

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

房屋及規劃地政局
香港花園道美利大廈



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18 November 2004

Clerk to LegCo Panel on Housing
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Miss Sarah Yuen)

The Alliance of Tenants of Old District
Submission on Landlord and Tenant (Consolidation)
(Amendment) Ordinance 2004

Thank you for your letter of 18 October relaying to us the concerns expressed by the Alliance of Tenants of Old District over the implementation of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (Amendment Ordinance). We wish to respond as follows:

Protecting tenants in redevelopment areas against eviction by landlords

The removal of the security of tenure provisions was intended to enable the rental market to operate as freely as possible as before and to achieve a better balance between the interests of landlords and tenants. As the supply of flats has become increasingly sufficient and rental level has ceased shooting up, providing security of tenure is no longer compatible with the present needs and would impede the free operation of private domestic

property market. In view of the above reasons and after extensive public consultations, the Government put forward a bill on the removal of the security of tenure provisions. Following comprehensive deliberations by the relevant Bills Committee, the Legislative Council approved the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 on 30 June this year to remove the security of tenure provisions. The new ordinance was gazetted and came into force on 9 July 2004.

Transitional arrangements have been introduced under the Amendment Ordinance to ensure that tenants whose domestic tenancies were already in existence before the above new ordinance came into effect can have enough time to make adjustments. The landlords of these tenancies who would like to terminate the lease upon expiry have to serve a "transitional termination notice" at least 12 months prior to the date they intend to terminate the tenancies. Such an arrangement allows the tenants affected to have enough time to arrange for re-accommodation. For tenancies that are signed after the enactment of the ordinance, details on the notice periods are to be determined between the landlords and the tenants and will be free from intervention by legislation.

For tenants who have actual difficulties, the Housing Authority, the Social Welfare Department and other non-government organizations have provided a safety net to offer assistance to tenants with urgent needs so as to ensure that they will not become homeless after the eviction by the landlords.

Affected tenants who meet the eligibility for public housing can apply for public housing flats. They can also apply to the Housing Authority for moving into transit centres located in the New Territories for a stay not longer than three months. During this period, if they are genuinely homeless and can meet the eligibility for public housing, they will be rehoused to interim housing flats, pending the allocation of public housing flats.

Families in need may also apply for compassionate rehousing or other assistance from the 66 family services centres / integrated family services centres of the Social Welfare Department and other non-government organizations such as the Hong Kong Family Welfare Society, the Caritas-Hong Kong, the Christian Family Service Centre and the Neighbourhood Advice Action Council.

Exemption from Comprehensive Means Test

The Alliance has requested exemption from the Comprehensive

Means Test. Subsidised public rental housing is provided to low-income families who cannot afford private-sector accommodation. The Housing Authority has therefore applied a set of means eligibility criteria to all prospective applicants for public rental housing. The income and asset limits under the Comprehensive Means Test are set with reference to the overall affordability of low-income families in renting private flats and their spending patterns. Public rental housing is a valuable public resource and the Housing Authority must ensure its fair allocation so that available resources are focused only on those in genuine need of housing assistance. We therefore consider the continued consistent application of the Comprehensive Means Test necessary. Nevertheless, for individual families who require accommodation in public housing due to special health or personal reasons, we will arrange compassionate rehousing to cater for their needs as far as possible on the basis of Social Welfare Department's recommendation.

Calculation of Ex-gratia Cash Payment

The Alliance has also expressed concern about the calculation of ex-gratia cash payment to be provided by the Urban Renewal Authority to the affected tenants. The Administration has recently provided a paper to the Legislative Council Panel on Planning, Lands and Works to explain the matter in detail. The paper is attached.

Yours sincerely,

(Miss Joey LAM)
for Secretary for Housing, Planning and Lands

Annex

LEGISLATIVE COUNCIL PANEL ON PLANNING, LANDS AND WORKS

Compensation Arrangements for Land Resumption for Urban Renewal Projects

PURPOSE

This paper sets out the compensation arrangements of the Urban Renewal Authority (URA) for its redevelopment projects in respect of domestic tenants after the enactment of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (LTO 2004) and the compensation policies for owners.

COMPENSATION FOR URA REDEVELOPMENT PROJECTS

Domestic Tenants

2. During the deliberation in the Bills Committee on the Landlord and Tenant (Consolidation) (Amendment) Bill 2003 (Amendment Bill), there were concerns about the URA's compensation arrangements for eligible domestic tenants in the remaining projects already announced by the former Land Development Corporation (in January 1998) after the proposed removal of the security of tenure and the statutory compensation. To address these concerns, the URA undertook at the passage of the Amendment Bill that the URA would provide rehousing or ex-gratia cash payment to these eligible domestic tenants affected by its redevelopment work through administrative measures. The amount of such ex-gratia cash payment would be calculated on the basis of the previous formula in force before the enactment of the LTO 2004. In addition, the URA would retain the minimum payments (\$70,000 for a one-person household and \$80,000 for a two-person or larger household). The URA has now worked out the implementation details for the above compensation arrangement and has set them out in paragraphs 7 to 12 of URA's paper at Annex.

