

(Translation)

IN THE APPEAL BOARD UNDER THE  
URBAN RENEWAL AUTHORITY ORDINANCE  
Appeal Case No.: 1 of 2023 (2023-001)

IN THE MATTER OF Urban  
Renewal Authority Development  
Project at Queen's Road West/Kwai  
Heung Street (C&W-007)

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BETWEEN

Fortune Chance Limited &  
Kam Kwong Trading Limited

Appellants

And

Secretary for Development

Respondent

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Appeal Board:	Miss KUNG Ching-yee, Athena	(Chairman)
	Mr. NG Wing-heng, Henry	(Member)
	Dr. LI Yi-man	(Member)
	Ms. HUNG Kam-ying	(Member)
	Ms. SO Lai-chun, Ann, MH, JP	(Member)

In attendance:	Mr. Oscar CHAN	(Secretary)
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Legal representation:	Ms. WU Pui-ching, Barrister, instructed by Joseph C. T. Lee & Co. for the Appellants
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	Mr. LAM Chin-ching, Gary and Mr. LIU Kwong-hang, Billy, Barristers, for the Respondent
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Dates of Hearing:	24 November 2023; 14, 15 and 19 February 2024
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Date of Written Decision:	24 May 2024
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## **DECISION**

### **Background**

1. The Appellants acquired the properties at Nos. 291-293 Queen's Road West and No. 295 Queen's Road West (hereinafter known as "the Lots") in 1991 and 1996 respectively. Thereafter, the Town Planning Board (hereinafter known as "the TPB") rejected two planning applications in respect of the Lots filed by the Appellants in 2011 and 2013 respectively. After the Appellants' review was dismissed in 2014, the Appellants lodged an appeal and finally gave up making further application in 2016.
2. The earliest date on which an order was issued to Nos. 291-293 Queen's Road West under section 30B of the Buildings Ordinance (Cap. 123, Laws of Hong Kong) was 17 October 2013. The earliest date on which a fire safety direction was issued to Nos. 291-293 Queen's Road West under the Fire Safety (Buildings) Ordinance (Cap. 572, Laws of Hong Kong) was issued to the aforesaid was 28 May 2021; and an order was first seen issued under section 28 of the Buildings Ordinance to Nos. 291-293 Queen's Road West on 22 October 2021.
3. The earliest date on which an order was issued to No. 295 Queen's Road West under section 30B of the Buildings Ordinance was 19 July 2019.
4. On 2 December 2022, the Urban Renewal Authority (hereinafter known as "the URA") commenced the Queen's Road West/Kwai Heung Street Development Project (C&W-007) (hereinafter known as "the Project") by way of a development project under section 26 of the Urban Renewal Authority Ordinance (Cap. 563, Laws of Hong Kong) (hereinafter known as "the URAO"). The notification of commencement of the Project was published in the Gazette on the same day. [That is, the Notification of Commencement of the Queen's Road West/Kwai Heung Street Development Project by the URA (G.N. 6913).]
5. Since December 2022, the URA had taken a number of steps to take forward the Project, including carrying out public consultation, providing the relevant documents for public inspection, conducting the Freezing Survey, holding briefings via live webcasts, and consulting the Central and Western District Council.
6. As at 2 February 2023, i.e. within two months from the date of publishing the notification of commencement of the Project by the URA, the URA received four objections and ten comments (including supportive comments) in relation to the Project. Thereafter, the URA addressed these objections and comments (including the supportive comments) one by one from February to April 2023.

7. Subsequently, the URA sought authorisation from the Secretary for Development. Finally, the Secretary for Development, having considered the Project and the relevant information, decided to authorise the URA to proceed with the Project without any amendment to the Project under section 24(4)(a) of the URAO on 5 September 2023. The decision was first published in the Government Gazette on 15 September 2023.
8. This hearing originates from the Appellants' appeal against the Respondent's decision to authorise the URA to proceed with the Project under the URAO (hereinafter known as "the Decision").

