

IN THE APPEAL BOARD UNDER THE
URBAN RENEWAL AUTHORITY ORDINANCE

Appeal Cases Nos. 1, 2, 4 and 10 of 2016

IN THE MATTER OF Urban
Renewal Authority Development
Project at Bailey Street / Wing Kwong
Street, To Kwa Wan (KC-009)

BETWEEN

LEE Kak To (transliteration) (李格度)	1 st Appellant
LAM Kin Yip (transliteration) (林健業)	2 nd Appellant
LAM Chong Yip (transliteration) (林創業)	4 th Appellant
WAN Fai Yiu	10 th Appellant

AND

Secretary for Development	Respondent
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Appeal Board :	Mr WONG Kam Shan, Kenny	(Chairman)
	Mr Lincoln HUANG Ling Hang, JP	(Member)
	Dr LI Ling Hin	(Member)
	Mr LO Kin Hei	(Member)
	Dr Elvis LUK Wai Ki	(Member)

In attendance :	Mr Trevor HO	(Secretary)
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Representation :	Mr Mike LUI (Counsel) and Ms CHAN Sum Yi, Priscilla (Government Counsel) for the Respondent and summoned witnesses Mr Kelvin CHUNG and Mr Mike KWAN to give evidence on oath
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All Appellants appeared in person and gave evidence upon affirmation

Date of Hearing :	14 February 2017
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Date of Decision :	28 April 2017
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DECISION

Upon due consideration of the submissions made by the Appellants and the Respondent in respect of the above four appeal cases, we, the Appeal Board, unanimously decide to dismiss all the appeals and confirm the Respondent's decision made pursuant to section 24(4)(a) of the Urban Renewal Authority Ordinance (Chapter 563) ("Ordinance") to authorise the Urban Renewal Authority ("URA") to proceed with the development project KC-009 at Bailey Street/Wing Kwong Street ("Project"). We could have asked but decided not to require the Appellants to pay the costs and expenses incurred by us in hearing and determining the appeal.

Various issues were considered before and during the course of the appeal hearings. Some were already well canvassed in previous decisions of the Appeal Board and some were new. We strongly advise that future appellants should read this Decision carefully. If despite our reasoning set out in this Decision on those various issues, future appellants insist to proceed with their appeals raising the same or essentially the same arguments and fail, it will be reasonable and just for such appellants to bear the costs and expenses of the hearing.

Our reasons are as follows:

A. Background

1. Pursuant to sections 23(1) and (2) of the Ordinance, URA gazetted a notice on the commencement of the Project (G. N. 1188 of 2016) on 4 March 2016. A copy of the notice is produced as Exhibit 2 of the Witness Statement of Mr Chung Kin Keung ("Chung's Statement"). A press release of the same date which explains the Project in greater detail can be found in the last document of Exhibit 5 of Chung's Statement. The Project covers a gross site area of about 8,042 m² ("Site"), abutting Wing Kwong Street to the north, Wan On Street on the east, Bailey Street to the south and Ma Tau Wai Road and a back lane to the west in Kowloon City District, Kowloon. The buildings within the project boundary were completed between 1957 and 1961. The proposed development will comprise residential and retail uses. It is estimated that about 2,000 households and 54 ground floor business operators may be affected by the Project.
2. Public inspection of (1) a description of the general nature and effects of the Project; and (2) a plan delineating the boundaries of the Project was given for a period of two months from 4 March 2016. Such information was also available on the URA website at <http://www.ura.org.hk>. In the last two sentences of paragraph 2.2 of (1) the description of the Project, it was stated:

"Some original units in the Project have been sub-divided into smaller units (sub-divided units) and suspected unauthorised building works are found at the rooftops and backyards of some buildings in the Project. The living condition is considered crowded and unsatisfactory. Many of the buildings exhibit signs of lack of proper maintenance and conditions of some of the buildings are "Poor" (the worst category in the Building Conditions Survey) 項目內的部分單位被分間成小型單位 (劏房) ,

在一些樓宇的天台及後院亦有僭建物，居住環境擠逼及不理想。大部分樓宇缺乏適當維修，部份樓宇呈‘明顯失修’狀況（在樓宇狀況調查中最差類別）” (see Exhibit 3 of Chung's Statement).

