

LCQ5: Use of Lands Resumption Ordinance by Government

Following is a question by the Hon Lam Cheuk-ting and a reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (June 27):

Question:

When she attended this Council's Question and Answer Session held on the third of last month, the Chief Executive (CE) advised that the Lands Resumption Ordinance should not be invoked arbitrarily because "owners whose private ownership is being infringed upon ... will apply for judicial review against the Government", and such lawsuits might last for as long as eight to nine years. However, in reply to a written question raised by a Member of this Council on the 30th of last month, the Government indicated that over the past two decades from July 1997 to December 2017, there were only eight judicial review cases lodged by landowners arising from the Government's invocation of the Ordinance for resumption of their private lands. For such cases, the time taken from the Court's granting of leave for judicial review to its handing down of judgments on the judicial review ranged from nine days, the shortest, to no more than one year, the longest. In this connection, will the Government inform this Council:

(1) whether it has assessed if CE's aforesaid statement is erroneous, and if it will mislead this Council and members of the public into believing that invocation of the Lands Resumption Ordinance will very likely give rise to litigations; if it has assessed and the outcome is in the affirmative, whether it will advise CE to rescind that statement; and

(2) whether it will undertake that it will only invoke the Lands Resumption Ordinance and not adopt the public-private partnership approach, in order to tap into private developers' agricultural lands for carrying out housing development projects?

Reply:

President,

Both Articles 6 and 105 of the Basic Law mention about the protection of "the right of private ownership of property" by the Hong Kong Special Administrative Region in accordance with law. The Government must adhere strictly to the spirit of and the constraints imposed by the law, and cannot neglect the importance of respecting the right of private ownership of property when deciding to exercise its statutory power to resume private land.

According to the Lands Resumption Ordinance (LRO), the Government may invoke the LRO to resume private land, having regard to the Government's

needs, only for an established "public purpose" pursuant to the LRO. In other words, the invocation of the LRO cannot be possibly based on a slogan or an intention. The Government has no justification and power to invoke the LRO to resume private land before the relevant "public purpose" has been established.

In the written reply to a Member's question on May 30, the Government mentioned that a total of eight judicial review (JR) cases arising from the invocation of the LRO for resumption of private land were lodged by landowners from July 1, 1997 to December 31, 2017 and the Government had lost none of the cases according to court rulings. This truly reflects that the Government has all along been acting strictly upon the spirit of and the constraints imposed by the law and invoking the LRO to resume private land carefully and prudently only for an established "public purpose" pursuant to the LRO.

My reply to Hon Lam Cheuk-ting's question is as follows:

(1) In the Question and Answer Session of this Council on May 3, the Chief Executive's statement is in line with the Government's established policy stated in the preamble above. As regards lawsuit over the Wan Chai Outline Zoning Plan (OZP) quoted by the Chief Executive in that Question and Answer Session, it was intended to demonstrate that JR proceedings involving land and the right of private ownership of property could be lengthy and the Government must therefore act prudently and carefully. Taking the above Wan Chai OZP as an example, it involved a number of JR applications since 2011 and as the arising follow-up work is still in progress, the OZP has yet to be submitted to the Chief Executive in Council for approval, thereby affecting the development of various sites within the district, including the former Wan Chai Police Station and adjacent area.

(2) Recently, there seems to be a view within the community that advocating public-private partnership to develop private agricultural land reserve in the New Territories would mean the Government giving up the right to resume private land through invoking the LRO for development; or that when the Government invokes the LRO to resume private land, it will no longer be necessary to allow land owners to use their privately-owned land for development. I must clarify that this kind of view that regards land resumption by the Government and private development as mutually exclusive is incorrect, and the Government certainly does not agree.

Firstly, the Government has been invoking the LRO to resume private land for development after establishing a "public purpose". In future, resumption of private land will continue to take place as well for different new development areas (NDAs) and public housing projects. For example, the Government resumed private land for different subsidised housing projects, such as Sha Tin Areas 16 and 58D in the past, whereas an estimated total of about 500 hectares of private land within the boundary of a few mega land development projects in the coming years, which include Wang Chau Development Phase 1, Kwu Tung North and Fanling North NDAs and the Hung Shui Kiu NDA, is planned to be resumed and the Government will continue to resume private land for different public housing projects.

On the other hand, not all land is suitable for "public purpose" or public housing development. In fact, development needed by the community is not confined to those needs for a "public purpose". It is therefore normal that land owners (including developers) will make use of their privately owned land for development. Many existing commercial and residential properties in Hong Kong were developed under this mode. Indeed, private development, including lease modification, land exchange and redevelopment, has been one of the major sources of land for private residential flats, and it has provided land for construction of more than 50 000 flats over the past decade. This development mode has been long standing in Hong Kong, which, as a free economy, respects the right of private ownership of property and allows the private market to play to its strengths.

One of the short-to-medium-term options that the Task Force on Land Supply (Task Force) recently put forward in its public engagement exercise is the development of private agricultural land reserve in the New Territories through public-private partnership. The Task Force's intention was to explore a possible way out through unleashing the development potential of agricultural land in the short-to-medium term. The Task Force indicated clearly that the relevant discussion must be premised on the understanding that the Government would set up a fair, open and transparent mechanism in future, in order to create a win-win situation for the general public and the private land owners, including the provision of private and public housing on privately-owned land. There are views that it will be more straightforward for the Government to invoke the LRO for public housing development given the public character. As explained above, whilst the Government will continue to invoke the LRO timely for development, the balanced and healthy development of society cannot solely rely on Government's power. As a matter of fact, it would be difficult for the Government to make planning and take forward development for all the land simultaneously. When the Government implements the overall planning and development programmes in different districts according to priorities, we do not rule out the possibility of developers devising development plans on their privately-owned land. The Government considers it worthwhile for the community to keep an open mind to explore initiatives that are economically viable while meeting society's overall needs.

In fact, the Government has been providing reasonable incentives according to its policy objectives through various programmes and initiatives with a view to capitalising on the forces of the market and non-governmental organisations to facilitate the implementation of different development projects in order to expedite the development and release the development potentials of private sites such that the public and the whole community can benefit earlier. Examples of such mode of cooperation include:

(i) Industrial building revitalisation measures – to provide more floor space for suitable uses while improving the safety of industrial buildings.

(ii) "Facilitation Scheme for Provision of Pedestrian Links by the Private Sector" – to waive the land premium for lease modification with a view to facilitating and encouraging private landowners to construct footbridges or subways at their own cost for provision of a safe, comfortable and convenient

pedestrian network.

(iii) New town development – to allow private land owners of sites planned for private developments to pursue their individual private projects through lease medication applications, while being responsible for most of the land acquisition work.

(iv) "Special Scheme on Privately Owned Sites for Welfare Uses" – to encourage non-governmental organisations to better utilise their own sites through expansion, redevelopment or new development to provide social welfare services.

(v) "Youth Hostel Scheme" – to fully fund non-governmental organisations to construct youth hostels on sites owned by them. Upon completion, NGOs will operate the youth hostels on a self-financing basis.

President, the Government will continue with its standing practice of resuming private land for development by invoking the LRO prudently under appropriate conditions and at the same time provide room for the private market and non-governmental organisations to optimise their land resources.