



香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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Tel: 2826 0111 Fax: 2845 2521

27 September 2012

By fax and mail

Mr. Raymond Lee
Assistant Director
Planning Department
16/F North Point Government Offices
333 Java Road
North Point
Hong Kong

Dear Raymond,

North East New Territories New Development Areas Stage 3 Public Engagement

We wish to state at the outset that REDA fully recognizes and supports the increasing community aspiration towards conservation and preservation of the natural environment and large areas of the New Territories should be reserved and protected for this purpose. However, it is necessary to balance this against the pressing need for new housing to meet the ownership aspirations of Hong Kong residents and investors/regular visitors to the SAR. We consider that the Government's long-standing plans to form a concentration of the three New Development Areas ("NDAs") in the North East New Territories ("NENT") is a sensible and pragmatic response to such a need. Nonetheless, it may also be appropriate at this time to undertake a more wholesale review of our remaining New Territories land "reserves" to ensure these are being put to optimal use in the light of community demands and the economic requirements of the SAR.

With respect to the Stage 3 Public Engagement process now underway, we would like to thank you for your letter of 13 August 2012 in response to our request for further information. Unfortunately, the inputs you relayed to us from the various Government departments did not provide the essential information we were seeking to enable us to study this subject as fully as we would like to. They have in fact cast



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more doubt than shedding light on Government's decision to suddenly change its implementation plan from the Public Private Partnership ("PPP") approach as proposed in the previous two stages of Public Engagement to the Conventional New Town Approach ("CNTA"). That notwithstanding, we have formed some views on the subject and would like to share them with you as our submission in response to the public consultation.

Frustrating Private Sector Initiatives and Undermining Investors' Confidence

As you may recall, the planning and development study on the potential of developing the three NDAs in the NENT dates back to as early as 1999. The primary planning objective then was the same as it is now, namely, *to accommodate the population growth*¹. We subscribe to this objective. Since then, ironically, the Town Planning Board has imposed a virtual moratorium on planning approvals for property developments within the NDAs and planning applications have consistently been rejected on the grounds of not wishing to pre-empt the outcome of the NENT study and a comprehensive land-use planning and review of the area. As a result, private owners' development rights within the NDAs through the normal course of planning applications and land exchanges have been circumscribed ever since. Their development projects have been put on hold pending the outline development plan.

Ten years elapsed before the Government undertook a public engagement exercise starting with Stage 1 in 2008, succeeded by Stage 2 in the following year. By then, the Government had, quite sensibly, in the light of the significant proportion of developable land under private ownership in the areas concerned, determined that PPP was an approach suitable for the specific circumstances of the three NDAs. As stated in the Topical Note 4 of the Public Engagement Digest and also by the then Assistant Director of Planning at a briefing to our members on 9 December 2008, the Government believed that the PPP approach would assure the early availability of land for development, avert possible social disturbances arising from land resumption, reduce the cost of compensation, and respect the property rights of private landowners. The findings of Public Engagement Stage 1 showed that *there was general support for the private sector participation concept provided that there would*

¹ Planning and Development Study on North East New Territories Consultation Digest (1999).



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*be a fair and transparent arrangement*². The Government's position was also widely reported in the media, see, for example, the attached article from Sing Tao Daily, 14 October 2007 (Attachment I).

We were therefore surprised by the latest decision of the Government to abandon the PPP approach in favour of the CNTA instead. The reasons given by the previous Secretary for Development ("SecDev") at a meeting of the Legislative Council ("LegCo") Panel on Development on 28 June 2012 was that CNTA could alleviate the public's concern expressed during the first two stages of Public Engagement over possible collusion, and ensure the timely and well-coordinated development of the NDAs crucial to increasing land supply including land for housing. At the same time, the SecDev noted specifically that implementation by the private sector would be "less predictable" and not conducive to the efficient delivery of housing.

We have studied the two published Public Engagement Reports for Stages 1 and 2 and, with respect, we are unable to find any serious concerns raised on PPP or the alleged "collusion". On the contrary, we believe the Government was being overly optimistic in assuming that the land resumption and the accompanying statutory procedures necessitated by CNTA might be completed within the timeframe it suggested. Choi Yuen Tsuen is a telling example demonstrating how land resumption is often fraught with obstacles and social disruption.

