



COMMENTS ON URBAN RENEWAL STRATEGY REVIEW

1. We have reread our comments on the draft of the current Urban Renewal Strategy (“URS”) – Consultation Paper given to the relevant Government bureau on 5 September 2001 and though a few comments have been overtaken by events in the course of time we adopt/reiterate those 2001 comments as the foundation for our comments on the current review of URS. **A copy is attached.**
2. Because of the shortness of time, our comments will not be in any logical order and they have been reproduced in the order in which the Land Use Planning and Environmental Law Committee (formerly the Land Use Planning Committee) discussed them.
3. More could be done to reinstate small businesses which have been resumed for the purpose of a particular development. Such small businesses are the lifeblood of a community and help create its ethos to a significant extent.
4. Whether an old business is reinstated under the same owner or tenant as before, or the new shop sold or rented to a newcomer, the business will be operating in an entirely different context. The old community or sub-community has gone and new and different customers have taken their place. In these circumstances, the difficulties in recreating an old business or creating a new one (even if it carries on a similar business to what was there before resumption) are great.
5. If the Urban Renewal Authority (“URA”) is in earnest in restoring communities, it should consider studying the needs of these businesses in the new setting to see what practical help the URA can give. This could include priority in taking tenancies in the new development, rental subsidies or allowances for, say, three years, research allowance, tax concessions, assistance or courses in the relevant business skills, business re-establishment grants and so on.
6. It should be borne in mind that in the pre-resumption situation, a tenant of a small shop in an older building may have been there for years and have established a good, even

symbiotic in some cases, relationship with the landlord. The post-resumption landlord will be very different.

7. Another problem with restoring small businesses as a focus of the post-resumption community is that rent is a big proportion of the cost of operating. This makes these businesses very fragile (hence the need for a good relationship with the landlord). Such business people would find it very difficult or impossible to reestablish themselves and survive if they are renting new premises which will have higher rents (e.g. specialist advice on relocation and “resettling”). In these sorts of cases, priority should be given to restoring the old buildings (if possible) so that the rental increase may be more affordable and the old tenants can remain.
8. We support the DURF proposal: it will reach the “real” people, the people in the roadside stalls or in the market, or in small flats.
9. DURF’s should be created for projects – indeed, each project should have one – and not just for districts. All sections of the community should be recognized: there should be established quotas for neighbourhood people, small business people, local NGO’s, owners, tenant, etc.
10. While it is accepted that certain assumptions had to be made in valuing the cost of rehabilitating old buildings, there is a question about their accuracy. If not already done, the figures given in the papers should be checked by an independent expert. Similarly, with valuations in general: an internal URA process followed by an independent expert’s opinion. The URA’s sole reliance on its own internal calculations for ascertaining cost of repairs and renovation of old buildings compared to demolition and redevelopment may be viewed as biased unrealistic unaudited or unverified.
11. The URA Ordinance needs to be changed to accommodate many of the new ideas now being put forward in the public engagement process.
12. When the URA is preserving old buildings, they should be renovated in the style of the old ones rather than creating new “Noddy” houses or buildings that look like fake buildings. Both Macau and Singapore have very successfully preserved and revitalized old buildings which have become major tourist and heritage attractions. There is no reason why Hong Kong should not learn and replicate their expertise and experience. URA should examine what new tools and/or additional statutory powers it needs to comply with its statutory obligation to preserve buildings (e.g. bonus plot

ratio or transfer of plot ratio). Notwithstanding that URA has inherited LDC projects, URA may still give priority to those projects with the oldest and most dilapidated buildings where the communities want redevelopment - as opposed to commercially viable and socially vibrant areas where the communities, landowners and occupiers oppose resumption and redevelopment.

