

調查報告摘要

有關受土地發展公司發展計劃影響的 臨時市政局設施租戶及檔戶的搬遷安排

背景

一九九九年年中，旺角「六街」重建計劃遲遲仍未展開，引起公眾關注。該項計劃涵蓋砵蘭街、亞皆老街、新填地街及山東街所包圍的大部分土地。在重建範圍內，除了前臨時市政局（以下簡稱「臨市局」）轄下一個臨時熟食市場的熟食檔仍未清拆外，其餘土地均已在一九九七年十二月清理妥當。至一九九八年一月，13名熟食檔的經營者已遷出該臨時熟食市場，餘下五名經營者則繼續在該處佔用其檔位。由於計劃遲遲仍未展開，土地發展公司（以下簡稱「土發公司」）與合作發展的私人財團須支付額外的銀行貸款利息，款額總數為約4億3,900萬元；自一九九八年一月開始，土發公司及私人財團支付了共16個月額外的銀行貸款利息。

2. 申訴專員於一九九九年十月二十九日通知當時的市政總署署長¹，她決定根據《申訴專員條例》第7(1)(a)(ii)條，就這事進行直接調查。

調查的目的及範圍

3. 進行這項直接調查的目的，是以「六街」重建計劃為案例，全面研究臨市局因土發公司進行發展計劃而清拆其轄下熟食檔及安排其他設施租戶／檔戶搬遷的事宜；評估現時的架構及機制是否適切有效；以及評估是否需要作出改善。

¹ 立法會於一九九九年十二月二日制定《提供市政服務（重組）條例草案》後，提供市政服務的新架構於二零零零年一月一日設立。自該日後，本署跟進有關市政總署／市政局／臨時市政局的一切事宜時，均與食物環境衛生署聯絡。

4. 這項調查擬審研以下事項：

- (a) 市政總署在配合土發公司的發展計劃而清拆臨市局轄下熟食檔及安排其他設施租戶／檔戶搬遷方面的職責；
- (b) 該署就配合土發公司的發展計劃而清拆臨市局轄下熟食檔及安排其他設施租戶／檔戶搬遷訂定的部門指引及程序；
- (c) 該署就配合土發公司的發展計劃而清拆臨市局轄下熟食檔及安排其他設施租戶／檔戶搬遷訂定的準則及機制；以及
- (d) 上述準則及機制是否適切有效，能否達到預期的目的。

土地發展公司

5. 土發公司於一九八八年根據《土地發展公司條例》成立，負責推行市區重建計劃，藉以改善市區的環境，提供最佳的居所、更多休憩地方，以及更多政府、機構和社區設施。自一九八八年以來，該公司已進行 50 項市區重建計劃，其中逾 15 項已經完成。然而，該公司沒有法定權力把土地收回重新發展，只能要求政府根據《收回土地條例》把土地收回，以便推行重建計劃。

臨市局轄下設施的租戶／檔戶的搬遷安排

6. 根據市政總署／食物環境衛生署（以下簡稱「食環署」）向本署提供的資料，該署沒有訂定任何書面指引，說明若土發公司的發展計劃牽涉到臨市局轄下的設施，市政總署與土發公司處理這些計劃時在工作上的關係，以及如何互相協調。不過，該署已訂定一般工作程序及常規如下：

- (a) 市政總署在得悉土發公司將進行涉及臨市局轄下設施的發展計劃後，會與土發公司及其他部門聯絡，以確定遷置需要和訂出遷置條件，並訂定相關的安排。
- (b) 該署把有關遷置條件及安排的建議提交市政局／臨市局轄下有關的事務委員會，以待委員會作出決定。土發公司的代表通常會列席委員會會議，解釋各項建議。在市政局／臨市局作出決定後，該署會以書面把該局的決定轉告土發公司。
- (c) 為執行市政局／臨市局的決定，市政總署與土發公司會一起策劃供遷置用途的設施、監察計劃的進度，以及定期向市政局／臨市局匯報進展情況。如有需要，市政總署會要求市政局／臨市局作出特別指示。

亞皆老街／上海街重建計劃

7. 一九九三年十一月十二日，政府在憲報公布及展示亞皆老街／上海街重建計劃的核准圖則。根據該項計劃，土發公司將與一家私人財團合作重建旺角「六街」。該項重建計劃影響 538 項物業及 883 戶共 2,242 人。

