

(Translation)

IN THE APPEAL BOARD UNDER THE  
URBAN RENEWAL AUTHORITY ORDINANCE

Appeal Case No.: 1 of 2021

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IN THE MATTER OF Urban Renewal  
Authority Development Project at Shing Tak  
Street/Ma Tau Chung Road (CBS-1:KC)

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BETWEEN

CHAN Tin-yau

Appellant

AND

The Secretary for Development

Respondent

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Appeal Board: Mr WONG Kam-shan, Kenny (Chairman)  
Ms CHAN Bow-ye, Bonita (Member)  
Mr LEE Man-lung, Joey (Member)  
Dr LI Yi-man (Member)  
Mr NG Wing-heng, Henry (Member)

In attendance: Mr Oscar CHAN (Secretary)

Representation: Miss FUNG Sau-kuen, Fanny (Senior Government Counsel,  
Department of Justice) for the Respondent  
Appellant, Mr CHAN Tin-yau, was absent without  
representatives

Date of Hearing: 16 April 2021

Date of Written Decision: 18 June 2021

## **DECISION**

### **I. Absent from the Hearing**

1. The Appellant was absent from the hearing. It was learnt that the Appellant was in New Zealand. The Secretary to the Appeal Board panel had time and again approached the Appellant to ask if he would attend or assign an authorized representative to attend the hearing, so that arrangements could be made accordingly. On 15 April (i.e. the day prior to this hearing), the Secretary to the Appeal Board panel emailed to ask the Appellant, for the last time, whether he would attend the hearing. In his reply on the same day, the Appellant did not indicate whether he would attend the hearing but only responded to some other matters.
2. In the notice of hearing dated 29 March 2021 setting out the date, time and place of this hearing, the Secretary to the Appeal Board panel made it clear to the Appellant that if the Appellant or the Appellant's authorized representative failed to appear within 30 minutes after the scheduled time of the hearing, and failed to give a reasonable cause to the Appeal Board, they would be regarded as being absent without reasonable cause. It was also pointed out in the notice of hearing that according to section 28(16) of the Urban Renewal Authority Ordinance (URAO), the Appeal Board might proceed to hear the appeal in the absence of the Appellant or the Respondent if the Appellant or the Respondent had failed to appear without reasonable cause, and that the Appeal Board might dismiss the appeal if the person who had failed to appear was the Appellant and the Appellant's authorized representative.
3. The Appellant was still not heard about in 30 minutes after the scheduled time of the hearing. Upon discussion, the Appeal Board decided to proceed to hear the appeal in the absence of the Appellant.

### **II. Duties of the Secretary to the Appeal Board panel and Adjournment of the Hearing**

4. Before hearing the submission made by the Respondent, the Appeal Board announced the following determination in respect of some

procedural matters for record:

- (1) Duties of the Secretary to the Appeal Board panel – The Appellant had repeatedly requested the Secretary to the Appeal Board panel to forward some documents from the Appellant to the President and all Members of the Legislative Council (LegCo) as well as the Director of the Liaison Office of the Central People’s Government in Hong Kong (LOCPG). The Secretary to the Appeal Board panel had replied to the Appellant many times that under the URAO, the former was only to assist the Appeal Board panel, such as making arrangement for the hearings, and would not circulate documents to any person other than the Appeal Board panel on behalf of the Appellant or the Respondent, i.e., the Secretary for Development (SDEV). On 15 April, the Appellant emailed the Secretary to the Appeal Board panel blaming the latter for reiterating its refusal to circulate documents to any person other than the Appeal Board panel on his behalf, saying that it should “boldly and straightly admit that it had violated Article 3 of Chapter I of the Constitution (of the People’s Republic of China)”. Presumably, what the Appellant referred to was the provision on “the division of functions and powers between the central and local state organs is guided by the principle of giving full scope to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities”. The Appeal Board did not find it unconstitutional for the Secretary to the Appeal Board panel to act in accordance with its vested functions and powers under the URAO. The Appeal Board was of the view that the Secretary to the Appeal Board panel had valid reasons to refuse to circulate documents to any person other than the Appeal Board panel on behalf of the Appellant. In future, should an appellant raise such an unreasonable request to the Secretary to the Appeal Board panel again, the Appeal Board would take this into consideration in determining whether the appellant had to bear the costs and expenses of the Appeal Board.
- (2) Adjournment of the hearing – The Appellant had proposed to the Secretary to the Appeal Board panel that it should cancel the