#### Grounds of appeal

9. The Appellants submitted the Notice of Appeal on 13 October 2023, and the Amended Notice of Appeal on 15 January 2024. The grounds of appeal put forward by the Appellants can be summarised as follows:-
  - (1) The URA wrongly took the view and believed that the Appellants were "responsible" or "obliged" to redevelop or renew the land and or/properties owned by them. It also relied on the uncertainty as to whether (or whether it could be ascertained that) the Appellants would eventually implement such proposals as the indicator/consideration/the reason for rejecting the Appellants' objection to include their land and/or properties in the Project. It was totally putting the cart before the horse.
  - (2) By taking "inevitability" as the starting point for the Project, the URA failed and/or refused to give consideration or serious thought to the redevelopment plan put forward by the Appellants. Most important of all, the building plans submitted by the Appellants had already been approved by the Buildings Department, and the Appellants had sufficient financial strength and experience to redevelop their land and/or properties.
  - (3) Thus, the URA also failed and/or refused to give consideration or serious thought to the actual benefits and value brought about by the Appellants' development proposals to the redevelopment of the entire community in terms of considerations including the number of new residential flats upon their completion and public finance and expenditure.
  - (4) The URA ruled out or failed to treat the exclusion of the Appellants' land and/or properties from the Project area as a genuine or feasible option, nor did it devise any other alternative proposals for comprehensive comparison. It also failed to give consideration or serious thought or give weight to whether the Appellants' redevelopment plan would indeed greatly impede the Project (including the physical, geographical location(s) of the Appellants' land and/or properties, the actual

components involved in the Project and their functions, uses (i.e. outdoor public spaces, two towers and basement carpark) and structurality); and/or whether there was any need to modify or adjust the design and scope of the Project, its viability, etc.

- (5) The URA had adopted or relied heavily on the irrelevant factors in its rejection to the Appellants' objection.

#### Reasons for objection to the appeal

10. As the witnesses of the Secretary for Development explained in their witness statements, the Decision has been made having regard to an array of considerations.
11. The Appellants' properties (i.e. Nos. 291-293 Queen's Road West and No. 295 Queen's Road West) possess a core position in the Project. If the Appellants' properties were excluded from the Project, the site area of the Project would be greatly reduced by about 300 square metres (including the Appellants' properties with an area of about 200 square metres, the approximately 70-square metre No. 297 Queen's Road West which would lose the opportunity for redevelopment due to its being isolated, and the adjoining government lane with an area of about 30 square metres). The class of site under the Buildings (Planning) Regulations (Cap. 123F) in relation to the Project, and other parameters such as the permitted plot ratio and gross floor area would also be affected.
12. Hence, the exclusion of the Appellants' properties from the Project would reduce the planning gains that could be provided by the Project and greatly undermine the building layout, and bring down the development potential of the Project.
13. If the Appellants' properties were excluded from the Project, the planning gains that could be provided by the Project would be greatly reduced:
  - (1) Due to the resulting smaller and more acute site layout, the proposed tower and podium layout of the Project would be highly constrained.
  - (2) The opportunity of providing a low-rise commercial/retail portion at the street corner of Centre Street/Queen's Road West to enhance visual comfort would be lost.
  - (3) The opportunity of providing a new public open space with an area of about 150 square metres in front of Queen's Road West would also be lost.
  - (4) The opportunity of opening up Sung Hing Lane Children's Playground to

connect with Queen's Road West under the Project for improvement of the Playground's overall visual openness, accessibility and connectivity would be lost. It would make the Project unable to enhance the usage of the Children's Playground and create synergy.

- (5) The Project site would turn into two separate redevelopment sites and two standalone residential buildings (i.e. the private development project at Nos. 291-295 Queen's Road West and the project by the URA). In comparison with the Project, this would bring about greater wall effect and affect the visual openness. It means that the exclusion could neither achieve symmetry nor be desirable in urban design terms.
- (6) The remaining lot at No. 297 Queen's Road West would also be isolated and lose the opportunity for redevelopment.
- (7) With a smaller site area, the layout and efficiency of the basement carpark would be highly constrained, and it would be more likely to give rise to the need for constructing more levels of basement carpark in order to accommodate the parking spaces that might need.