收回奶路臣街臨時熟食中心所在土地

8. 奶路臣街臨時熟食中心（以下簡稱「熟食中心」）是在土發公司亞皆老街／上海街重建計劃的發展範圍內，其所在的土地是政府於一九八六年四月臨時撥給市政總署的，可容納 18 個熟食檔。根據城市規劃委員會於一九九二年十二月批准的亞皆老街／上海街重建計劃圖則，土發公司必須在該計劃的發展範圍內設置一個永久熟食市場，並須先把熟食中心暫時安置在該發展範圍內。

9. 有關暫時安置熟食中心一事，土發公司於一九九五年七月告訴市政總署，基於公眾安全、環境及運作上的問題，原址安

置並不可行。一九九五年八月，地政總署證實，在油尖旺區內，沒有其他空置的土地，可用來暫時安置熟食中心。因此，土發公司建議給予檔位經營者特惠津貼，以代替遷置安排。

10. 土發公司認為，該公司與熟食檔位的經營者並無正式關係。不過，該公司仍願意給予他們特惠津貼，津貼額視乎他們是選擇遷置檔位、暫時停業或永久停業而定。該公司認為，由於該公司須為熟食中心所在的土地繳付十足地價，因此，市政總署有責任把土地騰空交出。

11. 至於市政總署在這項清拆工作中所擔當的角色，市政總署認為，其主要職責是安排土發公司與檔位經營者舉行會議、為那些選擇租用其他熟食市場內的預留空置檔位的檔位經營者安排圍內競投，以及把熟食中心所在的土地騰空交給地政總署。市政總署的法律立場是，在合約上，市政局／臨市局及檔位經營者均有權在給予對方一個月通知後終止租約。市政總署認為，臨市局按照租約給予通知後，便沒有法律責任向檔位經營者作出補償或安置他們。然而，市政總署的立場卻受到檔位經營者質疑。

12. 根據本署調查所得，熟食中心的清拆日期較原定的日期（即一九九七年十月）延遲了20個月。到一九九七年十二月時，除了熟食中心的檔位經營者外，亞皆老街／上海街重建計劃整個發展範圍內的所有租戶／住戶均已遷走。及至一九九八年十月，所有其他樓宇亦已全部拆卸。然而，市政總署直至一九九九年六月才收回熟食中心所在的土地。根據該署提供的資料，該署收回熟食中心所在土地的經過大致如下：

日期	收地經過
一九九五年三月	檔位經營者獲悉，熟食中心將於一九九六年年中清拆。
一九九五年七月初	市政總署要求檔位經營者續訂檔位租約，租約為期三年，由一九九五年八月一日開始生效。
一九九五年八月	規劃署與市政總署及土發公司舉行會議。當時三方面議決，未能找到合適的空置土地，可作

設置臨時熟食市場用途；區內現有空地亦不會用來暫時安置有關檔位。與會者同意考慮土發公司提出的臨時收購建議，作為過渡安排。

- 一九九六年九月 市政局屬下街市及販商事務委員會通過土發公司建議的過渡安排，同意向受影響的檔位經營者發放特惠津貼，以代替提供臨時熟食市場。
- 一九九七年一月、五月及六月 土發公司與檔位經營者舉行三次會議，商討特惠津貼的事宜，但未能達成協議。
- 一九九七年八月 分區地政處告訴市政總署，當局擬收回熟食中心所在土地，並要求市政總署於一九九七年十月三十一日或該日前交回土地。
- 一九九七年八月 在統籌清拆工作的會議上，清拆熟食中心的日期訂定為一九九七年十月。
- 一九九七年九月 街市及販商事務委員會通過，根據租約第 17 條，發出終止租約通知書給檔位經營者。
- 一九九七年十月 市政總署給檔位經營者一個月通知，最遲於一九九七年十二月三十一日終止檔位租約。
- 一九九八年一月 熟食中心的 18 名檔位經營者之中，有 13 名接納土發公司提出的建議，騰空其檔位。其餘 5 名則繼續在該處佔用其檔位。
- 一九九八年二月 市政總署在警方協助下，嘗試進行清拆行動，但該項行動當場受到質疑，因為檔位經營者認為他們所持的是租約，若要終止租約，市政總署必須預早 6 個月發出通知。市政總署遂中止清拆行動。臨市局後來向法院申請頒發遷出令，以便根據檔位租約，收回檔位。
- 一九九八年六月 市政總署根據《業主與租客（綜合）條例》第 V 部，發出通知給餘下 5 名檔位經營者，要求他們在 6 個月內把檔位騰空交出。
- 一九九八年十二月 在終止租約通知期滿後，檔位經營者仍然拒絕遷離。臨市局展開另一輪法律訴訟程序，以收回檔位。