3. Under section 24(1) of the Ordinance, any person who considers that he will be affected by the Project and who wishes to object to the implementation of the development project may send to the URA, a written statement of his objection(s) to the Project. The statement shall set out (1) the nature and reasons for the objection; and (2) where the objection would be removed by an amendment of the development project any amendment proposed. URA issued a set of *Guidelines on the Submission of Objections to Projects to be implemented by way of Development Project* and such Guidelines were made available for collection at designated locations including the URA Ma Tau Wai Neighbourhood Centre and the Public Enquiry Service Centre of the Kowloon City District Office which are in the vicinity of the Project site and are available online at URA's website.
4. Subsequently, URA received 67 objections (including those from the present Appellants) and 214 comments to the Project. After deliberation, the Development Project Objection Consideration Committee ("DPOCC") of the URA decided not to uphold the objections and noted the comments. URA then wrote to the objectors to inform them of the decision of DPOCC not to uphold their objections and the reasons thereof. In the letters, URA also enquired whether the objectors would like to withdraw their objections and whether they had any comment on and response to the decision and reasons of URA not to uphold their objections and if so, requested them to forward their comments and responses to the Authority by a stipulated date.
5. One objector wrote to URA withdrawing his objection, while further comments/new opinions/ objections were received from 21 objectors (including Appellant No. 1). After considering the further submissions, DPOCC decided to maintain its decision not to uphold any of the objections. On 22 July 2016, URA wrote again to the 21 objectors (including Appellant No. 1) of its decision together with an analysis and comments on their objection and asked if the objectors would withdraw their objections. Subsequently only 2 objectors (including Appellant No. 1) replied but raised no new grounds of objection. A copy of URA's letter to Appellant No. 1 can be seen is produced as Exhibit 5 of Chung's Statement.
6. On 3 August 2016, enclosing the reports on Stages 1 and 2 Social Impact Assessments conducted before and after the publication of the Project in the Gazette, and other papers, URA wrote to the Respondent to authorise URA to proceed with the Project without amendment. A copy of URA's letter to the Respondent is produced as Exhibit 6 of Chung's Statement.
7. On 25 November 2016, the Respondent decided to authorise the URA to proceed with the Project without any amendment. A notice of the decision was gazetted on 9 December 2016 (no. 6991 of 2016). In the notice, it was stipulated that pursuant to section 28 of the Ordinance, objectors to the Project who were aggrieved by the decision of the Respondent might appeal on or before 9 January 2017 by lodging a

notice of appeal with the Secretary of the Appeal Board Panel with a copy to the Respondent. A copy of the notice is produced as Exhibit 7 of Chung's Statement.

B. Appeals

8. The Secretary of the Appeal Board Panel received a total of 28 appeals. Before the hearing, 24 appeals were gradually abandoned. As a result, the hearing was conducted for the present four appeal cases only. As there were common questions, particularly about compensation, in the appeals, for ease of administration and to save time and cost, the appeals were consolidated to be heard at the same time.
9. This is an appropriate juncture to point out that the Secretary of the Appeal Board was uncertain about some of the appeals as they were either not filed using Form No. S28-1 provided by the URA or the contents were incomplete. Form No. S28-1 is not a statutory prescribed form. Appellants are not obliged to use that Form but must note that it is a statutory requirement under section 28(2) of the Ordinance that the notice of appeal must contain the following information:-
 - (1) the name, address and telephone number of the appellant and of the appellant's authorized representative, if any;
 - (2) details of the decision appealed against;
 - (3) the grounds of the appeal;
 - (4) the name, address and telephone number of all proposed witnesses; and
 - (5) particulars of the evidence to be given by the witnesses and documents and any other thing to be produced by or on behalf of the appellant sufficient to ensure that the Appeal Board and the Secretary are fully and fairly informed of the grounds of appeal.
10. It is only upon receipt of such notice that the Secretary of the Appeal Board Panel shall fix a date, time and place for the hearing of the appeal. A notice which does not contain all the requisite information is not a valid notice which the Secretary has to entertain.