Encouraged by the Government's proactive attitude to PPP during the previous two stages of Public Engagement, the private sector had continued to undertake site assembly in the areas under discussion and invest substantial capital therein, as in other parts of the New Territories, with the legitimate expectation that the Government would process land exchange applications in accordance with its long-standing policy with a view to providing the much needed housing to meet the demand of Hong Kong residents. The Government's abrupt about turn, if implemented, will vitiate all land assembly efforts at a stroke, ignoring expectations publicly created by the Government, missing the opportunity for the accelerated production of housing through private sector initiative, and seriously undermining the

² LegCo Paper CB(1)396/09-10(09) on North East New Territories New Development Areas, Planning and Engineering Study, Stage Two Public Engagement (November 2009).



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confidence of investors, both local and global, in Hong Kong as a business environment with consistent, predictable and transparent policies. We would not be surprised if the denial of the legitimate expectation created by established Government policies were challenged by private landowners putting at risk the early provision of much needed housing. In addition, the vast amount of public funds paid out initially for resumption and compensation may not be easy to justify.

Efficiency of Land Exchange by the Private Sector

Private sector participation through rezoning, land exchange and lease modification has *always* been an important and reliable source of land supply and public revenue generation, greatly benefiting the public through the revitalization of urban areas and the development of new towns. It has played an important role through private initiative to clear up environmentally incompatible uses and put under-utilized land to better use in accordance with approved town plan layout. That PPP may be perceived to have become “less predictable” in recent years, as the SecDev suggested, is the direct consequence of an increasingly conservative and rigid planning control and development regime. We have attached for your reference a copy of our recent submission to the Public Engagement for Enhancing Land Supply Strategy (Attachment II), which we believe is of relevance in this context. Had there been a more efficient planning framework and a more pragmatic attitude adopted by the Government, private landowners would be more than willing to undertake development initiatives which in turn would produce housing supply more readily.

In your letter of 13 August 2012, you said that

“The NDAs will be developed in phases. The detailed design for the advance works package is scheduled for commencement in 2013.....According to the latest study programme, we anticipate that sites would be made available for residential development from 2019 onwards.”

We take it from your letter that it would require another 6 years just to make available the sites for development to commence in 2019. By contrast, given the same 6 years, the sites, if left in private hands, could have gone through land exchange and turned into housing units ready for sale by 2019, bypassing the protracted process of land resumption and clearance, and the subsequent disposal through land sale, which is in



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itself unpredictable and time-consuming given the vast amount of land to be disposed of in phases. In the interest of expediting housing production and ensuring an appropriate balance of public housing (which will provide affordable housing for lower-income Hong Kong residents) as well as private housing to be provided in a timely manner, the Government's logical choice should therefore be PPP rather than CNTA.

“Conventional” New Town Approach?

We have grave reservations over the use of the term CNTA in the present context. It is being described by the Government as the approach applied conventionally in the development of previous new towns. We wish to bring out several important facts which were found missing in your latest consultation document:

- i) Most of the previous new towns included large tracts of reclaimed land^{3,4}.
- ii) If land resumption for public purpose was unavoidable, it was supported, in addition to cash compensation, by Letters A/B whereby the development rights of landowners were protected by the issuance of land exchange entitlements. The Letters A/B, devised to facilitate the acquisition of private land by avoiding lengthy negotiation and dispute, was an essential and integral accompaniment to invoking the then Crown Lands Resumption Ordinance^{5,6}.
- iii) In the development of those new towns, land exchanges were in any case allowed for sites which were appropriately zoned.

The CNTA as the Government now advocates, whereby private lands will be resumed for public works, public housing *and private developments*, with subsequent disposal of the resumed land by way of land sale in the market, is thus highly unconventional rather than “conventional”. The choice of this term is rather unfortunate.

The approach as now envisaged is untested under the Basic Law and clearly not suitable for the current NDAs where there are substantial private landholdings

³ North East New Territories New Development Areas Planning and Engineering Study Stage One Public Engagement, Topical Note 4 – Implementation Mechanism (November 2008).

⁴ Hong Kong: The Facts – New Towns and New Major Urban Developments (December 2011).

⁵ Land Administration and Practice in Hong Kong, Chapter 13 Land Exchange Entitlements, Roger Nissim, Hong Kong University Press, 2008 edition (P. 111).

⁶ LegCo Brief on New Territories Land Exchange Entitlements (Redemption) Bill (1996).



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amounting to 60% of the entire planning area, especially when they are capable of immediate land exchange and housing production.

Resumption for a Public Purpose?