#### Burden and standard of proof

- 14. At the hearing on 24 November 2023, the Appellants applied to the Appeal Board for calling upon two more witnesses, namely Mr. LEE Bing-wai and Mr. TAM Bing-man, Denny. Besides, the Appellants also applied to the Appeal Board for requesting the Respondent to disclose more documents. After discussion by both parties, the Appeal Board decided to allow the Appellants to call upon the two witnesses in question, and that a hearing of four days would be scheduled for 14 to 16 and 19 February 2024 pending the handling of documents by both parties. As confirmed by both the Appellants and the Respondent on the first day of the hearing held on 14 February 2024, the burden of proof falls on the Appellants in this appeal, and the standard of proof is based on the balance of probabilities. In addition, the Appeal Board accepts that the Amended Notice of Appeal submitted by the Appellants is the "framework" of this appeal, meaning that the matters that need to be considered by the Appeal Board in this appeal are restricted by the "framework" of the Amended Notice of Appeal.

#### The nature of this appeal and the functions of the Appeal Board

- 15. The Appeal Board considers that this appeal is a hearing de novo in nature. In respect of the functions of the Appeal Board, the views of the Appellants and the Respondent greatly differ.
- 16. At the hearing, the Appellants stressed that the Appeal Board should consider the relevant information submitted by the URA to the Respondent, and examine

the accuracy of the information in terms of the scope, the weight and the relevance, and that the Appeal Board should not “wipe off” the information provided by the URA.

17. The Appeal Board accepts the Respondent’s submission on this issue that the Appeal Board as a board should consider afresh and independently the merits of the matters in relation to the Amended Notice of Appeal. Having considered all the evidence and submissions, the Appeal Board should make the decision as it thought fit (i.e. to confirm, overturn or vary the Decision). As a matter of fact, the Appeal Board’s role in this appeal is different from a court’s role in handling judicial review.

#### Witnesses

18. The Appellants called upon a total of four witnesses:-

- (1) WONG Chi-muk;
- (2) LEE Bing-wai;
- (3) WAI Hing-wah; and
- (4) TAM Bing-man, Denny.

19. TAM Bing-man, Denny, was absent on the first day of the hearing held on 14 February 2024. As agreed by the legal representatives of both parties, the Respondent party would first call upon the three witnesses who would be relied on after the other three witnesses of the Appellant party testified on the first day of the hearing.

20. On the first day of the hearing, the Respondent party called upon a total of three witnesses as follows:-

- (1) KWAN Yee-fai, Mike;
- (2) DY Wai-fung; and
- (3) TONG Yat-man.

21. On the second day of the hearing on 15 February 2024, the Appellant party called upon the fourth witness, TAM Bing-man, Denny, to testify. After TAM Bing-man, Denny, testified, the Appellant party confirmed that there was no need to re-summon the three Respondent’s witnesses who finished testifying the day before for its re-examination. The hearing scheduled for 16 February 2024 was cancelled. Both parties made their closing submissions on 19 February 2024.