C. The Appellants and their Grounds of Appeal

11. Appellant No. 1 neither occupies nor owns any property in the Site. The Grounds of Appeal he put forward can be summarised as follows :
 - (1) Since the Project will provide commercial gross floor area of about 11,100 m², a large part of the Project is for commercial activities and cannot be for a 'public purpose';
 - (2) Given that there will be about 55,500 m² gross floor area for about 1,150 flats, the average floor area per flat would be around 48.26 m² which would be well above

the size for public housing. Hence, the Project is essentially for windfall profit and URA is abusing its authority;

(3) the compensation to be given to the owners is insufficient for them to buy a similar flat or shop in the same district; this constitutes plundering of private property by the government and there is not fair and reasonable compensation under the Land Resumption Ordinance.

12. Appellant No. 2 and 4 are brothers living in two separate illegal structures on the roof of Nos. 14 and 16 Wan Fat Street. Appellant No. 2's Grounds of Appeal is that "occupants on the roof may receive only a meagre removal allowance and such small amount would not be sufficient to pay [even] for the initial down payment for another flat. If the URA proceeds to resume [the land], where can [he] live?" Appellant No. 4's Grounds of Appeal are similar, he says "I am a roof occupant affected by the Project. If the development proceeds, I shall not be able to bear the rental or property value of another property. I would have no future. Hence I hope [URA] would stop the development so that I can still have a place to live".

13. Appellant No. 10 is an occupant of a unit on Floor No. 4 of 19 Wan Fat Street. His Grounds of Appeal can be summarized as follows:-

(1) The place he is occupying is an ancestral house or ancestral hall and he has been there since 1960 for 57 years;

(2) If the URA has to proceed with the redevelopment and impose a force acquisition at the end, he would lose his home; the one-off compensation and not "one house for one house" policy is unfortunate;

(3) Hence in his notice of objection he wrote: nuisance, no rehousing within same district, increased [financial] burden to change a new home.

He added at the end that he felt aggrieved because of ground no. 2.

14. All the Appellants appeared in person throughout the hearing, affirmed and gave evidence. The Respondent did not see the need to cross-examine any of them.

D. Standing

15. Appellants Nos. 2 and 4 do not have registered legal interest of the roof they are occupying. It is unclear if they may claim adverse possession which is not a matter for us to decide. Appellant No. 10 has no registered legal interest either at the place he resides but he claims he has lived there since 1967 without the need to pay any rent. Putting aside whether Appellants Nos. 2, 4 and 10 have any proprietary interest in the premises they are occupying, as those premises fall within the Site, the Project has a direct impact on them. On the other hand, the standing of Appellant No. 1 was doubtful. He admitted that he was an outsider (街外人). Naturally, the standing of Appellant No. 1 in these proceedings was queried by the Respondent although at the hearing, the Respondent did not pursue such challenge.

16. Given the above and no related arguments on standing were made before us, it is not necessary for us to decide on the issue. Yet, for future reference, we consider it useful for us to set out our observations on the issue.
17. According to Appellant No. 1, since the Project was open for public inspection, the fact that he was a Hong Kong citizen, a permanent resident, was already good enough to support his standing to initiate this appeal. He said, if needed, he could add that he was an applicant for public rental housing. He objected the Project as it was not for a "public purpose". His interpretation for a "public purpose" was that the land should be used for building public rental housing or subsidized housing under the Home Ownership Scheme. He also disputed why certain occupants in the Site might be given priority to be considered for public housing. Presumably, he was trying to say that because the Site could have been used for public housing and if it was not, and if affected residents within the Site might receive priority, his wait for public rental housing might be prolonged.
18. Sections 24(1) and 28(1) of the Ordinance are relevant to the issue in this hearing. Section 24(1) provides that "any person who considers that he will be affected by a project to be implemented by way of a development project" may send a written notice of his objections within a stipulated time. Section 28(1) stipulates that "an objector to a development project who is aggrieved by a decision of the Secretary" to authorise the URA to proceed with the development project without any amendment may appeal within a stipulated time.
19. Section 24(1) allows any person, including Appellant No. 1, who considers that he will be affected by the Project to send in a notice of objection. However, only an objector who "is aggrieved by" the Secretary's decision to proceed with the Project without any amendment may appeal. The question is who is this person (objector) who is aggrieved?
20. A person who is aggrieved must not be a mere busybody. A busybody is a person who masquerades himself as a crusader of justice and indulges himself in the pastime of meddling with the judicial process either by habit or for ulterior motives, sometimes no more than putting a spoke in the wheels of administration. On the other hand, a person who is aggrieved is one whose legal rights have been infringed, or who has a substantial and genuine interest in the subject matter or whose rights may be prejudiced, damaged or injured by an act or omission of someone else, often an authority. A nominal or a highly speculative adverse effect on the interest or right of a person should not be sufficient.
21. The "person who is aggrieved" requirement is intended to have a filtering function although it should not be construed narrowly. We are inclined to take the view that simply by reason of his being a Hong Kong citizen or permanent resident, Appellant No. 1 does not qualify as an objector who is aggrieved. We doubt even by adding his status as an applicant for public rental housing, that would be sufficient.
22. We further observe that although the English section refers to an objector who "is aggrieved", it is translated into Chinese as an objector who "feels aggrieved". There have been cases which explained that the words "a person who feels aggrieved" do not

