

(Translation)

IN THE APPEAL BOARD UNDER THE  
URBAN RENEWAL AUTHORITY ORDINANCE

Appeal Case Nos.: 1 to 10 of 2012

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BETWEEN

Mr WONG Chi-wing,	Appellants (No. 1)
Mr WONG Yung-kwong	
Mr WONG Chak-man	Appellant (No. 2)
Mr WONG Chi-wah	Appellant (No. 3)
Mr WONG Chi-sing	Appellant (No. 4)
Honfair Industrial Ltd	Appellant (No. 5)
Gold Sheen Investment Ltd	Appellant (No. 6)
Mr CHAN Wang-kin	Appellant (No. 7)
Lexgo Industrial Ltd	Appellant (No. 8)
Wise Bright Industrial Ltd	Appellant (No. 9)
Uni-thorn Industrial Ltd	Appellant (No. 10)

AND

The Secretary for Development	Respondent
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Appeal Board: Mr CHAN Bing-woon, SBS, JP (Chairman)  
Professor Rebecca CHIU Lai-har, JP (Member)  
Mr James KONG Tze-wing, M.H., JP (Member)  
Ms Austen NG Po-shan (Member)  
Mr Albert YOUNG Siu-chuen, MH (Member)

In attendance: Ms Rachel CHAN Ho-ming (Secretary)

Representation:

Appellants (No. 1) Mr WONG Chi-wing, Mr WONG Yung-kwong, Appellant (No. 2) Mr WONG Chak-man, Appellant (No. 3) Mr WONG Chi-wah and Appellant (No. 4) Mr WONG Chi-sing, acting in person with no authorised representatives

Appellant (No. 2) has confirmed to abandon appeal case No. 2 after the first day's hearing

Ms CHAN Ling-kwan acting for Appellant (No. 6) Gold Sheen Investment Ltd

Mr CHAN Kam-chuen acting for Appellant (No. 8) Lexgo Industrial Ltd

Mr HO Wai-ching acting for Appellant (No. 9) Wise Bright Industrial Ltd and Appellant (No. 10) Uni-thorn Industrial Ltd

Appellant (No. 5) Honfair Industrial Ltd and Appellant (No. 7) Mr CHAN Wang-kin being absent

Barrister Mr Jenkin SUEN, Senior Government Counsel Mr Samuel LEE Chiu-ting and Government Counsel Miss Queenie WU Chung-yi acting for the Respondent

Date of Hearing: 30 January, 6 February and 7 March 2013

Date of Decision: 14 June 2013

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## Decision

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Upon careful consideration of the submissions made by the Appellants and the Respondent in respect of the above ten appeal cases, the Appeal Board unanimously decides to dismiss the ten appeal cases and confirms the Respondent's decision made pursuant to section 24(4)(a) of the Urban Renewal Authority Ordinance (Cap. 563) ("the Ordinance") to authorise the Urban Renewal Authority ("URA") to proceed with the development project at Reclamation Street/Shantung Street. The Appellants are required to pay the costs and expenses incurred by the Appeal Board in hearing and determining the appeal.

Reasons are as follows:

1. A total of 27 written statements of objection and one letter not objecting to the Project were received by the URA. Upon deliberating on all the statements of objection and opinion, the Development Project Objection Consideration Committee of the URA considered that the objections should not be upheld and decided not to propose any amendment to the Project.
2. The Appeal Board Panel received a total of ten appeals: One of the two Appellants of case No. 1 is the owner of 4/F of No. 349 Reclamation Street. The Appellant of case No. 2 is the owner of 3/F of No. 333 Reclamation Street. The Appellants of case Nos. 3 and 4 are the owners of G/F

including the attic of No. 331 Reclamation Street. The Appellant of case No. 5 is the owner of G/F including the attic of No. 341 Reclamation Street. The Appellant of case No. 6 is the owner of shop C on the G/F of No. 32B Shantung Street. The Appellant of case No. 7 is the owner of 3/F of No. 335 Reclamation Street. The Appellant of case No. 8 is the owner of G/F including the attic of No. 343 Reclamation Street. The Appellant of case No. 9 is the owner of 2/F of No. 347 Reclamation Street. The Appellant of case No. 10 is the owner of 3/F of No. 341 Reclamation Street. The main grounds of appeal of the Appellants of case Nos. 1 and 2 were that (1) ex-gratia allowances should be offered to assist the owners in acquiring replacement properties; (2) the Home Purchase Allowance should be paid to improve their living environment; and (3) the option of “flat-for-flat” should be provided to allow owner-occupiers to opt for in-situ rehousing. The Appellants of case Nos. 3 to 10 are mostly owner-operators and owners of tenanted domestic units. Their main grounds of appeal were that the owners who have rented out their shops should receive an ex gratia payment equivalent to 10% of the market value of their properties or one time their rateable values, whichever is the higher. For owner-operators, apart from the market value of their properties, they should also receive 35% of the market value of their properties or 4 times their rateable values, whichever is the higher, as ex-gratia payment while tenant-operators should receive cash payment of three times the rateable values of their properties as compensation. Eligible owner-operators and tenant-operators should receive an additional payment of ex-gratia business allowance, which varies with the length of the business and ranges from HK\$70,000 to HK\$500,000. Alternatively, owner-operators and tenant-operators may choose to claim for business loss in lieu of any applicable allowances.