### Private property rights protected by the Basic Law

22. In the Amended Notice of Appeal, the Appellants have cited the Basic Law, which protects private property rights. According to Article 105 of the Basic Law, [“]the Hong Kong SAR shall, ‘in accordance with law’, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property...” The Appeal Board considers that the use of the wording “in accordance with law” in Article 105 of the Basic Law has clearly shown that the protection of Hong Kong people’s property rights under the Basic Law is definitely not absolute. Taking the URAO as an example, it was enacted to establish the URA for the purpose of carrying out urban renewal and for connected purposes and to achieve urban renewal in ways that are carried out “in accordance with law” through the URA.
23. Just as the Respondent party has rightly stated in the written closing submission, the Appeal Board has pointed out in its previous decisions that the protection under the Basic Law is not absolute. (See Hysan Development Co Ltd v. Town Planning Board (2016) 19 HKCFAR 372, a precedent case in the Hong Kong Court of Final Appeal, as cited in Lee Kak To & Others v. Secretary for Development, Appeal Case Nos.: 1, 2, 4 & 10 of 2016). In the case of Hysan Development Co Ltd v. Town Planning Board, the Hong Kong Court of Final Appeal has already established that the property rights under the Basic Law are not absolute rights. Legally speaking, property rights may be restricted under the proportionality assessment and reasonable balance test. Most importantly, the decision-maker or the authority will be given a wide margin of discretion when formulating policies or making decisions, while such discretion should be applied based on the “manifestly without reasonable foundation” standard [see paragraphs 89 to 104.]

### Major issues in contention in this case

24. In this appeal case, there is no dispute over the fact that redevelopment for Nos. 291-293 and No. 295 Queen’s Road West is justified. The issues in contention can be summarised as follows:
- (1) Whether the Appellants have the intent to undertake redevelopment and the capacity to undertake redevelopment;
  - (2) If the Appellants have the intent and the capacity to undertake redevelopment, what are the impacts of the Appellants’ redevelopment of Nos. 291-293 and No. 295 Queen’s Road West on the entire Project of the URA?

Whether the Appellants have the intent and the capacity to undertake redevelopment

25. In considering whether the Appellants truly have the intent and the capacity to undertake redevelopment, the Appeal Board shall bear in mind that the burden of proof falls on the Appellants, and the evidence relied on by the Appellants is the testimony of WONG Chi-muk.
26. According to the testimony of WONG Chi-muk:-
  - (1) During the period between 2011 and 2016, the Appellants made an application to the TPB for developing a hotel. They sought review on the TPB's rejection of their application, and lodged an appeal after the TPB dismissed the review. Thereafter, they applied for withdrawal of the appeal and sought other redevelopment ways. The Respondent had no dispute over these facts.
  - (2) The application made by the Appellants to the TPB was finally unsuccessful.
  - (3) As one of the beneficial owners (Mr. LUK Yu-wah (transliteration)) of the Appellants was severely sick in 2017 and finally passed away in 2019, coupled with social turmoil and the outbreak of the COVID pandemic since 2019, the Appellants' redevelopment plan was forced to be suspended and shelved.
  - (4) Mr. WONG Chi-muk and Mr. LUK Yu-wah had been acquainted with each other as partners for years. It would be unrealistic to expect that Mr. WONG Chi-muk would continue to discuss the redevelopment of Nos. 291-293 and No. 295 with Mr. LUK Yu-wah when he was sick.
  - (5) As regards the division of work between Mr. WONG Chi-muk and Mr. LUK Yu-wah, Mr. WONG Chi-muk had been responsible for the rental or day-to-day matters, but would still need to seek approval from Mr. LUK Yu-wah before taking further actions when making important decisions such as redevelopment. After all, as investment in a redevelopment project involves a great amount of money, it is reasonable for Mr. WONG Chi-muk as a veteran investor to have his own considerations and plans, and take into account the views of and seek approval from his partner.
  - (6) In 2020, Mr. WONG Chi-muk negotiated with the owner of No. 297 through an agent with an intent to acquire that lot for joint redevelopment of Nos. 291-293 and No. 295.
  - (7) Mr. WONG Chi-muk had all along maintained communication with the business sector, partners and professionals, as well as collecting and



gathering information about the opportunities in relation to the development of Nos. 291-293, No. 295 and No. 297, and the prospect and potential of their redevelopment.

- (8) The Appellants also had engaged professionals who had been taking up the supervision of the redevelopment plan, making every effort to carry out the design work in relation to Nos. 291-293, 295 and 297, and maintaining communication and discussion on an on-going basis.
- (9) Finally, the Appellants decided to redevelop Nos. 291-293 and No. 295 alone, having no regard to the incorporation of No. 297.