一九九九年六月 土發公司與餘下的 5 名檔位經營者終於達成協議。

一九九九年六月 市政總署收回整幅已騰空的熟食中心所在土地。

改善措施

13. 在本署調查這宗個案期間，市政總署／食環署曾考慮／採取以下的改善措施，以處理涉及食環署轄下設施租戶／檔戶的土發公司發展計劃：

- (a) 食環署擬發出部門指引，訂明工作程序、工作由哪些人員負責及應採取的行動。
- (b) 關於把租約／牌照有效期批至撥地限期之後的問題，食環署已要求地政總署，倘若後者打算終止臨時撥地安排，應給予最少八個月通知。
- (c) 至於檔位經營者質疑街市檔位租約的法律效力一事，食環署正研究應否採取行動，以澄清這些租約實際上是「牌照」，或是適當地修訂《公眾衛生及市政條例》，使有關部門清拆臨時撥用土地上的街市檔位的權力不會受到任何質疑。

觀察所得及意見

14. 關於收回熟食中心一事，申訴專員的觀察所得及意見如下：

職責

- (a) 本署發覺，沒有任何部門或機構是負起清拆熟食中心及作出有關的遷置安排的整體責任。土發公司的立場

是，該公司與檔位經營者沒有任何關係，因此，並無法律責任向檔位經營者作出任何形式的補償。然而，市政總署卻認為，根據城市規劃委員會所施加的規定，土發公司須負責為檔位經營者作出臨時及永久的遷置安排。由此可見，土發公司與市政總署均不認為本身須在安排檔位經營者遷置的工作方面負起主要的責任。在整項收地工作中，土發公司和市政總署，甚至其他有關的政府部門，都是擔任臨時統籌的角色，只處理對本身最有影響的事宜。這項如此大規模的重建計劃，根本沒有一個整體工作統籌者。

欠缺一個正式的統籌委員會

- (b) 當局沒有設立一個中央統籌機制，來處理整項計劃或有關收回熟食中心所在土地的工作。本署認為，當局應在地區層面成立一個正式的委員會架構，專責處理如「六街」這般大規模的重建計劃，並按情況所需，策劃和統籌各方面的工作。

欠缺應變計劃

- (c) 有關部門顯然在預定清拆日期前早已察覺到，土發公司與檔位經營者的磋商沒有什麼進展，並且知道雙方無法達成協議。雖然如此，本署發覺各部門的代表都沒有作出建議，以期能及早清理地盤，亦沒有擬訂應變計劃，以備檔位經營者拒絕在預定清拆日期前遷離熟食中心時作出應變。

欠缺既定的指引／慣行辦法

- (d) 市政總署並沒有制訂政策或以書面發出指引，指示屬下人員應如何處理涉及臨市局設施的土發公司重建計劃。市政總署採取每一項行動前，必須先請示市政局／臨市局，並須得其允准。因此，有關遷置安排的建議，亦須提交臨市局轄下有關的事務委員會決定。即使是有關行動上的事宜，例如發出終止租約通知

書，亦須經市政局／臨市局批准，這樣一來，清拆工作便會推遲。

過分信賴以往的經驗

- (e) 本署認為，市政總署過分信賴以往的經驗。由於該署過去進行永樂街及租庇利街的重建計劃時，收地的過程十分順利，所以該署以為亞皆老街／上海街重建計劃亦可順利進行。該署沒有預料到檔位經營者會抗拒收地行動，亦沒有作出適當的回應。由於檔位經營者拒絕遷走，並提出質疑，一九九八年二月六日的收地行動最終被迫撤銷。