The SecDev and yourself have both claimed that the resumption of private land in the planning areas is for a public purpose. We consider it highly debatable to describe the resumption of private land to be resold subsequently for private development as a genuine public purpose. Your current resumption proposal in fact contradicts the Government's long-standing policy on land administration as recorded in two separate LegCo papers:

*"Resumption for a "public purpose" as defined under section 2 of the Lands Resumption Ordinance would be recommended to the Chief Executive in Council only after the Secretary for Justice confirms that in his/her opinion the proposed use to which the site is to be put is indeed a public purpose."*⁷

*"There are views that the Government should consider resuming the sites concerned for public auction, in place of granting permission to developers' applications for lease modification and in-situ land exchange. Having examined this, we find the means of resuming the private land concerned not feasible. Under section 3 of the Lands Resumption Ordinance, resumption of private land must be based on public purpose. As regards section 4(2) of the TPO (Town Planning Ordinance), which provides for resumption of land which interferes with the layout of areas on draft or approved plans or MLPs, the Board (Town Planning Board) and the Government also have to act prudently. This provision is rarely invoked, as resumption of private land for development by another private owner is highly controversial. In comparison, it would be more reasonable to exchange land with developers who own private land for an early implementation of the planning intention."*⁸

Notwithstanding that there is jurisprudence on this matter, expanding the definition of "public purpose" to include private development may still invite legal challenge

⁷ LegCo Paper [CB(1)32/00-01(01)] Land Resumption Policy (September 2000).

⁸ LegCo Paper [CB(1)2165/07-08(01)] Comprehensive Development Area, Lease Modification and Land Exchange Arrangements (July 2008).



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which, if ever happens, will inevitably delay the development process and run counter to the Government's stated objective of speedy delivery of developable land and housing supply. It should also be noted that the resumption of private land for sale is tantamount to the deprivation of private property rights protected by Articles 6 and 105 of the Basic Law.

Our Proposal

In the light of the pressing need for housing, we believe the proposed development of the three NDAs has struck the right balance between conservation and development, providing the right location for the right use.

To instill greater public confidence, what the Government can and should do is to facilitate private sector participation, with fair and transparent arrangements that will meet the test of public scrutiny. To facilitate the effective implementation of the development of the three NDAs and the early delivery of housing supply, our proposal is:

1. Privately owned sites that are in compliance with the designated zoning on the OZPs should continue to be allowed to be converted to developable land through land exchange under established Government policy.
2. Resumption for genuine public purpose such as public housing, roads and GIC is supported. Public infrastructure serving both public and private housing should be provided before population intake.
3. Voluntary surrender of land by private landowners within the boundary of the outline development plans should be accepted (so as to avoid the lengthy and time consuming land resumption process) with compensation at market value or the relevant ex-gratia rate as used in resumption.
4. As an alternative to cash compensation whether for resumption or voluntary surrender, consideration should be given to the issuance of land exchange entitlements to the affected owners.
5. To speed up the process, a steering committee and a dedicated team should be set up under the respective Bureaux to co-ordinate with all Government departments involved to ensure early implementation.



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We note that the SecDev promised at the aforementioned meeting of the LegCo Panel on Development to study this subject further with special focus on the implementation approach, and trust you would share our views with the Honourable Members during your further consultation with them.

We look forward to the continuation of an open dialogue with your Department.

Yours sincerely

Louis Loong
Secretary General

星島網新聞回顧

林鄭倡公私合營發展新界北

(星島日報報道)《施政報告》重提發展新界北五個地區，發展局局長林鄭月娥表示，將重新開展規劃及工程研究，原則是為市民提供環保及優質生活空間，但政府不再像以往發展新市鎮大舉收地，而是以公私營合作模式發展。她又透露，會親自與深圳官員組成聯絡小組，商討河套區發展。

《施政報告》提出，重新發展洪水橋、打鼓嶺、坪輦、古洞及粉嶺，發展低密度及高質素的社區，容納現時至二〇三〇年間兩成的新增人口。

林鄭月娥昨日在電台節目中表示，這五個地區，已有集體鐵路運輸接駁，包括西鐵及東鐵落馬洲支線等，當局會首先啟動規劃及工程研究，有初步結果才落實用甚麼方案發展。「由於沒有很大的人口及住屋需要，我們可以循更環保及優質生活的方向去規劃，更可作科技及教育用途，配合香港成為教育樞紐。」