hearing on 16 April and forward his correspondences with the Secretary to the Appeal Board panel to the Director of the LOCPG for further action. The Appellant also claimed that he had already contacted the State President via other channels in order to solve the global monetary and trade problems put forth by him. The Appeal Board noted that the Appellant had only suggested and had not formally requested an adjournment of the hearing. And, even if he had made such a formal request, his grounds of adjournment would not be substantiated as there was no such mechanism under the URAO to refer issues to be heard to the LOCPG, the State President or any other person or authority for action. If the Appellant had genuinely wished to put forth his aforesaid grounds through some other channels which he conceived to be more viable, he could have abandoned the whole or any part of his appeal. As the Appellant had not done so, the Appeal Board decided to continue with the hearing.

### III. The Decision

5. Having considered the written materials provided by the Appellant and the Respondent, as well as the Respondent's oral submission for this appeal case, the Appeal Board had, on the date of the hearing, unanimously decided to dismiss this appeal case, and confirmed the Respondent's decision made pursuant to section 24(4)(a) of the URAO (Chapter 563) to authorize the Urban Renewal Authority (**the URA**) to proceed with the URA's development project at Shing Tak Street/Ma Tau Chung Road (CBS-1:KC) (**the Project**).
6. Having decided to dismiss the appeal, the Appeal Board noted that further discussion would be made on whether the costs and expenses for the hearing of and the decision made for this appeal case were to be borne by the Appellant. Upon discussion, it was decided that the Appellant should pay the relevant costs and expenses.

#### **IV. Reasons for the Decision**

##### **(A) Background and Grounds of Appeal**

7. The Appeal Board considers that with Gazette Notice No. 739 published on 11 February 2021, the Respondent has authorized the URA to proceed with the Project through normal procedures.
8. The Appellant's correspondence address is in New Zealand. As shown in the relevant information, the Appellant has apparently acquired 50% ownership of a property within the lot of the Project by his right of inheritance. Apparently, the owner of the other half of the property did not raise objection to the Project.
9. The Appellant copiously gave his reasons for objection and grounds of appeal against the Project, including his views on monetary, political, legal and economic issues. He made allusive reference to the Eight-Power Allied Forces in the late Qing Dynasty, the Hong Kong Government in the colonial era, the rights and laws of the nowadays Hong Kong Special Administrative Region (HKSAR), as well as the National Security Law and more, showing his thinking was muddled at various places. He also considered that the Finance Committee, the President and all Members of the LegCo in Hong Kong, Members of the Office for Safeguarding National Security of the Central People's Government in the HKSAR and the LOCPG and others should intervene to address the various issues he raised in his reasons for objection and appeal against the Project.
10. The Appellant claimed that he was a Physics and Mathematics teacher. He was of the view that the existing monetary system was to a large extent the root of all evil that brought about trade disputes, tyrannies and bullies as well as people's hardship, and that a holistic reform was called for. He considered that before the reform was put in place, however, the value of a commodity (including properties) in real terms could not be accurately assessed under the existing banknote system which was not backed by any physical commodities. For this reason, the URA should not force owners to sell their private properties in the name of property development and redevelopment.

11. The Appeal Board hereby attempts to summarise the Appellant's grounds of appeal as follows:

- (1) The establishment of the URA and the URAO are the legacy of the evil laws of the former British colonial government. The legislation on land resumption and the tenure of land leases, etc. should have become null and void from 1997 onwards. The State leaders may instruct the Chief Executive of Hong Kong to call off the urban renewal programme right away in accordance with the National Security Law.
- (2) There is fundamentally no depreciation rate for bricks and mortar, and their qualities remain unchanged over time. The Appellant considered that there were grave errors found in the fields of surveying, accounting and economics. There is no need for the URA to pull down dilapidated buildings for redevelopment, which is a wasteful use of resources.
- (3) Hong Kong must reform its current monetary system because the current legal tender of Hong Kong does not have a standard value unit of a commodity in real terms, it is fiat money that lacks intrinsic value. It is unacceptable to compensate the private properties and assets falling under the Project zone which are forcibly seized by the URA with fiat money. The SDEV's resolute refusal to consider the "flat-for-flat" option in taking forward urban redevelopment projects reflects that there is corruption and degeneration between the Government and the business sector in respect of land reform and land development in the Mainland.
- (4) The Government should study for reference the course and experience of the New Zealand Māori tribes in claiming their confiscated land.