部門內部欠缺有效的溝通

- (f) 在收地的過程中，市政總署轄下有關的分區辦事處甚少向市政總署總部及分區總辦事處提交進展報告，而後者亦似乎沒有要求前者定期提交進展報告。本署認為，該署部門內部欠缺有效的溝通，其總部及有關的分區辦事處對實際發生的事亦不是完全了解。

有關「租約」的問題

- (g) 本署注意到，與「租約」有關的問題，使清拆熟食中心的工作進一步推遲。在一九九五年七月，市政總署雖已清楚知道熟食中心擬於一九九六年年中拆卸，但仍堅持與檔位經營者續約三年。由於新租約由一九九五年八月一日起生效，約滿之日便在熟食中心的撥地限期之後。當檔位經營者對租約內有關終止租約的條款提出質疑時，市政總署顯然弄不清楚租約的法律效力，這使收地工作進一步推遲。檔位經營者聲稱，市政總署應在終止租約前六個月發出通知，但該署卻認為，根據租約，一個月前發出通知便已足夠。

結論

15. 總括而言，本署認為：

- (a) 在收回奶路臣街臨時熟食中心所在土地一事上，市政總署與土發公司對於對方所承擔的職責並不了解，亦沒有互相協定，以致在統籌與檔位經營者磋商特惠津貼及遷置安排的事宜方面，出現了問題。
- (b) 食環署顯然要就有關向受到土發公司發展計劃影響的租戶／檔戶收地的事宜，擬訂全面的指引和程序。
- (c) 鑑於食環署及檔位經營者對「租約」的法律效力有不同的理解，日後若土發公司的發展計劃涉及收回食環署轄下設施的租戶／檔戶所佔用的土地時，仍有可能會出現問題。

建議

16. 申訴專員考慮上述觀察所得及結論後，提出以下 10 項建議，以便食環署日後為推行發展計劃而遷置租戶和檔戶時考慮採納：

職責

- (a) 食環署應與土發公司及地政總署議定在收地工作方面各自的職責。
- (b) 食環署應採取更積極主動的態度，協助土發公司和檔位經營者／持牌人，使雙方能就遷置安排順利地進行磋商。

協調和統籌

- (c) 食環署應考慮制訂全面的指引，使各部門能互相協調，及時完成收地工作。
- (d) 在遷置轄下設施的租戶／檔戶的工作方面，食環署應考慮負起統籌的責任，定期與有關部門舉行協調會議，以期能以最高的效率完成收地工作。

指引及程序

- (e) 食環署應考慮就處理涉及或影響其轄下設施的發展計劃，擬訂指引及程序，指導屬下人員，確保處理方法貫徹一致。
- (f) 食環署應考慮擬備應變計劃，以備其轄下設施的租戶／檔戶抗拒收地行動時作出應變。
- (g) 食環署應就其內部溝通和監察機制是否適切作出檢討，以確保署方設有一個有效的匯報制度，以及其總部轄下各科與分區總辦事處／分區辦事處之間經常交換意見。

「租約」的法律效力

- (h) 食環署應檢討「租約」的法律效力，以確定須在終止租約前多久發出通知，以免其轄下設施的租戶／檔戶日後質疑檔位租約的效力。
- (i) 食環署應確保其轄下設施的租戶／檔戶獲悉收地的預定日期，並適當地調整續訂的租約的期限，以免預定的清拆工作不必要地推遲。
- (j) 食環署應確保批給租戶／檔戶的租約的期限與撥地期限一致，以維護其立場。

食環署的回應

17. 食環署接納上述 10 項建議，並擬在短期內分階段實施這些建議，以改善日後進行和處理涉及其轄下設施租戶及檔戶遷置安排的發展計劃的有關工作。食環署解釋，該署作為市政局／臨市局的行政部門，負責執行其政策及決定，在清拆熟食中心一事上的職責只限於執行市政局的決定。由於市政局屬下街市及販商事務委員會已決定，市政局及市政總署均不應參與涉及補償的磋商，市政總署便不能違背市政局的決定。