13. There is need for new and creative thinking in schemes where owners are offered a flat for flat exchange in the new development e.g. the URA might consider structuring these schemes as options which can be sold (after obtaining exemption from the Securities and Futures Commission or amending its ordinance to exempt them from the definition of investment products).
14. The question of compensation to dispossessed owners has always been thorny. The massive profits made from building mega towers have affected and clouded the public's perception of urban renewal. This is not helped by the current principle of compensating owners on a foot by foot basis but with the dispossessed owner being only entitled to the value of a 7 year old "foot". To some members of this Committee, it is difficult enough to assess the human value of asking someone to move their homes and allow others an opportunity to make a lot of money. To then provide compensation on the basis of something hypothetical only adds to the argument. The Committee agrees that urban renewal is a desirable objective but some members have expressed the view that it will be much better "PR" for the URA if dispossessed owners are given the opportunity to buy anything in the same area of the same size in the same general location regardless of age or be given preference in the new developments.
15. We support demand-led development projects.
16. There does seem to be some disproportion in URA projects that have been completed between pre-resumption small flats and post-resumption large flats, six star hotels, high-end commercial space etc. New URA developments should be designed according to normal planning principles, i.e. the developments should fit into and help implement the planning intention for the district or sub-district in which they are located. There are public perceptions that there is "special" planning and closeness to developers for URA projects which need to be dispelled. As a statutory authority, URA should build more balanced developments with a mix that contains low and medium cost housing as part of the development. Government and/or URA may consider what incentives such as additional plot ratio to encourage more "affordable" housing as a component of such developments and the tender process should be more

transparent and audited.

17. Following on a little from paragraph 13, while resumption compensation is based on a certain formula, the unit values of the pre-resumption premises are generally much lower than those of the new development. This is so for many reasons: marriage value, increase in values in the local area sparked by the URA's carrying out the very project. There seems an opportunity to offer previous owners as part of their compensation some kind of bonus, or "dividend" in the profit made by the new development. You could, for instance, have a system similar to that used in companies: A class shares which can be used by a former owner to exchange for a flat in the new development (though the owner of the share may have to pay for the additional value so gained); B class shares which carry a share in the profit share eligible for a bonus. The SFC aspect of this would need to be taken into account. It would be prudent to add a provision in the URA Ordinance to expressly exclude the application of the Securities and Futures Ordinance)
18. Of course, property values can go down, but that's Hong Kong ...
19. Mediation (i.e. a flexible confidential and without prejudice process where a neutral impartial third person, the mediator, facilitates the parties to negotiate a resolution of their dispute) should be used by URA as early as possible to resolve its disputes with owners and tenants, particularly in relation to valuations. It should be noted that the mediator is merely a facilitator of settlement and is an expert in negotiation. He is not applying any of his skills as a valuation expert, adviser or adjudicator and therefore a valuation expert need not be retained as a mediator. In any event, normally both sides will retain their own experts. This process will dramatically shorten the time for resolving compensation and other disputes (which currently take up to 2 years to resolve) and there can be a cap on the number of hours of mediation and/or duration of the process to save time and costs. In any event, the Practice Direction on Mediation of High Court and District Court claims will be effective after 1 January 2010 and the Courts will use its powers to penalize parties who do not take steps to undergo mediation; the Lands Tribunal is also pushing mediation (having already completed its pilot scheme). The URA should consider asking the Law Society (or HKIAC) to assist it in setting up a pilot scheme on mediation similar to HKMA's scheme for the Lehman Brothers disputes.

The Law Society of Hong Kong
The Land Use Planning and Environmental Law Committee
23 December 2009

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THE LAW SOCIETY OF HONG KONG'S SUBMISSIONS ON THE DRAFT URBAN RENEWAL STRATEGY - CONSULTATION PAPER

General Comment

The following are the comments by the Law Society's Land Use Planning Committee on the Consultation Paper:-

Generally, we are very disappointed with the vagueness lack of specifics in this paper and the absence of any new ideas for urban renewal. There does not appear to have been any lessons learned from the history of the Land Development Corporation ("LDC") and no account appears to have been taken of relevant overseas experience.

The draft Urban Renewal Strategy ("Strategy") has been expressed in such general terms that at many points it is very difficult to comment specifically on the language or the concepts. In some cases, the concepts seem so nebulous as to be practically meaningless. The most important thing about the policy is the implementation and it is the implementation of the Strategy which is going to be the most important. However, as this is a strategy rather than a statement of tactics, we do not expect to see full details of implementation here.

The difficulty in commenting on this document is that some of the key word and phrases in the Strategy can only be understood by reference to the means of implementation.

Specific Comments

Paragraph Comment

3 The phrase "people-centred" appears to be an empty jargon word. It is not clear from the document what a "non-people-centred" approach would be or how different the approach in the paper is from the LDC's previous approach which is presumably intended to be seen as "people-centred". It is suggested that the paper describe what a "people-centred" approach might be in ideal terms, i.e. what its characteristics are so that the reader can judge whether the paper adequately carries that out.

