

TASK FORCE ON LAND SUPPLY

Tapping into the Potential of Private Land

PURPOSE

This paper provides Members with some considerations relevant in exploring options to facilitate better utilisation of the potential of private land.

BACKGROUND

2. According to some rough guesstimate and information available in the public domain¹, major developers are believed to be holding no less than 1 000 hectares (ha) of agricultural land in the New Territories (NT). This is about one quarter of the existing built-up area for public and private housing flats². Space on this scale, if utilised properly, would have a major beneficial impact on Hong Kong's housing situation. Finding ways to make available these sites for housing development more quickly should be seriously considered by the community if we are determined to boost the land supply in the short to medium term.

3. At present, there are mainly two approaches to unlock the potential of private agricultural land of considerable scale in the NT, namely (a) statutory resumption of land under the Land Resumption Ordinance (Cap.124) (LRO), as in the case of taking forward the New Development Area (NDA) or other major development projects, and (b) lease modification or land exchange applications, which are dependent upon private initiatives.

¹ According to the information obtained from respective developers' annual reports/websites, as at 2016, major developers hold an aggregate of about 1 000 ha of agricultural land.

² Of the total land area of 111 100 ha, about 3.7% are for public and private residential use, equivalent to about 4 111 ha.

4. In her Election Manifesto, the Chief Executive (CE) proposed “tapping into the land reserves of private property developers” as one of the land supply options to be studied by the Task Force on Land Supply. When introducing the “Starter Homes” Pilot Scheme in her inaugural Policy Address (PA) of October 2017, CE said that “[i]t now appears that the land supply for “Starter Homes” will have to come from sites already owned by private developers or to be bought from the Government”. The Government’s initial thinking is to incorporate provisions into the land lease to require developers to pursue mixed developments on sites owned by themselves or bought from the Government. As a start, the Government plans to provide around 1,000 “Starter Homes” units and around 700 private units at a residential site at Anderson Road, Kwun Tong to be sold under the Land Sale Programme by the end of 2018. Details governing the provision of the “Starter Homes” on this site by the private sector will be finalised for announcement in mid-2018. This requirement for private developers to deliver affordable housing together with their own private housing is a form of “Public Private Participation” (PPP) the Government wishes to explore.

PUBLIC PRIVATE PARTICIPATION

5. PPP is not a concept entirely new to Hong Kong in the context of large-scale land development such as new town/ major development areas. Some examples include –

- (a) **Development of Sha Tin:** In mid-1970s, private developers were invited via tender to participate in the development of Sha Tin. The proposal saw a joint venture comprising four developers responsible for the reclamation, site formation and construction for a 56-ha site. Upon completion, 70% of land was passed to the Government for public housing and infrastructure development, while the rest was retained by the private developers for developing a major private real estate later known as City One Shatin, supplying a total of 10 642 private housing units.
- (b) **Private Sector Participation Scheme (PSPS):** Under PSPS introduced in 1978, the private sector was involved in the provision of subsidised sale flats (SSFs) as a supplement to the Home Ownership Scheme (HOS) flats.

Government sites were sold by tender to private developers, who were responsible for the design and construction of flats according to prescribed specifications and standards (e.g. number of flats, flat size, architectural designs, building services installations, etc.). In return, the Hong Kong Housing Authority (HA) paid a pre-determined guaranteed price to developers for each square metre of saleable floor area of flats constructed. Developers had to sell PSPS flats at a sale price determined by HA to purchasers nominated by HA under the same set of eligibility criteria and resale restrictions as were applicable to HOS applicants. Although PSPS allowed developers a free-hand to develop the layout of the projects so as to fully capture and utilise the potentials of the sites, it was known to have a problem of flat quality since the scheme provided developers with little financial incentive to ensure good flat quality. PSPS was terminated in 2002 following the repositioning of the Government's housing policy then in 2002.

- (c) **Mixed Development Pilot Scheme (MDPS):** Under MDPS introduced in 1998, government sites were sold by tender to private developers, who were responsible for the design and construction of both private flats and SSFs at the same site. Flats representing 60% of the saleable area of an MDPS project had to be built to the prescribed specifications and standards, and half of these flats (i.e. 30% of the total saleable area of the project) would be randomly selected as SSFs. The Hong Kong Housing Society (HKHS) was invited by the Government to administer MDPS. Developers had to transfer the selected flats to HKHS at a nominal consideration of \$1. HKHS would then sell SSFs to eligible purchasers at sale prices determined with reference to HOS pricing formula. The random selection in a mixed development would serve as a safeguard against poor flat quality. Two sites in Ap Lei Chau and Cheung Sha Wan were sold to private developers in 2000 for MDPS development. Since MDPS was terminated in 2002 upon the repositioning of the Government's housing policy, all flats of the two projects then under construction were

eventually sold as private flats, namely Sham Wan Tower in Ap Lei Chau and Aqua Marine in Cheung Sha Wan.