**(B) The first stage hearing**

12. The Appellant's grounds of appeal covered his views on a wide range

of issues, including monetary, political, legal and economic issues, which concerned not only the Project. In his correspondence with the Secretary to the Appeal Board panel, the Appellant questioned the legality of the URAO; and that of the URA and the SDEV in implementing land development schemes; and proposed that the court should revoke all URA development projects. Besides, the Appellant considered the HKSAR Government a “puppet government” and politically incorrect, hence the regulations formulated by the LegCo and the gazetted authorizations should only be applicable to the civil servants. The Appellant also raised that the Appeal Board should “break the confinement of duties” in processing his proposals. The Chairman of the Appeal Board was of the view that the Appellant’s appeal grounds not only covered a wide range of issues, but also questioned the legality of the URAO, the URA and its projects. From the perspective of fairness and efficiency, the Chairman held that the Appeal Board should firstly clarify its functions and powers before deciding whether the wide range of issues raised in the Appellant’s grounds of appeal were to be addressed by the Appeal Board.

13. The first stage hearing was conducted on the date of the hearing. Arrangements were made for the Appellant and the Respondent to give submissions to the Appeal Board on whether the Appellant’s grounds of appeal were to be addressed by the Appeal Board in accordance with its vested functions and powers under the URAO. A hearing in the next stage would be arranged if the Appeal Board decided that it was to address the Appellant’s grounds of appeal. As the Appellant was absent from the hearing, the Appeal Board could only hear the submission made by the Respondent for consideration.

**(C) Submission made by the Respondent**

14. The Respondent made the following submissions before the Appeal Board:
  - (1) The issues or so called grounds given by the Appellant had nothing to do with the Project.
  - (2) Pursuant to Gazette Notice No. 2566 on the Project and decision

of the first case handled by the Appeal Board (i.e. Appeal Case No. 1 & 4 of 2011), the Appeal Board's functions and powers, i.e. its terms of reference, was limited to the boundaries of the Project.

- (3) The Appellant's complaints were actually about policies, which were not to be handled by the Appeal Board. What the Appeal Board should consider was whether it was correct for the Respondent to permit the implementation of the Project. If any amendments to the Project were necessary, such amendments should be limited to the boundaries of the Project.
15. Regarding the first point raised in the Respondent's submission, the Appellant and the Respondent had divergent views as to whether the Appellant's grounds were relevant to the Respondent's decision about the Project. The Appeal Board was of the opinion that such an argument should be dealt with in the second stage of hearing (if it was to be held).
16. Regarding the second and the third points in the Respondent's submission, the Appeal Board was of the view that its power was not limited to determining (confirming or adjusting) the boundaries of the Project, as it could also reverse the Respondent's decision on the Project. The Appellant showed objection and dissatisfaction about the measures adopted by the Government in handling various issues, and he voiced out his views and suggestions, including his opinion that the Project should not be implemented. As a result, the Appeal Board had the functions and powers to decide whether to reverse the Respondent's decision on the Project in consideration of the grounds raised by the Appellant.
17. The Appeal Board asked the Respondent's representative whether she could provide any precedent cases, regulations or guidance about the terms of reference of the Appeal Board or similar bodies as reference materials. The Respondent's representative indicated that the Appeal Board had so far decided on four cases, and it was mentioned in the decisions of the first and the fourth cases that the functions and powers of the Appeal Board were limited to the boundaries of the Project. However, the Appeal Board was of the view that the remark was meant



only to address the issue whether amendments to the Project should be made.

18. The Respondent's representative indicated that no relevant precedent could be found. Yet, perhaps some inspiration could be found in the judgement of LIU Siu (transliteration) v the Lands Department and the Director of Lands of the Hong Kong Special Administrative Region (HCAL 645/2018) given by Mr CHOW Ka-ming, Anderson, Judge of the First Instance of the High Court. The Respondent's representative reminded the Appeal Board that the background and related regulations of that case were completely different from those of this appeal case. In the case of LIU Siu, a resident of North East New Territories affected by the first phase development of the Kwu Tung North/Fanling North New Development Area applied for judicial review.