她強調新發展區「不會再是紙上談兵」，但政府不會如以往發展新市鎮的做法，大舉向私人土地擁有人收地，而會探討政府與私人合作的模式。

至於鄰近深圳的河套區發展，林鄭表示項目屬中長期性，她本人將與深圳官員組成聯絡小組，探討土地用途和發展潛力，她短期內會到深圳開會進行有關工作。

鄉議局副主席張學明認為，公私營合作發展模式可行，由於新界土地多數為原居民擁有，或由地產發展商收購，政府欲以公私營模式發展，可要求土地擁有人放棄土地的發展權，並且交還政府，發展獲得的利潤與業主按比例分配。

「例如政府想發展一百萬呎土地，涉及一百至二百個私人業權，政府將土地集合發展，再將利潤按例與業主共同分享，這樣業權人便有經濟誘因將地拿出來與政府一同發



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Attachment II

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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30 March 2012

By fax and mail

Civil Engineering and Development Department
4/F Civil Engineering and Development Building
101 Princess Margaret Road
Homantin
Kowloon

Dear Sirs,

Enhancing Land Supply Strategy

We refer to the Stage 1 Public Engagement Exercise for Enhancing Land Supply Strategy and are pleased to enclose our submission for your consideration.

Yours sincerely

Louis Loong
Secretary General



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Stage 1 Engagement Exercise on Enhancing Land Supply Strategy

-- Submission by The Real Estate Developers Association of Hong Kong

The Public Engagement Exercise and the Public Engagement Digest (the PE Digest) provided by the Government seems to focus on justifying reclamation outside Victoria Harbour and rock cavern development only. The existing land supply options of rezoning land in under-utilized industrial and rural land and redevelopment of older urban areas were not given adequate discussion, apart from mentioning a few key limitations/challenges.

On the rezoning land option, the PE Digest mentions the following key limitation/challenge: "Involving private owners and developers, or different Government departments, it requires a longer process. Actual development hinges on market response. Timing of development is less predictable."

On the redevelopment option, the PE Digest mentions the following key limitation/challenge:

"Private owners and developers take the leading role. Comparing with other options implemented by the Government, it is less predictable."

We wish to point out that rezoning/ land exchange/ lease modification was once an important source of land supply in Hong Kong. The limitations/challenges mentioned in the PE Digest are well understood by the industry and practitioners. However, these limitations and challenges, to a large extent, arise from the current bureaucratic system/ policies of the Government, which has resulted in a drastic drop in land supply from rezoning of private land/land exchange/lease modification in recent years. This is reflected in the information given in the PE Digest. The chart "Land supplied by different options in the past decade" in the PE Digest shows that land supply from "Rezoning Land" in 2001-2005, during a period of property market crash after SARS, was over 300 Ha. However in 2006-2010, a period witnessing a



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significant property market boom, land supply from “Rezoning Land” surprisingly dropped to less than 100 Ha. This drastic drop in supply appears to act against the normal market behaviour that when price goes up, the supply goes up. The reason why the market had not responded by an increase in supply is, to a large extent, due to the increasingly conservative and extremely rigid planning controls introduced by the Government in recent years which has virtually frozen the development potential of private land to status quo. The current planning system has not only failed to plan for the anticipated population growth, but also failed to respond to private initiatives to produce more developable land to meet market needs. The current planning system has in fact been working in the opposite way by lowering the development densities both in urban and rural areas, which further aggravates the demand and supply gap.

Another aggravating factor is that the Government has not undertaken timely action in the planning and implementation of the New Development Areas which have been studied over and over again since 1999. These NDAs, when firstly promulgated by the Government 13 years ago, were supposed to be the “long-term” land supply to meet with the demand in the current days. It now becomes a “long-term” land supply again but still with no concrete implementation proposal and time frame.

Persistent shortage in land supply has been a major factor in the rise in properties prices in recent years, causing serious public outcries for more land supply. REDA has in the past suggested to the Government various improvement measures. We consider that the difficulties mentioned in the PE Digest on the existing land supply options of rezoning land and redevelopment can be overcome if Government will take a more positive and pragmatic approach in the land and planning policy so as to facilitate private owners and developers to provide more land supply. Given the right development environment and Government framework, private owners will be most willing to develop or redevelop their land which in turn will result in more housing supply.