結語

18. 申訴專員欣悉，食環署已接納所有建議，並會在短期內分階段實施這些建議，以改善日後進行和處理涉及其轄下設施租戶及檔戶遷置安排的發展計劃的有關工作。市政總署雖然已正確地道出該署與市政局的關係，但申訴專員相信該署貶低了本身對這事件的影響力及酌情決定權，因為市政局通常都會聽取市政總署的意見。倘若市政總署在磋商過程中積極主動地提出意見，相信市政局／臨市局亦不會拒絕接納，特別是市政局屬下街市及販商事務委員會若干名委員也曾表示支持市政局／市政總署採取更積極主動的態度去處理這事。

19. 申訴專員希望食環署通知她有關實施建議的進度，以及在有關處理會影響其轄下設施、租戶及檔位持牌人的發展計劃的政策和慣行辦法方面的重大修改。最後，申訴專員感謝土發公司、市政總署／食環署在本署進行直接調查期間衷誠合作，盡力提供協助。

申訴專員公署

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**Executive Summary of the Investigation Report on the
Clearance of Provisional Urban Council Tenants and Licence Holders
Affected by Land Development Corporation's Development Projects**

Background

In mid 1999, public concern was aroused over the undue delay in the commencement of the 'Six Streets' redevelopment project in Mongkok. The project covered most of the area bounded by Portland Street, Argyle Street, Reclamation Street and Shantung Street. The site was cleared in December 1997 with the exception of the cooked food stalls in a temporary cooked food market of the former Provisional Urban Council (PUC). In January 1998, 13 stall operators moved out of the temporary cooked food market and five stall operators continued to occupy their stalls on site. As a result of the delay, Land Development Corporation (LDC) and the private consortium incurred a total of additional bank loan interests of \$439 million for 16 months since January 1998.

2. The Ombudsman informed the then Director of Urban Services¹ on 29 October 1999 of her decision to conduct a direct investigation into the subject under Section 7(1)(a)(ii) of The Ombudsman Ordinance.

Purpose and Ambit of the Investigation

3. The purpose of this direct investigation was to use the 'Six Streets' redevelopment project as an example, to conduct an overview study of the clearance of cooked food stall and other PUC tenants/licence holders in connection with LDC's development projects, to assess whether the existing framework and mechanism are adequate and effective, and to assess the need for improvements.

4. The investigation sought to examine -

- (a) The Urban Services Department (USD)'s role and responsibility in the clearance of cooked food stall and other PUC tenants/licence holders in connection with LDC's development projects;
- (b) the departmental guidelines and procedures on the clearance of cooked food stall and other PUC tenants/licence holders in connection with LDC's development projects;
- (c) the framework and mechanism established for the clearance of cooked food stall and other PUC tenants/licence holders

¹Following the enactment of the Provision of Municipal Services (Reorganisation) Bill on 2.12.1999 by the Legislative Council, a new structure for the delivery of municipal services was established with effect from 1.1.2000. Since then, this Office followed up with FEHD on all matters relating to USD/UC/PUC.

- in connection with LDC's development projects; and
- (d) the adequacy and effectiveness of the framework and mechanism for their intended purposes.

Land Development Corporation

5. LDC was established in 1988 under the Land Development Corporation Ordinance to undertake urban renewal projects. Through such projects, LDC seeks to provide better housing, improved environment, and more open space and government, institution and community facilities in the urban districts. Since 1988, LDC had undertaken 50 urban renewal projects, of which over 15 had been completed. LDC had no statutory power to resume land for redevelopment. It could only request the Government to do so under the Land Resumption Ordinance.

Clearance of PUC Tenants and Licence Holders

6. USD/FEHD informed this Office that it had no written guidelines on the relationship and co-ordination between USD and LDC in the handling of LDC's development projects involving PUC facilities. However, the Department has established the following general working procedures and practices -

- (a) Upon notification of LDC development projects involving PUC facilities, USD would liaise with LDC and other departments to ascertain and to plan the reprovisioning requirements and to establish the related arrangements.
- (b) Proposals on reprovisioning requirements and arrangements would then be submitted to the relevant UC/PUC select committee for decision. LDC representatives would normally attend at the committee meetings to explain the proposals. Decisions of UC/PUC would then be conveyed to LDC in writing.
- (c) To implement UC/PUC decisions, USD would work with LDC on the design of the reprovisioning facilities, monitor the progress of the project and keep UC/PUC informed of development on a regular basis. As and when necessary USD would submit papers to UC/PUC seeking its specific instructions.