4(a) We suggest that the term "fair and reasonable" used to qualify "compensation" should be reconsidered. A similar phrase "on terms that are fair and reasonable" was used in S.15 of the old Land Development Corporation Ordinance (Cap.15) in relation to the use of the resumption power and the phrase was at the heart of all the judicial review cases which were taken against the Government and LDC in LDC resumptions.

The Strategy of which this document as a draft is a statutory document (S.20(1) of the Urban Renewal Authority Ordinance) and is the basis of the programme of proposals and implementation for projects in the Authority's corporate plan under S.21 (which would also involve budgeting for the financing of acquisition of properties). It is therefore quite possible that a dissatisfied owner, or former owner



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on a resumption, of a property who has failed to come the terms with the Urban Renewal Authority ("the Authority") in negotiation over the Authority's acquisition of his property leading to the property being resumed, might take judicial review action against the Authority or the Government on the basis that the compensation for acquisition which is "required" in this document to be "fair and reasonable", has, in fact, not being fair and reasonable.

Further, if Clause 4(a) can be interpreted as implying an obligation or duty on the Authority to offer terms that are "fair and reasonable" in its acquisition, then that clause can be used as the basis for an action for breach of statutory duty by the new Corporation.

Again, any policy for compensation for the acquisition of properties which the Authority publishes in future will be judged by this "fair and reasonable" criterion in Clause 4(a).

While the difficulties of S.15 of the old ordinance have been avoided in the new ordinance, they have returned by the back door in Clause 4(a).

It is suggested that any phrase used to qualify the word "compensation" in Clause 4(a) should not go beyond the statements made in either the Land Resumption Ordinance (Cap.124) or Article 105 of the Basic Law, in particular Article 105. This reflects the legal position under S.15 of the old ordinance as confirmed by the Court of Final Appeal. We do not suggest that the minimum legal compensation under the Lands Resumption Ordinance should be all that the Authority offers. It will offer *ex gratia* allowances, as well, we presume. However, to protect the Authority against judicial reviews and actions for breach of statutory duty, phrases like "fair and reasonable" should be avoided.

- 4(b) While "proper" was not used in the old ordinance, similar comments to Clause 4(a) apply. This word will be a fruitful source of disputes, if not judicial reviews. What is "proper"? By whose standards? Would "adequate" be better?
- 4(c) Again, this is a statement without content. It also could be abused by litigation, for instance, by judicial review designed to challenge whether there is no benefit to the community at large (there may even be a disbenefit - large numbers of persons who feel they have been displaced from their homes and thrust into a new environment may cause social unrest) in a particular project or whether the right considerations have been taken into account in deciding what the benefit to the community at large should consist in.

Should the statement make reference only to the local community?

- 5(a) We query the meaning of "restructuring" - does this mean changing the physical infrastructure? What is the difference between "restructuring" and "replanning"?



- 5(h) We question whether it is possible to preserve the social networks of the local community when numbers of people are being displaced from their homes to enable the local community to be renewed. Perhaps, it would be better to have, as an object, the reduction as much as possible of the destruction to the social networks of the local community as far as this is practicable.

Of course, it is not always necessary to tear down all the buildings in a designated area, thus destroying or reducing social networks. See comments on Clause 7.

- 6 We query whether the targets in this 20-year programme are realistic.
- 7 We agree with this statement. However, there is no evidence in this document that the past “slash and burn” strategy will not be followed again. Why cannot urban renewal be carried out by renovating all the old buildings (or some of them) in a designated area, thus preserving the neighbourhood networks and culture? The “slash and burn” method has been out of favour for years overseas because of its severe dislocation of local neighbourhoods and communities.
- 8 We query whether these targets are realistic.
- 10 The guidelines on the declaration of interests for board directors should include a prohibition on directors acting professionally for the Authority or being contractors for the Authority.

We support an independent audit team.

- 13 It is not clear whether the criteria for determining priority should be applied only to the 25 uncompleted projects of the LDC or to the 200 new projects.

- 15 We query whether this should be one of the functions of the Authority. We consider it should be a function of the Central Government, i.e. the Hong Kong Government, rather than of the development agency of the Central Government such as the Authority.