6. In terms of overseas experience, like Hong Kong, London's housing supply has been lagging behind its demand. As a result, home ownership has been out of the reach of many young Londoners. To expedite the supply of housing flats, the London Mayor refined the planning system in August 2017 whereby if developers voluntarily meet or exceed 35% affordable housing provision without public subsidy, they could benefit from a fast-track planning application process. The change provides a strong incentive for developers to meet the 35% affordable housing threshold, which offers far greater certainty and the opportunity to move away from protracted and uncertain viability negotiations. This is expected to deliver more affordable housing through the planning system whilst also ensuring development comes forward at a faster rate.

7. Some local commentators consider that the proposed PPP model would raise suspicions of collusion between the Government and businesses. In their view, the proposal would largely benefit private developers who have bought the land cheaply years ago. Some say that the PPP arrangement would lead to proliferation of development in the rural setting, which would further weaken the local agricultural industry and threaten sites with high ecological value.

8. In post-PA media interviews, CE elaborated further on the idea of PPP – the Government could facilitate putting sites owned by developers, being mostly agricultural land in the NT, into more productive uses through provision of infrastructure that could support higher-density residential development. In exchange for this, the developer should commit a certain portion of housing flats within his development for subsidised housing. CE also made it clear that there would not be any premium concession – the developer would have to pay a land premium reflecting the difference in full market value between the proposed residential use comprising different types of housing and the original land use stipulated in the lease.

Relevant considerations for a PPP

9. In the absence of a PPP scheme to tap into the private land bank at present, private developers have been seeking intensification of the development potentials of their land in the NT through planning applications to the Town Planning Board (TPB). For some cases, planning applications were unsuccessful mainly due to land use incompatibility and inadequate infrastructural capacity. For those cases that have secured planning permission, the scale of development in terms of plot ratio is relatively low, unless the Government happens to be taking forward major infrastructural upgrading for the benefit of the wider area (not just the private site).

10. So far, we have come across the following suggestions for the PPP model -

- (a) **Provision of infrastructure serving the interests of both the developers and the Government for the wider area:** The Government should be more forthcoming in providing infrastructural facilities in the wider area around the private site(s) so as to unlock housing delivery or provide capacity for higher-density development in the wider area concerned.
- (b) **Contributions by developers:** to justify the Government's investment into infrastructure as per (a) above, participating developers should demonstrate that higher density development is compatible with the local planning context and commit to building a certain portion of affordable housing (such as "Starter Homes" or even HOS flats) on the private land and selling them to eligible individuals according to specifications pre-set by Government. In other words, the private land should not just be used for private development but also for the delivery of housing or other facilities prescribed by the Government. Moreover, apart from contributing their land, developers will also be contributing their construction and marketing expertise in the provision of affordable housing.

- (c) **Planning and land matters:** the existing town planning and land administration regimes will continue to apply. First, the zoning of the agricultural lots needs to be changed to “Residential” or others and where appropriate the development intensity be enhanced. This will remain the prerogative of TPB. Secondly, the designated use of the land as specified in the lease needs to be amended, after payment of the full market value to the Government of what is required and permitted to be delivered.
- (d) **Fairness and transparency:** all interested developers may apply to participate. There should be an open, fair and transparent mechanism to ensure these applications are assessed objectively and consistently, with a view to ensuring the achievement of stated objectives and alleviating any public concern about possible collusion between Government and businesses.

11. The community may wish to consider whether a PPP scheme along the line of the above framework is worth pursuing. For the general public, more affordable housing will come on stream in a more efficient manner, relieving the burden of the HA and HKHS in providing subsidised housing, and providing diversity in building designs. The improved infrastructure will also benefit both the existing and new population. For the Government, the increased investment in infrastructure will help to unlock under-utilised private land resources for housing and other developments, thereby reducing reliance on the creation of new land under the multi-pronged land supply strategy. For the developers, their land can be put into more productive uses subject to their agreement to make available part of it for affordable housing. While developers can benefit from the opportunity to pursue greater intensity for their private developments, the infrastructural upgrading can also serve the wider public interests in terms of delivering the much needed affordable housing.

12. On paragraph 10(b), an alternative suggestion is for developers to hand over part of their land to the Government which will take care of the construction and subsequent sale. The downside is that the Government would not be able to capitalize on the expertise and diversity in the private sector.