The Argyle Street/Shanghai Street Project

7. On 12 November 1993, an Approved Plan for the Urban Renewal Argyle Street/Shanghai Street Project by LDC to redevelop "Six

Streets" in Mongkok in cooperation with a private consortium was gazetted for public notification and exhibition. The project affected a total of 538 property interests and 2,242 persons comprising 883 households.

Resumption of Nelson Street Temporary Cooked Food Market

8. The Nelson Street Temporary Cooked Food Market (the Cooked Food Market) was located within the development area of the Argyle Street/Shanghai Street Project. The site was temporarily allocated to USD in April 1986. It accommodated 18 cooked food stalls. Under plans approved by the Town Planning Board for the Argyle Street/Shanghai Street Project in December 1992, LDC had to provide a permanent cooked food centre and temporary reprovisioning of the Cooked Food Market within the development area.

9. On temporary reprovisioning arrangements, LDC advised USD in July 1995 that in situ reprovisioning was not viable on grounds of public safety, environmental acceptability and operational problems. In August 1995, Lands Department (Lands D) confirmed that no other vacant land was available in Yau Tsim Mong District for temporary reprovisioning of the Cooked Food Market. LDC therefore suggested that ex-gratia payment be provided to the stall operators instead.

10. LDC considered that it had no formal relationship with the cooked food stall operators. However, it was prepared to offer ex-gratia payment to the operators based on their option for relocation, suspension or permanent discontinuation of their business. LDC considered that it was USD's responsibility to hand over vacant possession of the Cooked Food Market site since LDC had to pay full premium for the site.

11. As regards USD's role in the clearance exercise, USD saw its main responsibilities as arranging meetings between LDC and stall operators, arranging restricted auctions for those operators who opted to take up the reserved vacant stalls in other cooked food markets, and delivering vacant possession of the Cooked Food Market site to Lands D. USD's legal position was that contractually, both UC/PUC and the stall operators were entitled to terminate the agreement by giving one month's notice. Once termination notice had been given, USD believed that PUC had no legal obligation to compensate or reprovision the stall operators. USD's position was challenged by the stall operators.

12. Investigation by this Office revealed that the clearance of the Cooked Food Market fell behind the original schedule of October 1997 by 20 months. By December 1997, the whole Argyle Street/Shanghai Street site was cleared of occupiers except the cooked food stall operators. By October 1998, all other buildings were demolished.

However, USD only managed to repossess the Cooked Food Market site in June 1999. A sequence of main events on the repossession exercise as provided by USD is at follows -

Date	Event
March 1995	The stall operators were informed of the demolition of the Cooked Food Market in mid 1996.
Early July 1995	USD requested the stall operators to renew the stall agreements for a term of three years starting from 1.8.1995.
August 1995	Planning Department held a meeting with USD and LDC. It was resolved that no suitable vacant site for a transit cooked food market could be identified and that no existing open space in the district would be used for temporarily reprovisioning. It was agreed to consider the temporary buy-out option proposed by LDC as a transitional arrangement.
September 1996	UC's Markets and Street Traders Select Committee (MSTSC) approved the transitional arrangements proposed by LDC, which would offer ex-gratia payment in lieu of providing a transit cooked food market to the affected stall operators.
January, May and June 1997	LDC held three meetings with the stall operators on the ex-gratia payment but no agreement was reached.
August 1997	The District Land Office informed USD of the termination of the land allocation for the Cooked Food Market and requested for the return of the site by 31.10.1997.
August 1997	At the clearance co-ordination meeting, the clearance date of the Cooked Food Market was scheduled to October 1997.
September 1997	MSTSC approved the issue of letters of termination to the stall operators under clause 17 of the agreement.
October 1997	USD served one month's notices of termination to the stall operators for stall agreements to be terminated by 31.12.1997.
January 1998	13 out of the 18 stall operators at the Cooked Food Market accepted LDC's offer and vacated their stalls. Five operators continued to occupy their stalls on site.

