

**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 Services<sup>1</sup> 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

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<sup>1</sup>Following 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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