13. On paragraph 10(d), the Government has no exhaustive information on the land reserve held by individual private lot owners including developers. To uphold **openness** and **fairness**, there **needs to be a transparent mechanism with promulgated criteria** under which private sites would be selected for PPP on an application basis. We need to devise objective criteria to ensure that potential market players would be put on a level playing field and to guard against criticisms of favoritism or collusion of benefits between individual developer-owners and the Government. **For instance**, in devising such criteria, it is for consideration –

- (a) whether the PPP should cover only those private sites with the potential of attaining a certain critical mass of population or considerable yield of public housing to justify the infrastructure upgrading that serves a wider area including adjoining government or private land;
- (b) whether priority should be given to sites which are capable of early housing delivery (including a reasonable prospect of securing planning permission from TPB for residential developments by demonstrating that the relevant planning considerations, including land use, planning context and infrastructure provision are taken care of to support the higher-density developments);
- (c) whether priority should be given to cases which offer better value for money based on an economic appraisal taking into account the infrastructural costs to be incurred and land premium to be received by the Government through lease modifications;
- (d) whether the split of public and private housing on the site should have regard to the size of Government's infrastructural investment in the area;
- (e) whether it is necessary to ensure that the benefits to the community as a result of the increased housing supply should be comparable to the additional financial gain which the developer-owner may enjoy through participation in the PPP;

- (f) As infrastructural improvements that could be pursued within an area are not without limits, the Government would need to take a view whether the enhanced capacity should be deployed to support the development on the private site or should instead be spared for supporting more public housing projects for the area via statutory land resumption (paragraphs 14 - 16 below).

STATUTORY RESUMPTION

14. Some critics of PPP have suggested that the avenue of PPP would further encourage buying and hoarding of agricultural land. They prefer that the Government make wider use of the statutory resumption power provided for in the LRO (i.e. turning under-utilised private land into government land) and in so doing perform a leading role in determining when and how the land should be developed.

15. While statutory resumption by invoking LRO, as often seen in the development of NDAs or public housing development, is available as a tool to utilise private land, it requires an established “public purpose” pursuant to the LRO. Generally speaking, land resumption for a “public purpose” takes place usually in development projects for new towns, public housing, or community facilities under public works programmes (such as schools, parks, hospitals, welfare service complexes, etc.). In other words, the Government has no justification and power to invoke the Ordinance to resume private land before the relevant “public purpose” is established.

16. If the suggestion is for Government to resume private land for the purpose of disposing the land in the open market for private housing development (without involving any public works before disposal), further legal advice is required on the justifications and legal grounds for invoking provisions under LRO to resume private land for such purposes.

LEASE MODIFICATION AND LAND EXCHANGE

17. Apart from statutory resumption, currently specific arrangements for lease modification and land exchange are in place for private developers to take forward development initiatives. For leased

lots intended for uses or development other than those prescribed in the lease, the lessee is required to apply to the Government for lease modification after they had unified the land titles of the concerned sites or all lessees of the concerned sites join-in the lease modification application. In respect of land exchange, reasons include minor adjustments to lot boundaries to allowing partial implementation of a town planning layout without resorting to land resumption. Broadly speaking, most land exchange cases fall under the category of in-situ land exchange, which involves the surrender of private land to the Government in return for the grant of a new lot, which fully or in general largely overlaps with the surrendered site. As for non-in-situ land exchange, the land surrendered need not overlap with the land to be granted. Such non-in-situ land exchange cases are rare and each case should be examined and, in general, approved by the Executive Council based on individual merits and justifications. The use and configuration of the new lot to be granted will be processed in accordance with the parameters stipulated in the relevant plans under the planning regime, and having regard to the relevant land ownership. A premium will also be charged to reflect the enhancement in the land value of the private land holding arising from the lease modification or the land exchange.

18. In general, the Government will grant permission to developers' applications for lease modification and in-situ land exchange which are in line with the approved plans/schemes under the statutory planning framework. In accordance with the Town Planning Ordinance (Cap. 131) (TPO), applications can be made under section 12A (Amendment of plans on application to the Board) (s12A application) to change the land use and/or development restrictions stated in the original statutory Outline Zoning Plans (OZPs). Alternatively, applications can be made under section 16 of TPO (Applications for permission in respect of plans) (s16 application) to seek permission from TPB for any proposed use or development which falls under Column 2 of an OZP, or for minor relaxation in development parameters such as plot ratio and building height restrictions. As an independent body, in considering s12A or s16 applications, TPB will give due consideration to, among others, (i) whether the proposed use and development parameters would be in harmony with the surrounding areas, (ii) whether there will be adverse impact on the surrounding environment, traffic, visual and other relevant infrastructure, and (iii) public views.

19. In respect of in-situ land exchange, any additional Government land to be incorporated into the regrant lot has to meet with

certain criteria, including (i) where the Government land involved in in-situ exchange is incapable of reasonable separate alienation or development; (ii) where the Government land concerned has no foreseeable public use; and (iii) that the developers are required to pay full market value premium and that results in a financial return to the Government no less favourable than which would be achieved by separate alienation.