27. Upon consideration of all the statements, evidence and submissions in the case, the Appeal Board rules, on the following grounds, that with regard to the issue of whether the Appellants have a genuine intent to develop their properties, the Appellants have failed to prove such an intent on a balance of probabilities:

- (1) The Appellants acquired Nos. 291-293 Queen's Road West and No. 295 Queen's Road West in 1991 and 1996 respectively, and the two planning applications in respect of the Lots were rejected by the TPB in 2011 and 2013 respectively.
- (2) The review and appeal in respect of the planning application rejected by the TPB in 2013 were dismissed and abandoned in 2014 and 2016 respectively, and no further planning application has been made in respect of the Lots since then. As such, the Appellants' redevelopment plan for the Lots are fraught with uncertainty.
- (3) Under cross-examination, Mr. WONG Chi-muk agreed that the Appellants' properties were owned in his name or under the name of his companies, and therefore they "could be leased, sold or redeveloped" in light of the "circumstances". And the so-called redevelopment plan had been "delayed" or "halted" due to the illness of his business partner. The Appeal Board considers that the view of Mr. WONG Chi-muk as a businessman on redevelopment should solely be a commercial decision, influenced by commercial considerations. While WONG Chi-muk repeatedly denied this under cross-examination, the Appeal Board rules that his testimony is untruthful.
- (4) While the general building plan submitted by the Appellants was approved on 13 July 2023, this took place subsequent to (a) the commencement of the Project on 2 December 2022 and (b) the statutory deadline (i.e. 2 May 2023) for the URA to make submissions to the Respondent under the relevant legislation.
- (5) In any event, even if the building plan has been approved, the Appellants

would still need to carry out a host of other steps and efforts in order to proceed with the redevelopment of Nos. 291-293 and No. 295 in compliance with the statutory requirements.

- (6) In addition, Mr. WONG Chi-muk has only provided in this appeal the evidence from the Shanghai Commercial Bank to prove the existence of a bank loan of HK\$14,000,000 and the Appellant's long standing relationship with the Bank. Under cross-examination, when asked about the redevelopment cost in the Appellant's case which might possibly be around \$67 million, Mr. WONG Chi-muk said that construction works and bank loans would be made in parallel; this could only be premised on the fact that he and his business associates were genuinely "rich", and that bank loans in relation to construction were "indiscriminately approved" and "definitely approved". He also admitted that he and his companies had other bank accounts and other debts, but none had issued a letter in support of his financial position in the same friendly way as the Shanghai Commercial Bank had done. Given that the burden of proof falls on the Appellant party, the Appeal Board rules, on the basis of these pieces of evidence alone, that the Appellants have failed to prove that they had the sufficient financial strength to complete the redevelopment, and their standard of proof cannot meet the balance of probabilities.
28. Regarding the Appellants' allegation that the URA wrongly took the view that the Appellants were obliged to undertake redevelopment, the Appeal Board accepts the Respondent party's argument that the URA's statement in question was merely a response to the Appellant's submission as follows: "If our Company is able to secure the intent of co-operation from the owners of the neighboring lots—owners of Lot Nos. 291-293 Queen's Road West and Lot No. 297 Queen's Road West—to develop the lots (i.e. No. 291, Queen's Road West, No. 293 Queen's Road West, No. 295 Queen's Road West and No. 297 Queen's Road West) on our own, will the Authority revise the existing development proposal as a result?" (See the letter dated 24 March 2023 from the Appellants to the URA and the URA's response dated 27 April 2023 to the Appellants.) The Appeal Board rules that the URA has never assumed that the Appellant should have been obliged to undertake redevelopment from the outset.

