

Topical Note 4 – Implementation Mechanism

Purpose of the Topical Note

The main purpose of the Stage 1 Public Engagement of the “North East New Territories New Development Areas Planning and Engineering Study” is to enable the public to appreciate the Study objectives and key issues relating to the development of the Kwu Tung North, Fanling North and Ping Che/Ta Kwu Ling New Development Areas (NDAs), and to express their visions for the NDAs. It is the intention to solicit public views through discussion on four topics, namely, strategic roles of NDAs, people-oriented communities, sustainable living environment and implementation mechanism. This topical note is prepared to provide background information on implementation mechanism with a view to facilitating public discussion on this topic.

1 Background

“The Planning and Development Study on North East New Territories” (the NENT Study) commissioned in the late 1990’s, identified Kwu Tung North (KTN), Fanling North (FLN) and Ping Che/Ta Kwu Ling (PC/TKL) as suitable New Development Areas (NDAs). Notwithstanding that the technical feasibility of the NDAs was confirmed by various technical assessments, the then study identified the involvement of substantial amount of private land as the major issue in the implementation of these NDAs.

In the light of the slower population growth and housing demand, the NDA proposals were shelved in 2003 pending further consideration on the need for strategic development areas in the Study on “Hong Kong 2030: Planning Vision and Strategy” (the HK2030 Study). The HK2030 Study was completed in 2007. It recommended to proceed with some NDA developments to address the long-term housing demand and provide employment opportunities. The Chief Executive announced in his 2007-2008 Policy Address the planning for NDAs as one of the major infrastructure projects for economic growth. Subsequently, the “North East New Territories New Development Areas Planning and Engineering Study” (the NENT NDAs Study) was commissioned in June 2008 to formulate a revised proposal for the KTN, FLN and PC/TKL NDAs.

2 The Implementation Issues

Unlike most of the existing new towns, which have mainly been developed on large tracts of land reclaimed from the foreshore, the extent of private land affected by the implementation of the NDAs is unprecedented. The total amount of private land in the three NDAs study area is about 445 ha, representing about 57% of the total developable land area within the NDAs. **Table 1** shows the developable land area within the three NDAs and the percentages of private land within the total developable area. The proportion of private land within each developable area of KTN, FLN and PC/TKL are 51%, 53% and 71% respectively.

During the course of the public consultation held under the previous study, some landowners (both large and small owners) had indicated their desire to participate in the implementation of the NDAs. They also wanted to submit development proposals for Government’s consideration based on their landholdings. The difficulties as regard to the acquisition of land involving “Tso/Tong” properties, absentee landowners and defective titles were also raised.

Topical Note 4 – Implementation Mechanism

Table 1 Summary of Land Areas

NDA Area (ha)		Kwu Tung North	Fanling North	Ping Che/ Ta Kwu Ling	Total
Total Land Area		500	260	240	1,000
Developable Land Area*	Government Land (a)	170	95	65	330
	Private Land (b)	180	105	160	445
	Total (c) = (a)+(b)	350	200	225	775
Total Private Land Area		180	105	160	445
Percentage of Private Land Over Developable Land (b)/(c) x 100%		51%	53%	71%	57%

* Excluding area of hilly mountains, river channels, Lo Wu Firing Range in KTN and Sewage Treatment Plant and Sheung Shui Slaughter House in FLN, which involve no developable private land.

To facilitate timely implementation of NDAs, early deliberation by the community at large on a suitable implementation mechanism is required. Regardless of the different implementation mechanisms, they must be:

- fair and equitable;
- in the public interest;
- in line with the legislative framework; and
- in line with the overall planning concept of the NDAs.

The previous NENT Study had examined the institutional framework for the implementation of the NDAs and recommended that:

- similar to other new town developments, the Government could be responsible for land assembly according to the prevailing land policy. Land is assembled through resumption and clearance, followed by site formation, provision of infrastructure and eventual disposal of sites for various developments (i.e. the “conventional new town approach”); and
- where private land owners/developers had assembled land which corresponds tallies with areas designated for private development in the recommended layout of NDAs, the private land owners/developers may be permitted to develop that land according to the overall development schedule of the proposed NDAs and in conformity with some given principles.