Clearly, there are going to be difficulties in implementing the scheme. One question is: how long before the Authority announces its intention to redevelop should these reimbursement payments be made? How are the areas in which reimbursement is to be permitted to be identified?

Finally, where is the Authority going to get the money to fund this particular scheme? Even if the Government were to provide funds for this reimbursement scheme, we consider it is not the most efficient use of the Authority’s resources for it to be administering this scheme.



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Further, the last two lines of this paragraph suggests the possibility that the properties on which reimbursement has been made may not actually be acquired by the Authority for redevelopment. What is the position then? Will the funds have to be clawed back from the owner?

- 16 Similar comments supplied to heritage preservation. We consider that this should be a function of the Central Government, i.e. the Hong Kong Government, rather than the renewal agency. In addition, if a heritage building is to be incorporated into a scheme, we consider that the cost of such incorporation should be paid by the Central Government.

- 21 Read with paragraph 4(a), this document will be seen as setting out statutory standards by which an offer to acquire by the Authority made before resumption will be judged for the purposes of judicial review. We consider that describing the terms of purchase and offers in such terms will encourage judicial review proceedings being taken in the same numbers as they have been taken under the old ordinance.

Further, the suggestion that the Authority does not have to try to acquire property but should only "consider" acquiring property may also make the decision to acquire part of judicial review proceedings.

- 26 We are concerned about the danger to confidentiality inherent in the setting up of a District Advisory Committee system. What information will be given to this committee which is not available to the general public? Will it enable the members of this committee to make strategic purchases of property within the areas concerned?

At what point it is intended to set up the District Advisory Committee? Compare paragraph 37 which makes it clear that sensitive information will be provided to the Authority only but not to the general public. Is this information to be supplied to the District Advisory Committee? If so, when?

Further, the terms of reference of the District Advisory Committees should be very clearly defined and be restrictive. For instance, we note that they are going to give both advice and assistance to the Authority. Is it necessary that they should give assistance to the Authority? For what purpose? What kind of assistance? Will they be seen as agents of the Authority for this purpose and the Authority held responsible for their statements and actions?

Will it be possible for a member of one committee to serve on another committee, e.g. because he has been appointed by reason of his being a District Board member and the District Board area covers the areas of more than one committee?



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- 28 While we support the full assessment of the social impact of a proposed project, it should be done in the light of the impossibility of preserving the social networks of the local community as pointed out by us in our comments on paragraph 5(10). We note that in the items to be included in the studies under paragraphs 29 and 30, there are no items relating to action to be implemented or recommended or initiated by the Authority to deal with the social impact of a proposed project. Should not this be dealt with as well even if reference is made to the resources of the Hong Kong Government and social welfare agencies? We do not consider that setting up urban renewal social service teams would be sufficient in this context.
- 34 Items (a) and (b) are negative substitutes. There is no guarantee here that the funds loaned to the Authority are going to be adequate for the mammoth tasks set out in paragraphs 6 and 8 particularly if the Government is lending money to the Authority rather than making a non-repayable grant. In particular, if the Authority is not going to enter into joint ventures with developers under which up-fund payments will be made by the developers, and under which the developers are to be responsible for all the costs and expenses of a project, rather than the Authority will assemble sites and sell them in the open market to developers. What is the position if the cost of site assembly including resumption costs is not matched by the price payable by the successful tenderer?
- 35 Owners' Participation Schemes were not successful or popular in the days of the LDC. It is therefore difficult to see what private sector participation can be encouraged in this paragraph. To encourage private sector participation now would require new and creative forms of participation which are not highlighted in this paper. A commitment should be made to investigate new forms of public/private sector participation and these should be studied by the Hong Kong Government as well as by the Authority.
- We support the concept of a self-financing urban renewal programme in the long-run but doubt very much whether this will ever be practicable in Hong Kong or whether it has ever been practicable in overseas countries.
- 37 This paragraph raises the question of confidentiality which we have mentioned earlier. It is not clear how if the Authority is to carry out its social impact studies as well as work through District Advisory Committees if information is not going to be available to individuals which would also to enable them to make advance to purchase of the strategic properties and so benefit from their inside information.

The Land Use Planning Committee
The Law Society of Hong Kong
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