To revive the land supply from Rezoning Land, which we believe will effectively help relieve the critical shortage of land supply in the short to medium term, we have the



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following suggestions:

1. In the rezoning process, there are different Government departments involved and the lack of adequate co-ordination and determination amongst some departments has often led to futile attempts apart from the fact the process has become very lengthy in recent years. There is a large reserve of land resources in the urban and rural areas which can be released. This requires Government to adopt an open, positive, sensible and realistic planning and land policy to enable the market to respond positively. We suggest that Government should revive the former high level land supply task force to co-ordinate relevant Government departments, and to oversee and facilitate the early implementation of private sector projects. This will result in more predictable land supply.
2. Rezoning requests of under-utilized industrial and rural land can be expedited by a more streamlined and efficient town planning/development process. REDA has in the past suggested various measures to the Government to improve the existing town planning system, such as enhancing the transparency of the town plan making process and adopting a fair objection hearing procedure at Town Planning Board meetings.
3. The current control of developable land in some rural areas to very low-density (e.g. PR 0.2) is unreasonable and unrealistic and is a waste of scarce land resources. A proper balance should be struck in fulfilling the society needs for development and protection of the environment. Subject to acceptable or surmountable environmental impacts, sites could be upzoned to higher density to make more efficient use of scarce land resources and to take advantage of existing and planned infrastructure and railway link. This will also enable more greenery space to be spared for the society's enjoyment.
4. The different Government departments involved in the planning and land policy should adopt a proactive approach in the implementation of the Outline Zoning Plans. Even if sites are zoned or rezoned for certain uses, which may have remained in the Outline Zoning Plans for many years, the lengthy and



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complicated process in getting approvals from various Government departments has affected their eventual implementation. In cases where the processing of development projects is not subject to any statutory time limit, such as applications for land exchange and lease modifications, the processing time has been unreasonably lengthy. This has, as a result, delayed the supply of housing units to the market.

The Lands Department, in particular, should adopt a proactive approach in processing land exchange and lease modifications, premium valuations, and various approvals under lease (e.g. DD&H, tree-felling, Master Layout Plan, and landscaping proposal approvals) as these have a direct consequence on the housing supply.

5. In some projects, the lack of adequate infrastructure, such as roads, drainage, sewage, and noise barrier, has delayed the early implementation of housing development. The Government as a whole should take a proactive and leading role in the co-ordination of relevant departments to speed up the provision of adequate infrastructure so as to facilitate early development of available land.
6. On the redevelopment of older urban areas to improve the local environment and to better utilize the land, the enactment of the Compulsory Sale for Redevelopment Ordinance has greatly facilitated the urban redevelopment process. The lowering of the threshold for compulsory sale to 80% for some categories of existing buildings has helped to expedite the process. Government should monitor the effect of the process and consult the public regularly to review and expand, if appropriate, the categories that can qualify for this lower threshold.
7. The existing large housing stock available for redevelopment is a huge resource of future housing supply. If private owners and developers are expected to take the leading role, there should be adequate incentives for redevelopment. Overly rigid and stringent planning controls will suffocate and even kill potential redevelopment projects. Urban redevelopment can be encouraged and facilitated by relaxing the development density and adopting a flexible building



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height profile to make redevelopment projects more viable. It should be pointed out that Hong Kong is a compact city and high density development is an efficient use of scarce land resources. Flexible building heights will facilitate the creation of space between buildings for better lighting and ventilation.

8. As announced in the 2011-2012 Policy Address, Government is exploring the possibility of converting into housing land agricultural land in North District and Yuen Long currently used mainly for industrial purposes or temporary storage, or which is deserted. As a part of this measure, Government should speed up the planning of the new development areas in the northern New Territories and produce a clear implementation programme so that the land supply can be quickly released and will become more predictable. Infrastructure, if not yet available, can be provided by the private owners and be deducted from the land premium so as to facilitate early development of available land.

As there are still huge land resources to be tapped in the urban and rural areas, reclamation should only be considered as a last resort to create land for housing. We note that reclamation will have negative impact on the environment and marine ecology. There are also the connectivity and commuting problems associated with some reclaimed sites proposed by the Government. Government's rationale for creating more land by reclamation is partly based on a policy to lower the development density and building height profile of existing urban and rural land. This artificial redistribution of population to remote reclaimed land will result in loss of social bonds of the residents. Reclamation will also require additional capital costs when compared with existing land. While we do not know the development density to be set for the reclaimed land, the distribution of development density from existing urban and rural land to the reclaimed land will reduce the development rights of private owners and the value of their land. As the affected private owners will not be compensated, Government will be seen to be taking away their land value but benefiting itself from receiving huge revenue from selling the reclaimed land.

We note that Government is placing some new facilities inside caverns e.g. Island West Transfer Station, and some existing Government facilities, e.g. Sha Tin Sewage



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Treatment Works. We consider that rock cavern development may be suitable for some offensive uses such as columbaria but this is not relevant to enhancing housing supply.

The Real Estate Developers Association of Hong Kong

March 2012