19. The Respondent's representative quoted paragraphs 28 and 31 of the said judgement as follows:

“28. As regards the Appellant's complaint in her affirmation against the decision of land resumption, in fact it arose from the Appellant's disagreement and dissatisfaction about the Government's policy in its implementation of the New Development Area (NDA) project, the consultation work and schedule, including the public-private partnership scheme, in-situ land exchange as one of the approach for land development, the compensation arrangements (including rehousing arrangements and cash compensation), as well as the inconvenience, losses and impacts on the affected farmers, villagers and residents brought by the NDA project. However, the court is neither the decision maker nor the executor for any land use planning or development, and the court does not have the power to formulate the relevant policy, or to vary the relevant policies formulated by the Government. (Added emphasis on the last sentence by the Respondent's representative)

31. As far as this case is concerned, the actual land resumption procedures and compensation arrangements are governed by and subject to statutory regulations. There is no evidence of non-

compliance with relevant regulations on the part of the Government. The evidence submitted by the Appellant has failed to prove a prima facie case that the decision of land resumption is illegal, ultra vires or totally unreasonable, or that the Government has failed to follow the proper statutory procedures in making the decision, or that the procedures involved are unfair.”

20. The Respondent’s representative was of the view that an appellant or an applicant might raise a lot of grounds, but such grounds might not be relevant to an appeal. If what an appellant wished to challenge was a policy, that would be beyond the ambit of the Appeal Board, he/she should do so by means of some other channels (e.g. judicial review). Take the case of LIU Siu as an example, the applicant complained because she was dissatisfied with the decisions of land resumption and the in-situ land exchange arrangement, but Mr Justice CHOW was of the view that the court was not the policy maker, therefore it could not and did not have the power to handle policy issues. In the same way, the Respondent’s representative believed that the Appeal Board did not have the functions or powers to handle policy issues.
21. The Appeal Board noted that in the case of LIU Siu, the court considered that it was neither the decision maker nor the executor for land use planning or development. However, the Appeal Board believes that, unlike a court, the Appeal Board has the power to affect whether the Project should be implemented. The Appeal Board has the power to confirm, reverse or vary the decision on the Project. The Respondent’s representative emphasised that the Appeal Board could only cast impact on the boundaries of the Project, but the Appeal Board believes that confirming, reversing or varying the Respondent’s decision on the Project means more than confirming or amending the boundaries. The Respondent’s representative believes that the case of LIU Siu in fact bears no direct relevance with this appeal case, and that it was brought up for reference only because the Appeal Board repeatedly asked whether there were precedent cases relating to the Appeal Board’s terms of reference.
22. As regards the terms of reference, the Appeal Board noted that since

the Appeal Board was set up under the URAO, it would be logical and legally viable that the functions and powers of the Appeal Board be limited to those stipulated under the URAO, and the Respondent's representative agreed. Therefore, the Appeal Board simply could not "break the confinement of duties" as suggested by the Appellant, and handle the proposals raised in his grounds for appeal.

23. The Appeal Board further noted that in questioning the legality of the URAO and the URA, the Appellant in fact also indirectly questioned the legality of the Appeal Board, because both the URA and the Appeal Board were set up under and were subject to the same Ordinance. The Respondent's representative again agreed.
24. The Appeal Board is of the view that pursuant to section 28 of the URAO, the Appeal Board should only handle appeal cases concerning decisions on development projects made under section 24(4)(a) or (7). The URA has the power to pursue development projects which meet the requirements under the Town Planning Ordinance in accordance with section 6(2)(d) of the URAO as long as the purposes of the URA as stipulated in section 5 of the Ordinance are conformed to. The Appellant's grounds of appeal, which involve policies and systems behind the purposes of the URA and the so-called monetary, political, legal and economic issues, fall beyond the ambit of both the URA and the Appeal Board.
25. According to section 5 of the URAO, the purposes of the URA are to -
  - (1) 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;
  - (2) 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;

