

Guide to Prepare An Expert Report for Application Under Land (Compulsory Sale for Redevelopment) Ordinance, Chapter 545



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Preface

The problem of urban decay and redevelopment is one of the hot topics which prompts much discussion in the public over the last decades. Good maintenance planning and proper upkeep of the building stock would be a way to arrest building deterioration in the territories. For buildings which are determined to be physical obsolescence, demolition for redevelopment in generating new urban fabric may be a good way for tackling the problem.

The enactment of the Land (Compulsory Sale for Redevelopment) Ordinance (hereafter referred to as “LCSRO”) (Cap. 545) in 1998 played a key role in facilitating private sector’s redevelopment efforts. However, since the LCSRO came into effect in 1999, there have been calls from individual owners urging the Government to amend the Ordinance, including lower the compulsory sale threshold, in view of the difficulties in acquiring interests in properties in some circumstances. The Government initiated public consultation several years ago to examine options to facilitate redevelopment projects initiated by the private sector.

After years of consultation and discussion in the society, the Land (Compulsory Sale for Redevelopment)(Specification of Lower Percentage) Notice was introduced early in 2010 as subsidiary legislation and came into effect on 1st April 2010, which specified a lower threshold for the compulsory sale application. Professional surveyors, especially members of the Hong Kong Institute of Surveyors (HKIS), play key roles in the mechanism under the LCSRO in offering professional advice to facilitate this redevelopment process.

One of the criteria before the Lands Tribunal granting the compulsory order for sale is that ‘the redevelopment is justified on the ground of age or state of repair of the existing buildings on the lot’. Persons who own a specified majority of the undivided shares in a lot have to submit an expert report to substantiate their application. Members of the Building Surveying Division (BSD) should be able to offer professional advices and services in this aspect.

In order to facilitate members to prepare such an expert report, the BSD decided to prepare this Guide in order to provide a framework required for the preparation of the expert report for complying with the LCSRO.

I would like to take this opportunity to thank for the effort from the working group led by Mr. Kenny Tse with Mr. Victor Lui and Mr. Peter Dy as members. Moreover, the effort from Mr. Raymond Chan as advisor is also highly appreciated.

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Disclaimer

1.0 Introduction

1.1 BACKGROUND

It has been more than a decade since the enactment of the Land (Compulsory Sale for Redevelopment) Ordinance (hereafter referred to as “LCSRO”) (Cap. 545), the Government announced the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice 2010 which took effect on 1 April 2010 by adjusting the threshold of applying to the Lands Tribunal for a compulsory sale order. For residential/composite buildings eligible for adopting a threshold of not less than 80% when applying for a compulsory sale, they must be issued with an Occupation Permit at least 50 years before the relevant date. For an industrial building located in non-industrial zone, it must be issued with an Occupation Permit at least 30 years before the relevant date.

The application for compulsory of sale under LCSRO shall be accompanied by an expert report to justify that the proposed redevelopment is necessary due to the age or state of repair of the existing development on the lot. The building professional who is commissioned to prepare the expert report, therefore, plays a crucial role on giving professional advices and comments on building conditions of the existing development for consideration by the Lands Tribunal, among other factors, in granting the order.

Building surveyor who has been trained to handle various kinds of building defects and conduct diagnosis is obviously one of the most suitable building professionals to prepare such an expert report. This Guide serves as a reference document, especially for members of the Building Surveying Division (Members), in preparing an expert report for the application for compulsory of sale under Cap. 545.

1.2 PURPOSES OF THIS GUIDE

This Guide aims to:-

- provide guidance for building surveyor on the preparation of an expert report.
- address the best practice in drafting an expert report by providing a comprehensive guide and recommended format to their preparation.

However, the advices recommended by this Guide may not be exhaustive and may not be universally applicable. Members who use this Guide should exercise his/her own professional judgment on individual merit.

1.3 SCOPE OF THIS GUIDE

The scope of this Guide covers only guidance on the preparation of an expert report in justifying whether the proposed redevelopment is essential or not, due to the age or state of repair of the existing building(s) on the lot.

2.0 The Expert Report

2.1 OBJECTIVE OF THE EXPERT REPORT

According to Section 4(2) of Cap. 545, the Lands Tribunal will not make an order for sale unless she satisfies that the redevelopment of the lot is justified “due to the age or state of repair of the existing development on the lot”.

Therefore, the objective of the expert report is to demonstrate whether the existing building(s) on the concerned lot has reached the end of its physical life and is not in a habitable condition.

2.2 WHO CAN PREPARE THE EXPERT REPORT?

There is no specific requirement stipulated in the Ordinance on the identity of the building professional who can prepare an expert report in justifying the existing condition of the concerned building and whether the proposed re-development is necessary.

Amongst the various building professionals in Hong Kong, building surveyor possesses professional knowledge in condition survey, defect diagnosis, building safety inspection and statutory requirements and is widely known by the public.