Whether the differential treatment as alleged by the Appellants exists

29. The Appellants alleged that the Project had accorded differential treatment to their properties and Flora Court at Nos. 265-267 Queen's Road West.
- (1) The Appeal Board considers that the Appellants' properties and Flora Court are totally incomparable in many aspects. In terms of the building age, for example, as at 2023, Flora Court was only 29 years old, whereas the Appellants' properties at Nos. 291-293 Queen's Road West

were 56 years old and the one at No. 295 Queen's Road West, being a pre-war building, attained an age of not less than 78 years old. As regards the building condition, Flora Court is assessed as "satisfactory/acceptable", whereas the Appellants' properties are in dilapidated conditions. As regards building facilities, only Flora Court is served by lift.

- (2) The Appeal Board does not accept the Appellants' claim that the Appellants' properties do not possess a core position in the Project. On the contrary, the Appeal Board considers that the Appellants' properties are indispensable to the Project. If the Appellants' properties were excluded from the Project, it would significantly reduce the planning gains that could be provided by the Project, e.g. it would affect the proposed tower and podium, car parking plan, the public open space, and the commercial/retail portion.
- (3) The Appeal Board also rules that symmetry with Flora Court would not be achieved aesthetically as alleged if the Appellants' properties were excluded. On the contrary, the exclusion would result in the Project site flanked by two piecemeal developments, thus compromising the planning gains. In urban design terms, the exclusion of the Appellants' properties would therefore be absolutely undesirable.

#### Impacts of excluding the Appellants' properties on the entire Project

30. The Appellants alleged that the exclusion of their properties would not affect the Project. However, the Respondent submitted that the Project would be highly constrained by the exclusion of all of the Appellants' properties (rather than any single or multiple buildings) from the Project as requested by the Appellants in the Amended Notice of Appeal.

- (1) Upon due consideration, the Appeal Board accepts that various aspects such as the proposed tower, podium layout, commercial/retail portion, public open space, revitalisation of Sung Hing Lane Children's Playground and car park would all be affected, as pointed out in the statement and supplemental statement made by KWAN Yee-fai, Mike.
- (2) The Appeal Board also accepts that, as elaborated by the Respondent's witness KWAN Yee-fai, Mike, the exclusion of the Appellants' properties from the Project area would create a "domino effect", for each part of the Project was "integral" to the overall planning of the Project and its immediate neighbourhood. The Project was given "holistic consideration", including the planning gains for all stakeholders. As far as the car park is concerned, he explained from a professional point of view that the car park would have to be made deeper if the Appellants' properties were excluded from the Project.

- (3) On the contrary, insofar as the Appellants' plan is concerned, no car park or parking space will be provided therein. As stated in the statement of KWAN Yee-fai, Mike, from a professional point of view and as a matter of common sense, the Appellants' plan (in particular taking into account the so-called three-storey commercial premises) might give rise to a demand for the loading/unloading of goods and passengers, and a design with no car parks or parking spaces would certainly have a negative impact on public roads.
- (4) The Appeal Board accepts that the URA and the Respondent have considered the Project as a whole and in detail, without showing any favouritism towards No. 297 or any of the properties; and that the URA and the Respondent have taken into account the concomitant impacts of excluding the Appellants' properties from the Project; and that the decision was not made on the basis of any one or single consideration or factor. From this follows that the exclusion of the Appellants' properties is not a practical or feasible option.
- (5) Should the Appellants' proposal to exclude Nos. 291-293 and No. 295 be adopted, the URA would no longer have any reasonable means to redevelop No. 297, i.e., it would need to give up No. 297, and this would constitute the so-called "prefer 291-293 and 295 interests to 297". The Appeal Board accepts that the URA and the Respondent have taken into full account the interests of all owners in arriving at the Decision; and that only by doing so can the policy decision of balancing the interests of all parties be best achieved. This is precisely the bona fide reason for adopting the "manifestly without reasonable foundation" principle as stated by the Court of Final Appeal.

