the public. In order to stimulate redevelopment in these types of properties, the HKIS suggests the Government to make use of its power under the Ordinance to include appropriate conditions for redevelopment justifications.



C. Clarifications of certain provisions in existing Ordinance

In *Bond Star Development Ltd. v Capital Well Ltd (2002)*, Judge Wong noted that the wording of **"the age or state of repair of the existing development on the lot of existing development"** in Section 4(2)(a)(i) would be ambiguous in situation where the building formerly erected on the lot has been demolished. Moreover, the Ordinance is silent as to the basis of valuation of the property on the lot in this situation.

Judge Wong tackled this problem with the assistance of other provisions of the Ordinance including the Preamble, Section 2 (the section on interpretation of the term "redevelopment") and Section 3(3)(c)(i)(B) (the section on the affixing of notice in case "where there is no building on the lot") and held that Ordinance applies to the situation where there is no building on the lot.

To avoid ambiguity in interpretation of the Ordinance and in the light of the comment made by Judge Wong, the HKIS suggests that the Ordinance should be revised to cater for such situation.

Conclusion

With more than 4 years experience gained since its enactment, the public in general has become more familiar with the application of the Ordinance and the operation of the Order for Sale. The HKIS proposes for a relaxation of the application criteria in the Ordinance in order to promote more private sector participation in urban regeneration.

The current criteria have not been able to foster what would be otherwise more desirable redevelopment projects. The merit of urban regeneration goes beyond removal of urban eyesore. Aesthetics design; environmental improvements and amenity facilities – factors critical in assessing the redevelopment merit - cannot be ignored. The HKIS calls for endorsement of the "Scheme" concept in the Ordinance in order to encourage more socially desirable redevelopment projects.

The above proposal will involve legislative change. The outcome and timing for such change is uncertain and could take a long time. To avoid undue delay and speed up urban redevelopment, the HKIS recommends the Government making use of the current built-in flexibility under Section 3 (5) and (6) of the Ordinance in which the Chief Executive has the power to lower the current 90% ratio to not less than 80%. We recommend the ratio be relaxed to 80% to increase the practical scope of the Ordinance.

For further discussion of our proposal, please contact our Secretary General Mr. Gordon Ng at 2526-3679.



Extracts from the Ordinance:

S 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).

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

S12. (1) The Secretary for Housing, Planning and Lands may make regulations- (Amended L.N. 330 of 1999; L.N. 106 of 2002)

(a) specifying grounds for the purposes of section 4(2)(a)(ii);

(b) specifying matters to be taken into account for the purposes of section 4(2)(b);

(c) specifying matters to be taken into account in the nomination or appointment of trustees to discharge the duties imposed on trustees under this Ordinance in relation to the lot the subject of an order for sale; and

(d) generally, providing for the better carrying into effect of the provisions and purposes of this Ordinance.

(2) A regulation made under subsection (1)(a) or (b) shall not apply to any proceedings arising out of an application made under section 3(1) before the commencement of the regulation.