Topical Note 4 – Implementation Mechanism

3 Conventional New Town Approach

The “conventional new town approach” has been effectively used in the implementation of our existing new towns in the last few decades. The rationale for suggesting the Government to take up the major land assembly is that this could provide a high level of certainty in implementing the NDAs in terms of the timing of public housing, infrastructure and Government, Institutional & Community (G/IC) facilities. As a result, there will be an orderly and balanced development according to the overall implementation programme.

To acquire land for developing our previous new towns in the New Territories, the Government instigated relevant ordinances such as Lands Resumption Ordinance (LRO) to resume private lots for implementing the public works development programmes. LRO provides that *“whenever the Chief Executive in Council decides that the resumption of any land is required for a public purpose, the Chief Executive may order the resumption thereof under the Ordinance”*. LRO has provisions on compensation for land resumed and procedures for making statutory claims.

Under the prevailing land policy, an ex-gratia zonal compensation provision for resumption of land in the New Territories has been in place as a final settlement of all statutory compensation claims for landowners. Ex-gratia allowances relating to land clearances to affected persons including eligible lot owners, farmers, business operators and legal occupiers of domestic properties etc. are also available. A summary of the various types of ex-gratia allowances and land compensation is in **Appendix A**.

4 Private Sector Participation

To smooth out the implementation process and to address private land owners/developers’ aspirations of being engaged in the implementation of NDAs directly, the previous NENT Study suggested that private sector participation could also be considered for some suitable development zones within the NDAs with a view to achieving the following:

- Early availability of land for NDA development since private landowners can initiate the development at an early stage.
- Reducing potential conflict with private landowners on land resumption as landowners are offered to involve in the implementation exercise.
- Reducing upfront cost on land resumption as the amount of land necessary to be resumed by the Government could be reduced.
- Respecting property rights of private landowners.

Topical Note 4 – Implementation Mechanism

In addition to the conventional new town approach, we are prepared to consider innovative way(s) including private sector participation, in implementing the NDAs. We shall explore with various stakeholders to understand their aspirations on the desirable features in a private sector participation scheme. Based on the comments received in the public consultation of the previous study, we have undertaken a broad assessment on these different aspirations. The findings of our initial broad assessment are as follows: -

Table 2 Summary of Aspirations from Major Stakeholders

Major Stakeholders	Aspirations on Desirable Features
General public	<ul style="list-style-type: none"> • Fair and transparent approaches • No favouritism • No Government subsidisation for private development
Major landowners with consolidation of large parcel of land	<ul style="list-style-type: none"> • Respect private property rights • High degree of direct participation in the implementation • Government to assist in land resumption on problematic land
Individual landowners without consolidation of large parcel of land	<ul style="list-style-type: none"> • Respect private property rights • Have choice of compensation or participation • No favouritism to major landowners
Indigenous Villagers	<ul style="list-style-type: none"> • Respect the rights of indigenous villagers
Existing Residents/Tenants	<ul style="list-style-type: none"> • Satisfy their rehousing needs
Existing Business Operators	<ul style="list-style-type: none"> • Satisfy their re-provisioning / expectation needs

* Problematic land refers to land being not transferable in the private market. This could be land involving "Tso/Tong", absentee landowners and defective titles.

The above initial broad assessment is just a preliminary appraisal. Further exploration with various stakeholders would enable us to better understand their aspirations. This would also facilitate formulation of the detailed implementation arrangements of the NDAs in the next stage of our work.

To facilitate public discussion, a summary of examples of private sector participation approaches and our observations on them are included in **Appendix B**.

Topical Note 4 – Implementation Mechanism

5 Your Views

To facilitate the next step of work, we would like to know your views. Specifically,

- What are your views on the implementation mechanism for the NDA developments?
- Do you have any comments on the past implementation mechanism in developing new towns in the New Territories?
- Do you agree to introduce private sector participation approaches in the implementation of the NDAs?
- For private sector participation approaches,
 - do you have any comments on the desirable features?
 - other than the approaches listed in **Appendix B**, do you have other suggestions?
 - do you support Government using statutory powers to resume problematic land to facilitate the private sector participation approaches?