3. The Respondent pointed out that pursuant to section 24(2) of the Ordinance, any person objecting to the Project might propose amendments thereto. Besides, under section 24(4)(b) of the Ordinance, the Respondent should consider whether or not to make amendments to the Project to meet the objections raised. Nevertheless, the Appeal Board agreed with the Respondent’s submission that the amendments he could make would be limited to those on the boundaries of the Project (that is, whether or not the land concerned should be included in the boundaries of the Project) and would not include those relating to compensation for acquiring such land. The Respondent also pointed out that it could be seen in the Gazette notice relating to the Project (No. 663 of 2012) that reference was only made in the notice to the boundaries of the Project, and public inspection of the description of the general nature and effects of the Project as well as the plan delineating the boundaries of the Project was invited. The notice did not cover the means of compensation for acquiring the relevant land.
4. Pursuant to section 28(14)(a) of the Ordinance, at the completion of the hearing of an appeal, the Appeal Board may confirm, reverse or vary the

decision appealed against (that is, the decision of the Respondent pursuant to section 24(4)(a) to authorise the URA to proceed with the Project) as it thinks fit. However, it is obvious that the decision was not related to compensation. The Appeal Board has no power to amend the compensation policies regarding the acquisition of the relevant land, nor has it the power to determine the means of compensation for the acquisition of the Appellants' properties by the URA.

5. Although the relevant compensation policies or decisions are not under the authority of the Appeal Board, a major portion of time of the appeal hearing was used on the hearing of the Appellants' grievances and challenges against the current compensation policies.
6. The Respondent relied upon the decision ("the Decision") made by the Appeal Board on the appeal case Nos. 1 and 4 of 2011, as stated in paragraphs 7 to 8 and 14 in particular. The Respondent pointed out that pursuant to section 24(2) of the Ordinance, any person objecting to the Project might propose amendments thereto. Besides, under section 24(4)(b) of the Ordinance, the Respondent should consider whether or not to make amendments to the Project to meet the objections raised. Nevertheless, the Appeal Board agreed with the Respondent's submission that the amendments he could make would be limited to those on the boundaries of the Project (that is, whether or not the land concerned should be included in the boundaries of the Project) and would not include those relating to compensation for acquiring such land. The Respondent also pointed out that it could be seen in the Gazette notice relating to the Project (No. 663 of 2012) that reference was only made in the notice to the boundaries of the Project, and public inspection of the description of the general nature and effects of the Project as well as the plan delineating the boundaries of the Project was invited. The notice did not cover the means of compensation for acquiring the relevant land. Pursuant to section 28(14)(a) of the Ordinance, at the completion of the hearing of an appeal, the Appeal Board may confirm, reverse or vary the decision appealed against (that is, the decision of the Respondent pursuant to section 24(4)(a) to authorise the URA to proceed with the Project) as it thinks fit. However, it is obvious that the decision was not related to compensation. The Appeal Board has no power to amend the compensation policies regarding the acquisition of the relevant land, nor has it the power to determine the means of compensation for the acquisition of the Appellants' properties by the URA. The Appeal Board agrees with the Respondent's submission that the Appeal Board should not deal with the issues of

acquisition and compensation relating to the Project. Therefore, the Appeal Board decides to dismiss the ten appeal cases and to confirm the Respondent's decision pursuant to the Ordinance to authorise the URA to proceed with the Project. Besides, the Respondent also relied on the following points of law.