#### Consideration of building condition

31. The Appellants alleged that their properties had been maintained up to an acceptable level; and that the conditions of the buildings were of little consequence because they would redevelop the Lots as soon as possible.
32. The Appeal Board considers that, of the nine building blocks involved in the Project, bar a four-storey pre-war building at No. 295 Queen's Road West with no approved general building plan to record the year of its completion, the remaining buildings are roughly over 60 years old. As confirmed by the Respondent's witness, Mr. DY Wai-fung, the blocks are "relatively dilapidated" in terms of building condition. These buildings are in dilapidated conditions, lacking both lift and barrier-free facilities. Their overall maintenance is therefore barely satisfactory.
33. The Appeal Board has also taken into account the fact that the Appellants'

properties at Nos. 291-293 Queen's Road West and No. 295 Queen's Road West have been respectively classified in "Marginal" and "Varied" conditions, indicating that they are in need of major repair works. However, various orders/directions issued against the buildings, including those under sections 28 and 30B of the Buildings Ordinance (Cap. 123) and the fire safety improvement directions, have not been complied with.

34. The Appeal Board rules that there remains, after all, a significant degree of uncertainty in terms of the Appellants' intent to undertake redevelopment.

#### No. 297 Queen's Road West

35. The Appellants also alleged that they had engaged in negotiation with the owner of No. 297 Queen's Road West with the aim of acquiring the lot for joint development. But in practice, there has been no evidence to show any successful negotiations or acquisition attempts.

#### Appellants' experience as a construction developer

36. The Appellants have also repeatedly stressed that Mr. WONG Chi-muk is an experienced construction developer with the financial strength to complete the redevelopment within four to five years. Having considered all the evidence, the Appeal Board rules that the Appellants have failed to prove on a balance of probabilities that they have sufficient capacity to complete the redevelopment project within a reasonable period of time, and in particular, when no genuine action in relation to redevelopment could be seen to have been made over such a prolonged period of time, the various explanations they have offered are nothing but pretexts.

#### Analysis of other issues in contention between the Parties

37. The Appellants alleged that the Respondent did not cross-examine the Appellants' witness, Mr. WAI Hing-wah, or raise objection to what he had claimed in his statement. The Appeal Board accepts that Mr. WAI Hing-wah is an "Authorised person" and a "Registered architect" rather than a "Town Planner"; therefore, matters related to town planning, including the impacts of economic, environmental and social factors on land use, are by no means the areas of his expertise. As such, it was not necessary to put him under cross-examination on issues falling outside the areas of his expertise.
38. In alleging that the Respondent had not exercised due diligence in the disclosure of documents, the Appellants requested the Appeal Board to draw, on this basis, an adverse inference against the Respondent party. In this connection, the Appeal Board, upon careful consideration, accepts that further disclosure of documents would be no more than a repetition, as argued by the Respondent party in its closing submission in rebuttal of the Appellants' allegation; the

Appeal Board is also satisfied that the nature of this hearing is a hearing de novo and consideration has been given to the merits of the case in relation to the Amended Notice of Appeal independently. As the Appeal Board has absolute discretion to consider any factors before making a decision, it is simply irrelevant as to whether any evidence has been adduced and/or considered at the earlier hearings convened by other entities. In a nutshell, the Appeal Board rules that the Respondent had fulfilled the duty of due diligence in disclosing the documents to the Appellants, and that there was no breach of this duty and/or obligation. The Appellants' allegation in this regard is unsubstantiated.

### Conclusion

39. The Appeal Board considers that the redevelopment under the Project is necessary and urgent. It is definitely in the best interests of the entire community of the Western District, as well as the buildings covered by the Project and other neighbouring buildings, if the Project can commence and complete in the shortest possible time.
40. The Appeal Board also rules that the URA not only has a clearer redevelopment plan and financial strength, but also will not be influenced in any way by changes in the market or other circumstances (e.g. lack of sufficient financial strength as in the case of the Appellants); therefore, it could better serve the interests of the public should the URA proceed with the redevelopment project.
41. The Appeal Board rules against the Appellants on all grounds of appeal.
42. In the premises, the Appeal Board decides to dismiss the Appellants' appeal; the Appeal Board decides to confirm the Decision pursuant to section 28(14)(a) of the URAO. The above is a unanimous decision made by the Appeal Board.