Topical Note 4 – Implementation Mechanism

Appendix A

Summary of Compensation Payable for Land Resumptions and Ex-Gratia Allowances for Clearances

The Lands Department publishes a pamphlet entitled “EX-GRATIA ALLOWANCES PAYABLE FOR LAND RESUMPTIONS AND CLEARANCES – INFORMATION FOR OWNERS, TENANTS AND OCCUPIERS” outlining various types of ex-gratia allowances and land compensation payable by the Government. The latest version is dated April 2006. This free pamphlet is obtainable from the 12 District Lands Office of the Lands Department. The English version of this pamphlet is also available in the Website of the Lands Department (<http://www.landsd.gov.hk/en/images/doc/ex-gratia.pdf>). For reader’s easy reference, some brief relevant information is extracted below:

Ex-gratia Compensation for Private Land in the New Territories

The New Territories is divided into four compensation zones. The compensation rates for different zones are expressed in terms of varying percentages of the basic rates for agricultural and building land. The ex-gratia compensation zones are shown on a Zonal Plan for Calculation of Compensation Rates which is available for inspection at all New Territories District Lands Offices.

- i) For owners of agricultural land, compensation may be offered based on the relevant ex-gratia compensation rates in final settlement of all statutory claims under the relevant resumption ordinance.
- ii) For owners of building land, compensation offers may be made based on professional valuation plus an ex-gratia compensation at the relevant zonal rate.

If owners are dissatisfied with the ex-gratia compensation offered by Government, they may opt for statutory compensation.

Ex-gratia Allowances for Village House Removals in the New Territories

Indigenous villagers in the New Territories or non-indigenous villagers who owned building lot since before World War II or by succession may be provided with alternative sites or houses and/or ex-gratia allowances when their building lots are resumed.

Topical Note 4 – Implementation Mechanism

Other Ex-gratia Allowances for Tenants and Occupiers

There are other ex-gratia allowances payable to the people affected by acquisition projects such as to:

- occupiers of legal/permitted domestic properties
- genuine farmers
- legal commercial/ industrial properties
- fishery undertakings
- Shops, workshops, godowns, slipways, schools and churches, and ornamental fish breeding undertakings

Other Ex-gratia Allowances for Indigenous Villagers/Villages

- removal of graves, urns (Kam Taps) and shrines
- 'Tun Fu' payment

For details, please refer to the relevant pamphlet issued by the Lands Department.

Topical Note 4 – Implementation Mechanism

Appendix B

Private Sector Participation Approaches

With reference to overseas and past experiences, some possible private sector participation concepts and our observations on them are listed below. However, the list is by no means exhaustive nor is there any commitment to adopt any approach at this stage. The list is appended for the purpose of facilitating public discussion only.

	Private Sector Participation Concepts	Observations	Remark
1.	<p>Land Pooling/ Land Readjustment -</p> <p>A group of adjoining landowners forms a partnership for joint development and subdivision of their land with project costs and profits being shared among them.</p>	<ul style="list-style-type: none"> Involve large number of participants and even absentee owners, long discussion and long development process. New Legislations may be required to empower the implementing agent if the Government participates in this approach. 	<ul style="list-style-type: none"> This mode would be more effective in a development site with limited number of landowners only.
2.	<p>Development Share/ Convertible Bond -</p> <p>The arrangement involves forming a new development company to issue shares for setting-up business. The landowners whose land is to be resumed are issued with shares. Holder of shares will be given an annual interest payment and will exchange such shares for full cash compensation from the company upon completion of the development using revenue from the development. It is a contractual arrangement between an individual landowner and the development company.</p>	<ul style="list-style-type: none"> New/amended Legislations may be required to empower the implementing agent (development company). Asset value must be large enough to redeem all issued development shares and/ or convertible bonds. 	<ul style="list-style-type: none"> The mode could be favoured by small landowners if they consider that the overall return to accept development share/ convertible bond is larger than cash compensation.
3.	<p>Land Exchange (within NDAs)-</p> <p>To exchange either the landowner's land or Government land with the landowner for his land (in situ or non in-situ).</p>	<ul style="list-style-type: none"> Given that the developable land within NDAs is mainly privately owned, there is limited chance to proceed with land exchange before some land resumption has been carried out by the Government. Uncertainty on development programme since land exchange is to be initiated by landowners. Challenge of favouritism for some landowners. 	<ul style="list-style-type: none"> This mode would be more effective for landowners with sites of developable size.