- (3) 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;
  - (4) prevent the decay of the built environment of Hong Kong by promoting the maintenance and improvement of individual buildings as regards their structural stability, integrity of external finishes and fire safety as well as the improvement of the physical appearance and conditions of that built environment;
  - (5) preserve buildings, sites and structures of historical, cultural or architectural interest; and
  - (6) engage in such other activities, and to perform such other duties, as the Chief Executive may, after consultation with the URA, permit or assign to it by order published in the Gazette.
26. Based on the above, the Appeal Board concludes that the issues raised by the Appellant in his appeal do not fall under the matters for which the Appeal Board was set up and empowered to handle under the URAO. For the avoidance of doubt, as regards the third appeal ground raised by the Appellant (set out in paragraph 11(3) above), i.e. the Respondent's resolute refusal to consider the "flat-for-flat" option in taking forward urban renewal projects, it is an issue of compensation. The Appeal Board made it clear in the decisions of Appeal Case No. 1 & 4/2011 and Appeal Case No. 1, 2, 4 & 10/2016 that the Appeal Board should not and had no power to handle acquisition and compensation issues regarding the Project. The details are not repeated here.

## **V. Costs and Expenses**

27. The Appeal Board reiterates that it does not want any person to make use of the appeal mechanism of the URA improperly to vent out his/her dissatisfaction with the Government or its administration.
28. The Appellant's grounds for appeal were not directed against the Project, but against all URA projects. Apparently, the Appellant wished to voice out his views and suggestions about the monetary,

political, legal and economic issues by means of his objection against the Project, and that through the Appeal Board or the Secretary to the Appeal Board, his views and suggestions would hopefully be reflected to the Government of the HKSAR, or even the leadership tier, and the legislative and administrative authorities of the Chinese Government.

29. The Appellant believes that those who do not conform to his views or suggestions are corrupted, abuse their power for personal gains, and deceive the public. The Appeal Board does not agree. Besides, notwithstanding the fact that the Secretary to the Appeal Board panel repeatedly replied that it would be beyond its duties to circulate documents to any person other than the Appeal Board panel, the Appellant turned a deaf ear to it, kept raising the same request, and accused the Secretary to the Appeal Board panel of being incompetent and contravening the law. Furthermore, despite repeated enquiries, the Appellant still chose not to respond whether he would attend the hearing. The Appeal Board considers the Appellant's attitude unreasonable.
30. In view of the decision to dismiss the appeal and the Appellant's uncooperative manner, the Appeal Board decides it is fair and reasonable that the Appellant shall pay the costs and expenses in relation to the hearing and determination of the appeal.
31. The Appeal Board determines the total costs and expenses payable by the Appellant to be HK\$ 15,422.7 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 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 HKSAR. The due date for payment is 18 August 2021.

(signed)

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Mr WONG Kam-shan, Kenny  
(Chairman)

(signed)

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Ms CHAN Bow-ye, Bonita  
(Member)

(signed)

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Mr LEE Man-lung, Joey  
(Member)

(signed)

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Dr LI Yi-man  
(Member)

(signed)

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Mr NG Wing-heng, Henry  
(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 2021
URBAN RENEWAL AUTHORITY PROJECT	:	Development project at Shing Tak Street/Ma Tau Chung Road (CBS-1:KC)
APPELLANT	:	Mr CHAN Tin-yau
RESPONDENT	:	The Secretary for Development
DATE OF THIS ORDER	:	18 June 2021

**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 16 April 2021 pursuant to section 28 of the Urban Renewal Authority Ordinance in respect of the appeal (that is, appeal case no.: No. 1 of 2021) against the Secretary for Development's decision to authorise the Urban Renewal Authority to proceed with the development project at Shing Tak Street/Ma Tau Chung Road (CBS-1:KC) 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 Shing Tak Street/Ma Tau Chung Road in the Gazette (No. 3631 of 2021) on 18 June 2021. The Appeal Board also decides that the Appellant 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 Appellant to be HK\$15,422.7, 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 Appellant 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 18 August 2021.

(signed)

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Mr WONG Kam-shan, Kenny  
(Chairman)

(signed)

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Ms CHAN Bow-ye, Bonita  
(Member)

(signed)

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Mr LEE Man-lung, Joey  
(Member)

(signed)

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Dr LI Yi-man  
(Member)

(signed)

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Mr NG Wing-heng, Henry  
(Member)

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