### Costs

43. On costs, the Appeal Board rules that the Appellants' grounds of appeal being flimsy and requested the Respondent to provide a large number of irrelevant documents; and that the need to proceed with the hearing on the second day was entirely due to the Appellants' mistake in scheduling the witnesses, thus making it impossible for the witnesses of both parties to complete their testimony within the first day of the hearing.
44. Pursuant to the power vested under section 28(14)(b) of the URAO, the Appeal Board orders that the Appellants do pay the costs and expenses incurred by the Appeal Board in hearing and determining the appeal; and this order for costs is made under section 28(14)(c) of the URAO, as the Appeal Board is satisfied that it is reasonable and just for the Appellants to bear the costs and expenses of this hearing.

(signed)

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Miss KUNG Ching-yee, Athena  
(Chairman)

(signed)

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Mr NG Wing-heng, Henry  
(Member)

(signed)

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Dr LI Yi-man  
(Member)

(signed)

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Ms HUNG Kam-ying  
(Member)

(signed)

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Ms SO Lai-chun, Ann, MH, JP  
(Member)

*(If there is any discrepancy between the original decision in Chinese and the English translation, the Chinese original shall prevail.)*

(Translation)

**IN THE APPEAL BOARD UNDER THE  
URBAN RENEWAL AUTHORITY ORDINANCE (Chapter 563)**

APPEAL CASE NO.	:	No. 1 of 2023 (2023-001)
URBAN RENEWAL AUTHORITY PROJECT	:	Development project at Queen's Road West / Kwai Heung Street (C&W-007)
APPELLANT	:	Fortune Chance Limited & Kam Kwong Trading Limited
RESPONDENT	:	The Secretary for Development
DATE OF THIS ORDER	:	24 May 2024

**Order for Payment of Costs and Expenses**

The Appeal Board is nominated under section 27(8) of the Urban Renewal Authority Ordinance. The Appeal Board conducted the hearing on 24 November 2023 and 14, 15 & 19 February 2024 pursuant to section 28 of the Urban Renewal Authority Ordinance in respect of the appeal (that is, appeal case no.: No. 1 of 2023) against the Secretary for Development's decision to authorise the Urban Renewal Authority to proceed with the development project at Queen's Road West / Kwai Heung Street (C&W-007) without any amendment. The Appeal Board had confirmed the decision appealed against after the hearing and published a notice of the decision in respect of the development project at Queen's Road West / Kwai Heung Street in the Gazette (No. 2867 of 2024) on 24 May 2024. The Appeal Board also decides that the Appellants shall pay the costs and expenses incurred by the Appeal Board in hearing and determining the appeal. After considering section 28(14)(b) of the Urban Renewal Authority



Ordinance, the Appeal Board determines the total costs and expenses payable by the Appellants to be HK\$74,566 which is the amount of remuneration and allowances payable to the Chairman and the members of the Appeal Board and the amount of administrative or other costs and expenses incurred by the Appeal Board in relation to the hearing and determination of the appeal.

The Appellants shall follow the payment methods as stated in the General Demand Note attached to this Order for Payment of Costs and Expenses to pay the amount payable to the Government of the Hong Kong Special Administrative Region. The due date for payment is 24 July 2024.

(signed)

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Miss KUNG Ching-yee, Athena  
(Chairman)

(signed)

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Mr NG Wing-heng, Henry  
(Member)

(signed)

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Dr LI Yi-man  
(Member)

(signed)

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Ms HUNG Kam-ying  
(Member)

(signed)

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Ms SO Lai-chun, Ann, MH, JP  
(Member)

*(If there is any discrepancy between the original decision in Chinese and the English translation, the Chinese original shall prevail.)*