Assessment of premium

20. Except for certain public and/or non-profit-making uses, approved lease modification and land exchange applications will be subject to land premium assessed on full market value basis under a set of established procedures. In the negotiation process, the Director of Lands would act in the role of landlord in private law and is negotiating under contracts in that capacity, with all the commercial sensitivity implications applying to that. That said, to facilitate applications and their processing, LandsD publicises information notably through practice notes on the premium assessment procedures. Information about the numbers of applications of lease modifications and land exchanges received and brief information about completed cases is available on the LandsD website.

Agricultural land

21. Specifically, for agricultural land in the NT, the processing of lease modification application for changing the agricultural land use to other uses is similar to that for changing the land use from commercial to residential use. That is to say, the applicant has to obtain the required planning approval or the proposed development is already permissible under prevailing planning regimes, and that the scale of development is in line with the planning intention and development restrictions³. If an approval is granted to such application, the difference between the land value under the existing lease conditions (including the use therein) and the land value under the modified lease conditions (including the permitted new use) will be reflected in the premium⁴.

³ For the “Agriculture” zone, as far as residential-related use is concerned, only “House (NTEH only)” can apply for planning permission under section 16 application.

⁴ The latest agreement was reached was on 8 September 2017, which involved a premium payment of about HK\$15.9 billion for the conversion of a 62.3 ha farmland in Sai Sha, Shap Sze Heung, Tai Po, for commercial/residential use. The full list of land exchange executed is available at the website of the Lands Department (www.landsd.gov.hk).

22. Along the approval process, relevant development approval authorities will maintain communication to ensure that all regulations are complied with. For development involving lease modification or land exchange, a building covenant clause is usually included in the lease requiring the developer to complete the building as required within a specified period ranging from four years or more, depending on the scale of the development. If the developer is required to provide public facilities such as park or open space in his development as required under planning regimes or under policy directives of the concerned policy bureaux, appropriate provisions are specified in the lease with a view to ensuring public enjoyment of relevant facilities.

23. In land transactions involving modifying agricultural land into development land for other purposes, the value of the agricultural land in the “before” land value will be credited against the value of the “after” land value in arriving at the premium chargeable. It is not uncommon that developers argue for higher values of agricultural land by reference to the transaction prices of agricultural land in the market. However, these transaction prices in the market almost invariably reflect “hope values” for development into more lucrative uses⁵. In the normal principle of premium assessment, the land value is assessed based on the current lease provisions, which means that any hope value for development into other uses not permissible under the existing lease that may be attached to such land if transacted in the open market must be excluded in the premium assessment. Thus, LandsD can only value the agricultural land on this basis.

OTHER OPINIONS

24. While the above discusses the possible scope of exploring more “carrots” in promoting public-private sector collaboration, some critics opine that there should also be “sticks” to deter or prevent private owners from hoarding on idle lands without taking forward any development proposal. In this regard, some have suggested imposing a tax (e.g. punitive vacancy rates payments for land lying undeveloped) or fine for development stagnation over a certain period of time. Some commentators have suggested that the Government should not renew a

⁵ The gap between LandsD’s assessed agricultural land value and the value claimed by developers is wide. But the overall effect on the land premium chargeable is usually not very significant given the much-higher land value of the “After” form of development.

lease upon its expiry if no development takes place to realise what is permitted in the OZPs.

25. On the suggestion about non-renewal of lease, according to the policy statement promulgated by the HKSAR Government in July 1997, leases not containing a right of renewal (excluding short term tenancies and special purpose leases) may, upon expiry, and at the sole discretion of the HKSAR Government, be extended for a term of 50 years without payment of an additional premium. In practice, various factors will be considered on lease extension, e.g. whether serious breaches are found under the original lease; if the original lease was granted on policy considerations for promoting certain objectives (e.g. development of an individual industry), whether the policy consideration is still valid. The Government is prepared to listen to community views as to whether the development status of the land (i.e. whether it has been/will be developed) should be among the criteria for considering renewal.

26. There are also calls from the private sector to streamline the existing procedures regarding planning, lease modification, premium assessment and building plan approval, such that the development of privately-owned land could be expedited, thus unleashing the potential of private land reserves in the short to medium term. Despite their different objectives and loci and the evolution of the different regulatory regimes over the years, the Government recognises that there may be further rooms to consolidate and rationalise the standards and definitions adopted by PlanD, LandsD and the Buildings Department in scrutinising development projects such that the approval process can be streamlined without prejudicing the relevant statutory procedures and technical requirements. The CE has announced in her PA that a steering group would be set up under the Planning and Lands Branch of the Development Bureau to look into the matter.

ADVICE SOUGHT

27. Members are invited to note and offer comments on the possible approaches in tapping into the potential of private land.

Development Bureau
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