really mean a man who is disappointed of a benefit which he might have received if some other order had been made. Such person (who feels aggrieved) must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something. In future, if this issue of standing arises again, we expect to be fully addressed on who qualifies as a person who is aggrieved (or who feels aggrieved as in the Chinese text) in order to assist us to reach a decision.

23. The Respondent submitted that so far, nothing was said whether or not the residential floor area of the Project would be used for public housing or not. Even if it may not be, we do not see that Appellant No. 1 has a legal right to public (rental) housing. Compared to the greater good of a redeveloped area, the further time it may take for his application to become successful is nominal and actually speculative. We wish to point out that the Appellant No. 1 has not provided any documentary evidence about his public rental housing qualification and information about the status of his application although such evidence would most unlikely have affected our decision on this issue. The Appeal Board is also mindful that Appellant No. 1 has to meet the eligibility criteria for public rental housing. Other priority initiatives such as the Single Elderly Persons Priority Scheme and the Harmonious Families Priority Scheme may also affect Appellant No. 1's application for public rental housing. Further how many of those directly affected by the Project may apply for public housing can only be speculative.
24. Appellant No. 1's behavior during the appeal hearing also fortified our impression that he did not have a substantial and genuine interest in objecting the redevelopment. He admitted that he did not read any of the evidence (witness statements) filed and served by the Respondent. Rather, he used the appeal to vent his distrust of URA by repeated his arguments again and again during the course of the hearing. According to him, there was no public purpose; URA was profiteering by forcing affected owners to sell at 50% of market value; and URA was a corrupt retired officer club. He mentioned a few times that he agreed redevelopment was a good deed but it would only be fair to the affected owners or occupiers and correct according to the Basic Law if there were "flat-for-flat" and "shop-for-shop" exchange of the same size at the same address without any price adjustment. We are therefore inclined to consider him a busybody rather than a person who is aggrieved.
25. Nonetheless, Appellant No. 1's appeal was fully heard and our decision against him was reached entirely due to the lack of merits of his case and arguments, not doubts on his standing.

E. Public Purpose

26. One of Appellant No. 1's major objections against the Project was that it was not, according to him, for a "public purpose". The Respondent has pointed out that according to Section 29(4), if the Respondent recommends to the Chief Executive in Council a resumption of land under the Lands Resumption Ordinance (Cap 124), such

resumption shall be deemed to be a resumption for a public purpose. Under section 2 of the Lands Resumption Ordinance, the definition of resumption for a public purpose includes under sub-section (d) any purpose of whatsoever description which the Chief Executive in Council may decide to be a public purpose. Section 19 of the Lands Resumption Ordinance further provides that "In any notice to resume any land, it shall be sufficient to state that the resumption of such land is required for a public purpose, without stating the particular purpose for which the land is required; and a notice containing such statement shall be conclusive evidence that the resumption is for a public purpose." Public purpose is likewise presumed under the Land Acquisition (Possessory Title) Ordinance.