With the above expertise, building surveyor can perform the following tasks:-

- Conduct condition survey to the Building;
- Identify any Unauthorized Building Works (UBWs) which include unauthorized alteration & addition and change of use;
- Assess the provisions in relation to building safety, fire services installations, barrier free access, etc. in the Building according to the current statutory requirements and standards;
- Assess the general condition and repair status of the Building;
- Diagnose building defects and propose suitable repair methodology;
- Advise on any necessary upgrading works in accordance with the current statutory requirements/standards;
- With their wide spectrum of knowledge, building surveyor can also act as the leading professional in preparing the expert report, coordinating with other specialists and testing consultants, consolidating and analyzing their findings / advices then formulating appropriate professional opinions.

2.3 TYPES OF EXPERT REPORT

Generally, there are two types of report related to the compulsory sale of land application under Cap. 545:-

- Report to Support an Application for Compulsory Sale of Lot Under Cap. 545 by Majority Owner

This type of report is usually prepared to support the application for compulsory sale of lot under Cap. 545 by the Majority Owner.

- Report to Against an Application for Compulsory Sale of Lot Under Cap. 545

If any Minority Owner does not agree to any justification of an application for compulsory sale of lot under Cap.545 proposed by the Majority Owner, they can propose objection to the Lands Tribunal. The Minority Owner can also appoint an expert to prepare a report to prove that the concerned building is still repairable and in a habitable condition.

2.4 TYPES OF SPECIALISTS INVOLVED AND THEIR ROLES

To assess the state of repair of an existing building, the building surveyor who takes up the role of an expert may need to coordinate with various specialists (registered structural engineer, asbestos consultant, etc.) and testing consultants/laboratories for conduction of necessary tests such as infrared thermographic survey, hammer tapping test, concrete compressive strength test, rebound hammer test, carbonation test, chloride content determination test & concrete cover test, etc., for compilation of the expert report.

3.0 Contents and Format of the Expert Report

- 3.1 In general, the expert report, whether it supports or is against an application for compulsory sale of the lot under Cap. 545 should cover but not limited to the following aspects:-

General Contents:-

- A. Introduction
- B. Information Obtained
- C. General Description of the Building
- D. Area Inspected
- E. Condition Survey
- F. Structural Survey
- G. Cost Estimates for Repair Maintenance and Remedial Works
- H. Conclusions
- I. Caveat
- J. Declarations of Duty to Court

Appendix:-

- I. Location Plan
- II. Copies of Approved Building Plans, Structural Plans and Drainage Plans
- III. Copies of Occupation Permit
- IV. Floor Plans for Illustrating the Location of Defects and Unauthorized Building Works
- V. Photo Records
- VI. Certified True Copy of Land Registry records (especially for any served Statutory Order, Compliance Letter, etc. under the Building Ordinance or other related regulations).
- VII. Asbestos Investigation Report and Asbestos Abatement Plan (if any)
- VIII. Infra-red thermographic survey (if any)
- IX. Structural Survey Report (comprises of various structural test reports)
- X. Breakdown of Cost Estimate for Repair, Maintenance and Remedial Works of the Subject Building
- XI. Newspaper Cutting for any Special Event Happened (such as fire incident at the concerned building)
- XII. C.V. of all Professionals involved in the Expert Report

The following parts illustrate the suggested details in each chapter of the expert report.

3.1.1 Introduction

- a) The introduction should include but not limited to the followings:-
 - i) Full address of the concerned lot(s)
 - ii) General description of the concerned building
 - iii) General information of the Client and the appointment for the survey
 - iv) Purpose of the expert report
 - v) Areas inspected
 - vi) Details of inspectors and relevant inspection date (C.V. of the professionals should be enclosed)
 - vii) Disclosure of interests

3.1.2 Information Obtained

- a) In this part of the report, details (e.g. reference no, drawings no, description, sources of information, etc.) of all information adopted for the expert report should be provided.
- b) The general information involved should include but not limited to the followings:-
 - i) Approved Building Plans
 - ii) Approved Structural Plans
 - iii) Approved Drainage Plans
 - iv) Occupation Permit (including those for the nearby developments)
 - v) Land Registration Certificate
 - vi) Statutory Orders, Notices and Directions

3.1.3 General Description of Building

- a) In this part of the report, full details of the concerned building should be clearly described, including:-
 - i) General description of construction materials and the main structural system (i.e. reinforced concrete, column and beam structure etc.)
 - ii) General description of orientation and external and internal finishes of the concerned building
 - iii) General description of the provision of means of access for fire fighting, means of escape in case of fire, etc.
 - iv) Number of storey
 - v) Number of staircase
 - vi) Number of unit and the approved use of each unit

- vii) Comparison of the existing / approved uses of the concerned building with the use allowed under the current Outline Zoning Plan
- viii) General description on age of the concerned building and the neighbouring buildings, including comparison of the age of these buildings

3.1.4 Areas Inspected

- a) It is common that not all parts of the building are accessible for inspection, especially when the report was prepared for the minority owners.
- b) This part of the expert report should provide detailed description to the areas, which are accessible for inspection.
- c) Areas which are inaccessible or could not be inspected due to any reasons should be clearly listed out.
- d) General description of the methodology of inspection adopted should be mentioned.