7. Firstly, pursuant to section 21(3)(a) of the Ordinance, the URA, when preparing its programme of proposals and its programme of implementation for projects, shall follow any guidelines set out in an urban renewal strategy prepared under section 20(1) in relation to the implementation of those proposals and projects. Section 20(2) further stipulates that the Respondent shall consult the public before finalising the urban renewal strategy in such manner as he may determine. As such, the Appellants have no power to bypass this legal mechanism, requesting the Appeal Board to reverse or disregard any guidelines set out in the urban renewal strategy on the compensation mechanism. For discussion and analysis on the relevant guidelines, reference can be made to paragraphs 11 to 13 of the Decision. The Respondent also explained that compensation in the form of "shop-for-shop" was not included in the acquisition and compensation policies of the URA (the policies applicable to the Project were based on the acquisition and compensation policies endorsed by the Finance Committee of the Legislative Council in March 2001). Secondly, such an option of "flat-for-flat" is only available to owner-occupiers of domestic units and is not available for shops. Therefore, to date, the URA does not have a "shop-for-shop" acquisition and compensation option or policy.
8. The Respondent clearly expressed that a "flat-for-flat" option does not mean that an affected owner of a domestic unit can simply choose, as an exchange or compensation, to receive a property unit upon completion of a development project. In fact, the URA still offers only cash compensation to owner-occupiers of domestic units, where the owner-occupiers may choose to use that compensation payment to purchase another domestic unit developed by the URA, either in-situ at the redevelopment project site or in the same district or at an available site. An owner-occupier may need to top-up in order to purchase a new flat or a balance may be due to him.

9. According to Chapter 5 of the Public Views and Future Direction Paper for the Consensus Building Stage of the Urban Renewal Strategy Review, a possible “flat-for-flat” model and procedure is as follows:

(1) Residential owner-occupiers must first accept the amount of cash compensation for their properties. This cash value is the basis for all other related considerations;

(2) If the value of the new flats under the redevelopment proposal is higher than the cash compensation to which the owner-occupiers are entitled, then the owners opting for the “flat-for-flat” arrangement must pay the URA the difference. If the value is lower than the cash compensation, the owners will be refunded the difference;

(3) The URA will, at the time of making offers for voluntary acquisition, provide details of the arrangements for the “flat-for-flat” option and the basic information about the new flats;

(4) If an owner opts for “flat-for-flat”, the URA will hold part of the cash compensation at a law firm for confirmation.

On page 20 of the Public Views and Future Direction Paper, it is stated that such “flat-for-flat” policy is not applicable to shops. During the course of the hearing, the Respondent also pointed out that the “shop-for-shop” compensation option would entail many problems that are difficult to resolve. For instance, each shop differs from another in terms of location, size and operational needs, and as land and planning considerations must be taken into account and building regulations, fire and safety requirements must be met during the course of redevelopment, it is often impossible to guarantee the provision of similar shop spaces on the completion of the redevelopment project.

10. In fact, the Appeal Board has no power to order the URA to make acquisition offers according to a mechanism other than the urban renewal strategy, as this would be tantamount to ignoring the urban renewal strategy which the URA has to follow under the existing legal framework, and the entire public consultation process would only exist in name.

11. Secondly, the URA’s acquisition offers are to be accepted on a voluntary basis. The URA has no power to make the owners to accept its acquisition offers. Instead, if the owners do not accept the URA’s acquisition offers, the URA may apply to the Respondent under section 29 of the Ordinance requesting him to recommend to the Chief Executive in Council the resumption of land under the Lands Resumption Ordinance. Since the URA’s acquisition offers are to be accepted on a voluntary basis, and compulsory resumption of land under the Lands Resumption

Ordinance is governed by a legal framework, the Appeal Board sees no reason to reverse or vary the decision appealed against because of the URA's land compensation policy.

12. Thirdly, if the Appeal Board reverses or varies the decision made by the Respondent on the Project using URA's compensation policy as a reason, it may suggest that all the projects of the URA (not only the Project) cannot be implemented because the land compensation policy which the URA has been using is a uniform policy. It follows that the Appellants' grounds of appeal are not tenable.
13. Fourthly, even if the Appeal Board will consider the relevant land compensation policy, many cases pointed out that the protection of private property by the Basic Law is not absolute as Article 105 of the Basic Law only requires the Government to pay the real value of the property concerned as payment of compensation for the private property. In the present case, the compensation offered by the URA to owners of domestic units or shops is determined at a level above market rate.
14. Fifthly, as the URA has not yet made any acquisition offers for the land involved in the Project, the Appellants do not have justifications to claim that the acquisition offers to be made by the URA in future fail to compensate them for their losses in properties. The Appellants mistakenly believe that the Respondent should not authorise URA to proceed with the Project before they receive any acquisition offers from the URA. In this regard, paragraph 25 of the Urban Renewal Strategy stipulates that although the URA may request resumption of land for redevelopment under the Ordinance, it should consider acquiring land by agreement before making such a request to the Secretary for Development. Offers of purchase should be made after a project has been authorised but before the land reverts to the Government.
15. Since the Appellants did not give evidence on oath, the Respondent had no opportunity to cross-examine the Appellants. Within this context, when the Appellants asked the witnesses summoned by the Respondent questions, any allegations made ex parte about the facts or expert witnesses would not and should not be accepted as evidence made by the Appellants.
16. The Ordinance does not require the Respondent to disclose the reasons for his decision in considering the matters and exercising the powers in relation

to section 24(4). In making his decisions, the Respondent shall consider the matters from a macro perspective and balance the conflicting or competing interests of all parties, with the overall interests of Hong Kong in mind.

