

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

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.

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?

- 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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