27. Appellant No. 1 objected that the Respondent or the Chief Executive in Council could decide what "public purpose" was. To him, developing land other than for public rental housing or subsidised housing under the Home Ownership Scheme could not be for a public purpose. He criticized URA for its \$4.233 billion accumulated surplus and remarked that it was not right for URA to lose money in a project and even worse to gain from a project. He also questioned why the URA would choose this Project amongst others when no building had yet collapsed.

28. In the past 10 years, URA suffered a deficit for the year 2009 and 2014. The URA would also have suffered a deficit in 2015 if not for the fact that the government waives land premium for URA's redevelopment sites. When implementing its urban renewal programme, the URA is necessarily exposed to financial risk arising from property market fluctuations. One of the key recommendations of the revised Urban Renewal Strategy (see Exhibit 1 to Chung's Statement) promulgated on 24 February 2011 was that the urban renewal programme of URA should be self-financing in the long run.

29. In the Chairman's Statement dated 31 July 2016 in the URA annual report 2016, he stated:

As a public organisation, we shall continue to exercise due care and diligence in the handling of our finances to ensure sound long-term finances on a self-sustaining principle. A total expenditure of about \$34 billion has been earmarked for URA's work in redevelopment, rehabilitation, preservation and revitalisation for the five years from April 2016 to March 2021. Although a net operating surplus of \$4.5 billion was recorded in 2015/16, the income is not recurrent in nature and the URA's operating environment remains challenging as unfavourable factors continue, including the higher-than-market acquisition costs, soaring construction costs, uncertainty in the property market and the conservative tender bids for the URA's projects from private developers.

30. The revised Urban Renewal Strategy ("URS") promotes a "People First, District-based, Public Participatory" approach. It was drawn up on the basis of the broad consensus reached during the extensive public engagement between July 2008 and June 2010 to review the strategy during which over 2,400 public opinions/comments were received. The draft text of the revised URS was open for a two-month public consultation between 13 October 2010 and 13 December 2010. Over 70 written

submissions were received and the finalised revised URS had been prepared taking into account the comments received.

31. Following the revised URS, URA embraced the district-based approach to ensure that its self-initiated projects create greater planning and social gains upon completion than scattered “pencil block” or other smaller redevelopment projects. This approach is aimed to ensure that URA’s new projects create real impact and are aligned with its overall mission, in particular the Ordinance/URS objectives to restructure and re-plan urban areas with more environmentally-friendly transport networks and rationalised land uses.
32. While improving the quality of life of residents in the urban areas remains a primary goal, the vision of urban renewal should embrace the concepts of sustainable development and building a quality city (including appropriate development intensity, land use planning, urban design, greening, local culture, heritage preservation and harbour beautification, etc.) and be forward-looking to support the development of Hong Kong in the long run. It is mean and reckless of Appellant No. 1, to say the least, to suggest that the URA should only step in when dilapidated building faces the danger of collapse or some tragedy has happened.
33. The revised URS embraces the setting up of District Urban Renewal Forum (“DURF”) in old urban districts to strengthen urban renewal planning at the district level. In June 2011, the first pilot DURF was established in Kowloon City. It comprises members from a wide cross-section in the community, including professionals, District Councillors/Area Committee Members, established non-government organisations/groups/business associations serving the district, and representatives of the URA and relevant government bureaux and departments. The Project is the first development project in Kowloon City under the district-based approach following recommendations submitted by the Kowloon City DURF. On 3 June 2016, three more development projects were launched simultaneously under the same district-based approach. These projects together are designed to improve not only the living conditions but also the accessibility and the traffic circulation of the surrounding area in the Kowloon City district with a new through road between the redevelopment projects.
34. As pointed out by Mr Chung Kin Keung, the Respondent's first witness, Eight “Wan” Streets in the area including Wan Tat Street, Wan Fat Street, Wan Hing Street and Wan Lok Street covered by the Site, are amongst the Redevelopment Priority Area in the Urban Renewal Plan for Kowloon City (“URP”) proposed by the Kowloon City DURF. A summary of the recommendation on this can be found in para 6.2.1 of the URP which says – Buildings in the [Redevelopment Priority Area] are mostly in dilapidated or markedly dilapidated conditions and are generally aged 50 or above. While some buildings do not meet the above criteria on building conditions and age, they are also included in the Area as their residents are suffering from serious problems such as environmental hygiene, and air and noise pollution. Taking into account the above situations and weighing against the possible impacts of redevelopment and other urban renewal approaches, it is proposed that redevelopment should be given priority as the urban renewal approach for the Area.