Date	Event
February 1998	USD attempted a clearance operation with police assistance. However, the operation was challenged on site on the basis that the operators held a tenancy that required service of six months' notice of termination. The clearance was aborted. PUC then applied to court for eviction orders to resume the stalls under the stall agreements.
June 1998	USD served notice under Part V of the Landlord and Tenant (Consolidation) Ordinance to the five remaining stall operators, requiring them to deliver vacant possession of their stalls in six months.
December 1998	Stall operators still refused to leave upon expiry of the notice of termination. PUC instituted another round of legal proceedings for repossession of the stalls.
June 1999	Agreement was finally reached between LDC and the five remaining stall operators.
June 1999	USD gained vacant possession of the whole Cooked Food Market site.

Improvement Measures

13. During the course of this investigation, USD/FEHD has considered / made the following improvement measures in handling LDC's development projects involving FEHD's tenants/licence holders -

- (a) FEHD intended to issue departmental guidelines setting out the procedures, officer(s) responsible, and action to be taken.
- (b) On the issue of granting of tenancy/licence beyond the allocation period, FEHD had requested Lands D to give at least eight months' notice of its intention to terminate temporary allocation of the site.
- (c) As regards stall operators' challenge to the status of tenancy agreement for market stalls, FEHD was studying whether action should be taken to clarify that such agreements were in reality "licences" or to put beyond doubt the relevant authority's power to clear market stalls on temporarily allocated land by suitable amendments in the Public Health and Municipal Service Ordinance.

Observations and Opinions

14. The Ombudsman made the following observations with regard

to the resumption of the Cooked Food Market -

Roles and Responsibilities

- (a) This Office found that no party assumed overall responsibility for the Cooked Food Market clearance exercise and its related reprovisioning arrangements. LDC's position was that it had no relationship with the stall operators and therefore no legal obligation to compensate them in any form. USD, however, considered that according to the requirements imposed by the Town Planning Board, LDC was responsible for providing both temporary and permanent reprovisioning arrangements for the stall operators. Hence, neither LDC nor USD considered that they had a leading role to play in the reprovisioning arrangements for the stall operators. Throughout the exercise, LDC, USD and indeed other relevant government departments assumed a coordinating role on an ad hoc basis in respect of matters which affected them most. There was no overall coordinator for such a major redevelopment project.

Lack of a Formal Co-ordination Committee

- (b) There was no central co-ordination machinery set up for either the resumption of the Cooked Food Market or the project as a whole. This Office believes that a major redevelopment exercise like "Six Streets" should require the regular attention of a formalised structure of committees at the district level to plan and co-ordinate the many facets of activities on the ground.

Lack of Contingency Plans

- (c) It was obvious that well before the target clearance date, departments were aware of the lack of progress in negotiations and realised that agreement was unlikely to be reached between LDC and the stall operators. Despite this, this Office notes that departmental representatives made no suggestions to bring about an early clearance of the site or to formulate a contingency plan in case the stall operators refused to vacate by the scheduled clearance deadline.

Absence of Established Guidelines/Practices

- (d) USD had no policy or written guidelines on the handling of LDC redevelopment projects involving or affecting PUC facilities. USD had to seek endorsement from UC/PUC on every action it took. Proposals on reprovisioning arrangements had to be submitted to the relevant PUC select

committee for decisions. Even operational matters such as the service of termination notices had to be approved by UC/PUC. This contributed to delays in the clearance exercise.

Over-reliance on Previous Experience

- (e) This Office notes that over-reliance on previous experience on the smooth resumption in relation to LDC's H3 (Wing Lok Street,) and H6 (Jubilee Street) Schemes lured USD into believing that the Argyle Street/Shanghai Street Scheme would also go smoothly. USD failed to anticipate and to respond to the unexpected adverse reaction from the stall operators. Resistance and challenge from the stall operators eventually forced the withdrawal of the clearance operation on 6.2.1998.

Ineffective Intra-departmental Communication

- (f) Throughout the resumption process, the USD District Office seldom submitted progress reports to its regional and departmental headquarters, which also appeared not to have asked for regular progress reports. This Office considers not only was effective intra-departmental communication lacking, it also appeared that neither USD headquarters nor its District Office got the full picture of happenings on the ground.

Problems with the "Tenancy" Agreement

- (g) This Office notes that the problems associated with the "tenancy" agreement had prolonged the delay to the clearance exercise. In July 1995 USD insisted on giving stall operators a three-year renewal in the full knowledge that demolition of the Cooked Food Market was scheduled to take place in mid-1996. The 3-year tenancy renewal from 1.8.1995 exceeded the land allocation period of the Cooked Food Market itself. USD's apparent confusion over the legal status of the tenancy agreement added further delays when stall operators challenged the termination clause of the tenancy agreement. Operators claimed that six months' notice of termination was required against the one month notice which USD believed was sufficient under the agreement.