Topical Note 4 – Implementation Mechanism

	Private Sector Participation Concepts	Observations	Remark
4.	<p>Development Entitlement -</p> <p>Landowners whose land is to be resumed are issued with certificates which entitle the bearer to cash compensation or to bid for sites in the KTN, FLN, and PC/TKL NDAs before the deadline for redemption.</p>	<ul style="list-style-type: none"> • Drawing experiences from Hong Kong's previous land administration practice on land exchange entitlement or Letter A/B, there is a need to have good control of the issued amount of development entitlement to make sure that there are sufficient tendered sites to recoup all issued development entitlements within reasonable time frame • Difficult to assess a fair exchange ratio which is to be acceptable to all private lot owners • Absence of large tracts of land reclaimed from the foreshore unlike other new town developments so suitable sites for redemption are limited 	<ul style="list-style-type: none"> • This mode may apply to both large and small land landowners
5.	<p>Negotiation Approach -</p> <p>The Government launches an open exercise to invite submission of private sector development proposals before NDAs development is finalised. The boundaries of land uses would be adjusted suitably after taking into account merits of individual proposals.</p> <p>With certain Government assistance, the private sector and the Government could work together to consolidate problematic land*.</p>	<ul style="list-style-type: none"> • Layout plans have to be drawn/ adjusted according to land ownership. The configuration of private land consolidation may not be conducive to a reasonable and comprehensive layout, and hence may not come up with acceptable schemes. The adjustment may also be subject to the challenge of favouritism. • For Government assisted approach, the assistance given to private development may be subject to the challenge of favouritism. 	<ul style="list-style-type: none"> • This mode would be more effective for land owners with sites of developable size.

Topical Note 4 – Implementation Mechanism

	Private Sector Participation Concepts	Observations	Remark
6.	<p>Time Limited Approach -</p> <p>The Government would specify a “limited period” for the private developers to amalgamate private land according to an adopted layout. Beyond the period, the Government would resume the land for implementation of NDAs.</p> <p>The approach could be modified to build in certain Government assistance on consolidation of problematic land*.</p>	<ul style="list-style-type: none"> • May delay the implementation programme • The effectiveness of this approach is in doubt given that developers might have purchased private land to amalgamate this land over years, the extent of additional land which could be amalgamated may be limited. • The developer might also have assembled land according to an adopted plan but was still unable to amalgamate all land in the development zone. It would be controversial either for Government to assist resuming the remaining land for the developer, or resuming the developer’s land for only one reason that the developer was not able to resume all land within the development zone. • For Government assisted approach, the assistance given to private development may be subject to the challenge of favouritism. 	<ul style="list-style-type: none"> • This mode could apply to sites with fragmented ownership.
7.	<p>Pilot Project –</p> <p>Where the planned land use requires a substantial critical mass, such as a business park or a technology park, but the returns to cover land assembly costs is uncertain, the public sector may consider developing a pilot project in the limited government land portion or adjacent resumed private land, and at the same time providing infrastructures to the remaining parts of the planned area.</p>	<ul style="list-style-type: none"> • May delay the implementation programme as developers will wait and see whether the scheme is successful or not • Pending the fruitful result of the programme, large piece of developable land may be lying idle 	<ul style="list-style-type: none"> • This mode may be applicable to high-value-added business park type development.
8.	<p>Site and Service Approach –</p> <p>The Government will provide essential infrastructures including access roads etc. for some proposed land uses and the Government will resume land if necessary.</p>	<ul style="list-style-type: none"> • May delay the implementation programme as there is no certainty of development by private sector 	<ul style="list-style-type: none"> • This approach is applicable to development area where there is no urgency to develop the whole area immediately.

* Problematic land refers to land being not transferable in the private market. This could be land involving “Tso/Tong”, absentee landowners and defective titles.