35. We agree with the Respondent's submission that the URA projects must logically qualify as being for a public purpose. One of the objectives of the URA is to address the problem of urban decay and to improve the living conditions of residents in dilapidated urban areas. The community at large would also benefit from urban renewal. Section 5 of the Ordinance sets out the purposes of URA and relevant to this hearing are the purposes set out in sub-section (a), (b) and (c):-

- (a) replace the Land Development Corporation as the body corporate established by statute having the responsibility of improving the standard of housing and the built environment of Hong Kong by undertaking, encouraging, promoting and facilitating urban renewal;
- (b) improve the standard of housing and the built environment of Hong Kong and the layout of built-up areas by replacing old and dilapidated areas with new development which is properly planned and, where appropriate, provided with adequate transport and other infrastructure and community facilities;
- (c) achieve better utilization of land in the dilapidated areas of the built environment of Hong Kong and to make land available to meet various development needs.

It cannot be right that only building of public rental housing or subsidised housing under the Home Ownership Scheme serves a public purpose.

36. Details of the objectives of urban renewal can be found in the revised URS. The following key principles underlying the Government's approach to urban renewal are identified:-

- (1) eligible owners whose properties are acquired or resumed for the implementation of redevelopment projects should be offered fair and reasonable compensation;
- (2) eligible tenants affected by redevelopment projects should be provided with proper rehousing;
- (3) the community at large should benefit from urban renewal; and
- (4) residents affected by redevelopment projects should be given an opportunity to express their views on the projects.

37. URA must adopt a comprehensive and holistic approach to rejuvenate older urban areas by way of redevelopment, rehabilitation and heritage preservation. It cannot, as implied by Appellant No. 1, wait for a tragedy like the collapse of the building at 45J Ma Tau Wai Road, to take action.

38. It is difficult to see how development projects reflecting the purposes of URA and manifesting its objectives are not for a public purpose, particularly in respect of the Project against the above background following the public participation and recommendations of the Kowloon City DURF.

F. Basic Law

39. Appellant No. 1 argued that URA's development projects are plundering of private properties, are forced sale at low price to enable URA to resell at a windfall and contravenes Article 105 of the Basic Law which reads

The Hong Kong Special Administrative Region 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.

Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay.

The ownership of enterprises and the investments from outside the Region shall be protected by law.

40. In the case of *Secretary of Justice v Chu Chu Yiu* DCCJ 2157/2013, the learned District Court Judge Chow has ruled that although Article 6 of the Basic Law requires that "The Hong Kong Special Administrative Region shall protect the right of private ownership of property in accordance with law", there is no contradiction between Article 6 and Article 105 when the government resumes land for the purposes of urban renewal and such resumption does not contravene either the Basic Law nor the Hong Kong Bill of Rights Ordinance.

41. In that judgment, Article 14 of the Bill of Rights was specifically mentioned:-

- (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
- (2) Everyone has the right to the protection of the law against such interference or attacks.

The learned judge explained that as the government lawfully resumed land, there could be no contravention of the Bill of Rights.

42. First of all, Articles 6 and 105 expressly refer to protection on private property rights. It is doubtful whether any of the four Appellants has private property rights affected by the Project. In *Hysan Development Company Limited et al v Town Planning Board*, FACV Nos. 21 & 22 of 2015, a case concerning planning restrictions imposed by the Town Planning Board, the Court of Final Appeal pointed out that property rights under Articles 6 and 105 were not absolute rights. Applying the rationale of the *Hysan* decision, even if the Respondent's decision to commence the Project were to be judicially reviewed, the URA's decision would have satisfied the proportionality assessment and reasonable balance test explained in the said Court of Final Appeal case as (1) the URA pursues a legitimate aim to redevelop land for urban renewal (2) the decision to commence the Project is rationally connected thereto: (3) the effect to the original owners and residents and their possible relocation is not manifestly without reasonable foundation or is no more than reasonably necessary; and (4) a

reasonable balance has been struck between the societal benefits of the redevelopment and the inroads made into the constitutionally protected rights of the individuals with property interests affected by the Project and does not result in an unacceptably harsh burden on the individuals.