Conclusions

15. In summary, this Office has concluded that -

- (a) In the resumption of the Nelson Street Temporary Cooked

Food Market site, there was a lack of mutual understanding and agreement between USD and LDC on their respective roles and responsibilities. This caused problems over co-ordination on matters involving negotiation with the stall operators on ex-gratia payment, and reprovisioning arrangements.

- (b) There is clearly a need on the part of FEHD to formulate comprehensive guidelines and procedures for resumption involving its tenants/licence holders affected by LDC development schemes.
- (c) The different interpretation on the status of the "tenancy agreement", are still susceptible to potential problems, for future LDC development schemes involving resumption of land taken up by FEHD's tenants/licence holders.

Recommendations

16. Having regard to the above observations and conclusions, The Ombudsman has made the following 10 recommendations for consideration by FEHD in future development projects involving the clearance of its tenants and licensees -

Roles and Responsibilities

- (a) FEHD should work out and agree with LDC and Lands D their respective roles and responsibilities in the resumption exercise.
- (b) FEHD should assume a more proactive role to facilitate smooth negotiations between LDC and the stall operators/licensees on reprovisioning options.

Co-ordination

- (c) FEHD should consider devising comprehensive guidelines on inter-departmental co-ordination to facilitate timely completion of the resumption exercise.
- (d) To maximise efficiency in the resumption exercise, FEHD should consider assuming a co-ordinating role in the clearance of FEHD's tenants/licensees and hold regular co-ordination meetings between relevant departments.

Guidelines and Procedures

- (e) For staff guidance and to ensure consistency, FEHD should consider devising guidelines and procedures on the handling of development projects that involve or affect FEHD facilities.
- (f) FEHD should consider formulating contingency plans where resistance to resumption is expected to be put up by its tenants/licensees.
- (g) FEHD should review the adequacy of the communication and monitoring mechanism within the Department to ensure, in particular, an effective reporting system and a dialogue between the various divisions in headquarters and regional/district offices.

Status of "Tenancy Agreement"

- (h) To forestall future challenges to the status of the stall agreement by its tenants/licensees, FEHD should review the legal status of the "tenancy agreement", so as to clarify what notice period is required to terminate these agreements.
- (i) To avoid unnecessary delays to scheduled clearance, FEHD should ensure that its tenants/licensees are informed of the expected resumption date and to suitably adjust the duration of the tenancy being renewed.
- (j) To protect its own position, FEHD should ensure that the tenancy agreements granted to its tenants/licensees are consistent with the terms of the land allocation.

Response from FEHD

17. FEHD has accepted the 10 recommendations and will implement them in stages within a short timeframe to improve the operation and handling of future development projects involving the clearance of its tenants and licensees. FEHD explains that being the executive arm of UC/PUC to implement its policy and decisions, USD's role in the clearance of the Cooked Food Market was limited to the execution of decisions taken by the Council. As MSTSC had taken a decision that neither UC nor USD should be involved in compensation negotiation, USD could not have acted contrary to Council's decision.

Final Remarks

18. The Ombudsman is pleased to note that FEHD has accepted all the recommendations and will take them forward in stages within a short timeframe to improve its operation and handling of future development projects involving the clearance of its tenants and licensees. However, while USD had correctly represented its relationship with the Council, The Ombudsman believed that the department had underplayed the amount of influence and discretion it had in the matter. Council would normally take advice from the department. Had USD advised a more proactive role for itself in the negotiation process, there was no reason to believe that such advice would be rejected by the Council, particularly when a few MSTSC members had voiced support for a more proactive approach by UC/USD.

19. The Ombudsman would also like to be kept informed of the progress on the implementation of the recommendations, and any major changes in the policy and practice in handling development projects affecting FEHD's facilities, tenants, and licensees in due course. Lastly, The Ombudsman would like to express appreciation to the cooperation and assistance rendered by LDC, USD/FEHD throughout the course of this direct investigation.

Office of the Ombudsman

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