3.1.5 Condition Survey

Under normal circumstances, this part should be further sub-divided into three sections:-

- External Condition
 - Internal Condition of Common Areas and Facilities
 - Internal Condition of Individual Units or Other Related Areas
- a) External Condition
This part of report should include but not limited to the findings of condition survey (including the result of infra-red thermographic survey and/or hammer tapping test, if any) for the following elements:-
 - i) *Roofs and Skylights*
 - ii) *External Walls*
 - iii) *Fence Walls*
 - iv) *Light Wells*
 - v) *Windows/Louvers*
 - vi) *External Pipeworks and Supporting Brackets*
 - vii) *Cantilevered Structures (Balconies, Canopies, Verandahs, etc.)*
 - viii) *External Appendages*
 - ix) *Protective Barriers, Railings, Fencing and the Associated Fixings*
 - x) *Any UBW Identified*

The location, nature and quantum of defects or deficiencies of above elements should be identified in the report.

b) Internal Condition of Common Areas and Facilities

In this part of report, it should include but not limited to the findings of condition survey of the following elements:-:-

- i) *Common Staircases and Corridors*
- ii) *Fire Safety Provision of Means of Access for Fire Fighting and Rescue, Means of Escape in Case of Fire and Fire Resisting Construction*
- iii) *Common Facilities (including lift installation, refuse disposal facilities, emergency lighting, fire services installations, drainage system etc.)*
- iv) *Communal Metalworks*
- v) *Plant Rooms and Other Services Rooms*
- vi) *Any UBW Identified in particular those may affect safety occupation of the Building*

The location, nature and quantum of defects or deficiencies of above elements should be clearly identified in the report.

c) Internal Condition of Units or Other Related Areas

In this part of report, details of the existing condition of each accessible unit, any UBW identified in particular those may affect safety occupation of the Building, any significant change in the internal layout and structural alterations, any safety and hygiene problems, etc. should be clearly identified in the report.

3.1.6 Structural Survey

- a) This part of the report should give a brief summary of all findings of the Structural Survey report prepared by a registered structural engineer.
- b) A summary of the opinions/advices provided by the registered structural engineer should also be included in this part of the report.

3.1.7 Cost Estimates for Repair, Maintenance and Remedial Works

- a) This part of the report could be considered as the summary of cost estimates for the required repair, maintenance and remedial works. Cost estimates are the main aspect to be considered in giving justification for the state of repair of the concerned building.

- b) General details and breakdown for the estimated cost of the required repair, maintenance and remedial works (a list of price, unit rate and approximate quantities for the recommended work items) and the assumptions of such cost estimates should be included in this section.

3.1.8 Conclusions and Caveat

- a) The conclusions should include an analysis of all the findings and recommendations stated in respective reports.
- b) The justifications FOR or AGAINST the proposed redevelopment and application for the compulsory sale of lot under Cap. 545 should be given.
- c) There is no special requirement of the caveat. It is however varied with individual expert or the company policy of individual building consultancy firm.

3.1.9 Declarations of Duty to Court

The building professional who prepares the expert report shall declare the followings in the report:-

- (a) He/she understands that the expert report will be submitted to the Lands Tribunal in respect of an application for order for sale under the Land (Compulsory Sale for Redevelopment) Ordinance.
- (b) He/she has read the Code of Conduct for Expert Witness (Appendix of the Rules of the High Court) and agreed to be bound by it;
- (c) He/she understands his/her duty to the court; and
- (d) He/she has complied with and shall continue to comply with that duty.
- (e) He/ she believes that the facts stated in the expert report are true and the opinions expressed in it are honestly held.

The building professional who prepares the expert report is required to sign the above declarations. Similar statements / declarations might be required to each supporting report prepared by other specialists subject to the advice from the solicitor who is responsible for submission of the compulsory sale application to the Lands Tribunal.

Disclaimer

This Guide is issued for the Members' use as guidance to help professionals writing an expert report for application under Land (Compulsory Sale for Redevelopment Ordinance) (Cap. 545). The Guide is for reference only and is not intended to be regarded as statutory requirements. The guidelines provided in this Guide do not have neither legal force nor legal authority, nor are they claimed to be fully comprehensive. While the Institute endeavors to ensure the accuracy and reliability of the contents of this Guide and the information provided therein, the Institute and the authors that prepared this Guide do not guarantee their accuracy and reliability and accept no liability (where in tort or in contract or otherwise) for any loss or damages arising from any inaccuracy or omissions in this Guide, or from the use of this Guide.