43. Further, Appellant No. 1 disagreed and contended that the learned judge in *Chu Chu Yiu* failed to properly consider the words "freely convertible" in Article 105 of the Basic Law. His interpretation was that URA could not force an owner affected by the Project to sell his premises. He further interprets "freely convertible" to mean "watch-for-watch", "flat-for-flat" and "shop-for-shop". Article 105 of the Basic Law provides for a right to compensation for lawful deprivation of property and such compensation shall correspond to the real value of the property concerned at the time. It does not prohibit the government from resuming land. Guiding notes of the Basic Law compiled by Professor Wang Shuwen, member of Hong Kong Basic Law Drafting Committee and published by the Central Party School of the Communist Party of China 中共中央黨校出版社 – 香港特別行政區基本法導論 explain that "freely convertible" refers to the currency used to pay for the compensation. It does not refer to a "same commodity exchange" concept as Appellant No. 1 has contended.
44. Hence we disagree with Appellant No. 1 that compensation following Article 105 in these circumstances should mean "flat-for-flat" and "shop-for-shop". In any event, for reasons explained below, issues about compensation are irrelevant in these appeals.

G. Compensation

45. This brings us conveniently to the issue of compensation. It is apparent from the notices of appeal and the hearing that all Appellants are concerned about compensation if the Project proceeds and for Appellants Nos. 2, 4 and 10 that they have to move out. However, as the Respondent has repeatedly pointed out to the Appellants, no announcement has yet been made by URA about compensation. The Project has yet to reach the stage to talk about compensation.
46. In paragraph 14 of the Appeal Board's first Decision No. 1 & 4 of 2011, it states:

The Appeal Board agrees with the [Secretary for Development]'s submission that the Appeal Board should not deal with the issues of acquisition and compensation relating to the Project.

47. In the Appeal Board's second Decision No. 1 to 10 of 2012, in paragraph 6, it states:

...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...

48. We repeat once again that the Appeal Board has no authority nor discretion to deal with issues of compensation.
49. If the Project proceeds, URA will commence to acquire properties in the Site through private negotiation. If URA cannot reach agreement with all the owners, it may then have to proceed under the Lands Resumption Ordinance. Eligible persons will be offered compensation or ex-gratia allowances and rehousing arrangements may be made for occupiers of domestic flats, if applicable. If the parties fail to reach agreement on the compensation, the matter can be referred to the Lands Tribunal for adjudication. URA also has policies for compensating eligible domestic tenants. Information can be found at <http://www.ura.org.hk/en/schemes-and-policies/redevelopment/faq/compensation-and-rehousing-faq/owners.aspx>. For rehousing eligibility of illegal rooftop structure occupiers for Public Rental Housing or URA Re-housing Block, ex-gratia removal allowance and compassionate re-housing, information can be found at <http://www.ura.org.hk/en/schemes-and-policies/redevelopment/ura-implemented-projects/ex-gratia/urao/urao-rehousing.aspx>.
50. The revised URS recommends "flat for flat" but not "shop for shop". URA will offer "flat for flat" as an alternative option to cash compensation and ex gratia payment to the owner-occupiers. An owner opting for "flat for flat" will still be receiving compensation and ex gratia payment at the notional value of a 7-year-old replacement unit. The new flats are to be sold at market price. There will be no "shop for shop" option, as offering shop operators affected by redevelopment a shop in a future development several years later would not meet operators' primary concern for uninterrupted business. Instead, URA will provide shop operators with more assistance to re-start their business.
51. Although irrelevant at this stage, the Respondent had on various occasions tried to explain to all the Appellants about the Respondent's current compensation policy. The Respondent has produced as Exhibits 8, 9, 10 and 11 of Chung's Statement respectively Brief Notes on the Principles Adopted by the URA in Property Acquisition (Other than Industrial Properties) dated February 2015, Flat-for-Flat (Pilot Scheme) Pamphlet dated August 2016 and Elderly Domestic Owner-Landlords Compassionate Allowance dated March 2014, and Brief Notes on the Principles Adopted by the URA for Tenant Re-housing and Ex-gratia Payment for Projects Announced by the URA under the Ordinance (other than former Land Development Corporation Projects). More information about the Principles Adopted by the URA in Property Acquisition can be found at <http://www.ura.org.hk/en/schemes-and-policies/redevelopment/ura-implemented-projects/acquisition.aspx>
52. Not that it matters to this Decision, the Respondent's witness Chung Kin Keung pointed out that Appellant No. 1 was mistaken in the following aspects about compensation:
- (1) Appellant No. 1 contended that URA only paid 50% of market price to acquire private properties from owners. Mr Chung pointed out that market value based on vacant possession basis (plus allowances depending on the situation) would be paid.