The Appeal Board unanimously decides to order each and every Appellant to bear the costs and expenses of HK\$9,299 incurred in hearing and determining the appeal.

(signed)

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Mr CHAN Bing-woon, SBS, J.P.  
(Chairman)

(signed)

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Professor Rebecca CHIU Lai-har, JP  
(Member)

(signed)

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Mr James KONG Tze-wing, MH, JP  
(Member)

(signed)

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Ms Austen NG Po-shan  
(Member)

(signed)

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Mr Albert YOUNG Siu-chuen, MH  
(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 2012, No. 2 of 2012, No. 3 of 2012, No. 4 of 2012, No. 5 of 2012, No. 6 of 2012, No. 7 of 2012, No. 8 of 2012, No. 9 of 2012, No. 10 of 2012
URBAN RENEWAL AUTHORITY PROJECT	:	Development project at Reclamation Street/Shantung Street (YTM-010)
APPELLANT	:	Mr WONG Chi-wing, (No. 1) Mr WONG Yung-kwong  Mr WONG Chak-man (No. 2) (The Appellant of case No. 2 has confirmed to abandon appeal case No. 2 after the first day's hearing)  Mr WONG Chi-wah (No. 3)  Mr WONG Chi-sing (No. 4)  Honfair Industrial Ltd (No. 5)  Gold Sheen Investment Ltd (No. 6)  Mr CHAN Wang-kin (No. 7)  Lexgo Industrial Ltd (No. 8)  Wise Bright Industrial Ltd (No. 9)  Uni-thorn Industrial Ltd (No. 10)
RESPONDENT	:	The Secretary for Development
DATE OF THIS ORDER	:	14 June 2013

### **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 hearings on 30 January, 6 February and 7 March 2013 pursuant to section 28 of the Urban Renewal Authority Ordinance in respect of the ten appeals (that is, appeal case nos.: No. 1 of 2012, No. 2 of 2012, No. 3 of 2012, No. 4 of 2012, No. 5 of 2012, No. 6 of 2012, No. 7 of 2012, No. 8 of 2012, No. 9 of 2012 and No. 10 of 2012. The Appellant of case No. 2 withdrew his appeal by giving notice in writing to the Appeal Board on 4 February 2013.) against the Secretary for Development's decision to authorise the Urban Renewal Authority to proceed with the development project at Reclamation Street/Shantung Street (YTM-010) without any amendment. The Appeal Board had confirmed the decision appealed against after the hearings and published a notice of the decision in respect of the development project at Reclamation Street/Shantung Street in the Gazette (No. 3346 of 2013) on 14 June 2013. The Appeal Board also decides that the ten Appellants shall pay the costs and expenses incurred by the Appeal Board in hearing and determining the appeals. After considering section 28(14)(b) of the Urban Renewal Authority Ordinance, the Appeal Board determines the total costs and expenses payable by the ten Appellants to be HK\$92,990, 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 appeals. The Appeal Board decides that the above total costs and expenses shall be shared equally by the following ten Appellants. The amount of costs to be shared by the Appellants is as follows.

Mr WONG Chi-wing, Mr WONG Yung-kwong	HK\$9,299
Mr WONG Chak-man	HK\$9,299
Mr WONG Chi-wah	HK\$9,299
Mr WONG Chi-sing	HK\$9,299
Honfair Industrial Ltd	HK\$9,299
Gold Sheen Investment Ltd	HK\$9,299
Mr CHAN Wang-kin	HK\$9,299
Lexgo Industrial Ltd	HK\$9,299
Wise Bright Industrial Ltd	HK\$9,299
Uni-thorn Industrial Ltd	HK\$9,299

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 15 July 2013.

(signed)  


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Mr CHAN Bing-woon, SBS, JP  
(Chairman)

(signed)  


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Professor Rebecca CHIU Lai-har, JP  
(Member)

(signed)  


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Mr James KONG Tze-wing, MH, JP  
(Member)

(signed)  


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Ms Austen NG Po-shan  
(Member)

(signed)  


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Mr Albert YOUNG Siu-chuen, MH  
(Member)

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