- (2) Appellant No. 1 suggested favouritism as only one valuation firm was engaged to conduct valuation of properties affected by a redevelopment project. Mr Chung pointed out that URA appointed seven consultant firms to do so. The highest and lowest valuations would be discarded. The remaining five would be averaged. Names of the seven valuation consultants and their valuation data would be made public.

H. Time for lodging and serving evidence

53. This is only a small procedural matter which although the Respondent conceded, we ought to decide. Appellant No. 1 complained that the Respondent served upon him in less than 7 days the Respondent's Skeleton Submission, a Chronology of Events and a List of Authorities in contravention of section 28(5) of the Ordinance. The Respondent pointed out that the not less than 7 days prior to the date set for the hearing requirement applied only to witness statements, documents and any other thing to be given or produced in evidence at the hearing of the appeal, it did not apply to the aforesaid materials which were not evidence but were prepared merely to facilitate the appeal hearing, the Respondent conceded not to refer to those materials.
54. We agree with the Respondent's submission that section 28(5) refers only to evidence and does not apply to the aforesaid materials which the Respondent prepared to facilitate the hearing and does not put in any new evidence. However, given that the appellants are often layman, it would better to serve any facilitative materials to the appellants sooner if possible. For the avoidance of any doubt, in the Respondent's list of authorities, we are of course well aware of the Ordinance and two decisions of the Appeal Board, namely 1&4 of 2011 and 1 to 10 of 2012. The case of the *Secretary of Justice v Chu Chu Yiu & others* was raised by Appellant No. 1 to explain his observation that the learned judge failed to consider the phrase "freely convertible" and then dealt with by the Respondent during its oral submission and by us.

I. Costs and expenses

55. Clearly, the Appellants erred in appealing to us on issues about compensation or rehousing. Appellant No. 1 also failed on all the points he raised. While we sympathise with the worries of Appellants Nos. 2, 4 and 10 about losing their homes, we do not wish to encourage improper use of the URA appeal process on irrelevant issues, not to mention, to vent general grudges about URA or the government based on misconceptions, rumours or unfounded accusations.
56. Therefore, it would have been reasonable and fair for the Appellants to bear the costs and expenses of this hearing.
57. Yet, this Appeal Board unanimously feels sympathy for Appellants No. 2, 4 and 10 and does not wish to make a cost order against them. As this is a consolidated hearing, although we can, we hesitate to seek cost and expenses against Appellant No. 1 only. As we have mentioned at the outset, if despite this Decision which explains in detail

our decisions on the many issues raised, the Appeal Board will duly order cost and expenses against future appellants who raise the same or similar unmeritorious grounds of appeal or arguments unless there has been a change in the relevant law, strategies or policies of URA. We ask that the Secretary of the Appeal Board should provide a copy of this Decision to prospective appellants in future and highlight to them this paragraph so that they understand the possible cost implication.

(signed)

Mr WONG Kam Shan, Kenny
(Chairman)

(signed)

Mr Lincoln HUANG Ling Hang, JP
(Member)

(signed)

Dr LI Ling Hin
(Member)

(signed)

Mr LO Kin Hei
(Member)

(signed)

Dr Elvis LUK Wai Ki
(Member)