Owners

3. The current URA's compensation policies for owners affected by its redevelopment projects broadly follow the decision of the Finance Committee of the Legislative Council in March 2001 on the "Home Purchase Allowance and Ex gratia Allowance for Owners and Legal Occupiers of Commercial Properties", details of which are set out in paragraphs 13 to 20 of URA's paper at Annex.

4. During the Finance Committee's consideration of the compensation package in 2001, there were suggestions from some quarters of the community that the URA should launch a pilot "flat-for-flat" exchange scheme. In accordance with its undertaking, the former Planning and Lands Bureau has passed the relevant suggestion to the URA for consideration. The URA has set out its analysis and position on the flat-for-flat scheme in paragraph 17 of its paper at Annex. The URA will keep under review the feasibility of introducing a flat-for-flat scheme for owners and will continue to render assistance to domestic owners who are in need of help. For example, the social service teams engaged by URA will offer assistance to owners in identifying and moving to replacement flats.

5. As regards the request for "shop-for-shop" exchange, it is to be noted that this was not raised in the context of previous discussions over compensation arrangements in 2001. This of course does not imply that the suggestion cannot be examined. The URA has outlined the practicable difficulties and complexities of the exchange scheme in paragraph 20 of its paper at Annex. Nevertheless, the URA has been and will continue to discuss with affected shop owners/operators in its redevelopment projects with a view to exploring practicable options to assist them in relocating and continuing their business.

**Compensation Arrangements for
Land Resumption for Urban Renewal Projects**

Introduction

This paper sets out the URA's proposed arrangements for domestic tenants affected by its redevelopment projects following the abolition of security of tenure and statutory compensation under the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (LTO 2004) and the compensation policies for owners of properties affected by redevelopment projects.

Proposed Arrangements for Domestic Tenants

2. The LTO 2004 was enacted on 9 July 2004. The main changes are:

- Security of tenure has been abolished.
- Statutory compensation has been abolished.
- For tenancies current on the effective date (9 July 2004) landlords must serve a Transitional Termination Notice (TTN) of at least 12 months from the end of the tenancy period before recovering the property.

3. In the Bills Committee on the Landlord and Tenant (Consolidation) (Amendment) Bill 2003, the URA has undertaken that current policies will apply in projects already launched before the enactment of the LTO 2004 and that, for the remaining projects announced by the former Land Development Corporation (LDC) in January 1998 but not yet commenced, we will continue to base payments on the previous formula in force before the LTO 2004 on an ex-gratia basis and retain the existing minimum payments (\$70,000 for a one-person household and \$80,000 for a two-person or larger household).

4. The URA has also indicated that policy for new projects carried out under the Urban Renewal Authority Ordinance (URAO) (i.e. other than ex-LDC projects) would comprise an option between re-housing (for

those eligible) and cash compensation based on $3.5 \times$ the rateable value (RV) of the premises occupied.

5. In drawing up proposals for payments to tenants in the remaining ex-LDC projects, the URA has been concerned to treat tenants as fairly as possible while balancing the interests of both tenants and landlords. The following principles have been adopted:

- Domestic tenants should receive payments based on the previous formula in force before LTO 2004 even if they are required to leave by their landlords, provided they have fulfilled their obligations under their tenancy agreements, particularly the payment of rent, up to that point.
- While landlords have a legal right to recover their properties upon expiry of the tenancies and TTNs, URA compensation policies should be such that they will not be better off by doing so. The policies are designed to be incentive-neutral.
- As far as possible, policies should be designed to prevent abuses.

New URAO Projects

6. For new projects launched under the URAO (i.e. other than the announced ex-LDC projects) the URA will adopt the following policies:

- Re-housing (subject to eligibility) or
- $3 \times RV$ plus a further $0.5 \times RV$ as an incentive to encourage early acceptance, subject to
- Minimum payments of \$70,000 for a one-person household and \$80,000 for two-person and larger households (i.e. as under current policy).

To ensure the effectiveness of its policy and to guard against possible abuses of the ex-gratia cash payment policy, the URA Board may adjust the above policies to reflect prevailing circumstances and the requirements of individual projects.

Ex-LDC Projects

7. In the ex-LDC projects, it is likely that some domestic tenants currently living in the project areas will be asked to leave by their landlords when their tenancies and the 12-month TTNs expire. It should be noted, however, that mere service of the TTN does not necessarily indicate that a landlord will require the tenant to leave when the notice expires. Service of the TTN is now a statutory requirement but landlords may enter into new tenancy agreements with tenants at market rents following expiry of their current tenancies and the TTNs. However, where tenants are required to move before implementation of the project, the URA proposes the arrangements set out in paragraphs below.

8. There will therefore be three categories of domestic tenants:

- 1) Pre - 9 July 2004 residents who are still living in the project area and entitled to the TTN (which may or may not have been served and, if served, may have expired after 9 July 2005).
- 2) Pre - 9 July 2004 residents who have been required to move out by their landlords on expiry of their tenancies and the TTNs before clearance.
- 3) Residents who moved in after 9 July 2004, perhaps to replace category 2 tenants, and are not covered by the TTN provision.

9. The URA proposes the following arrangements for the three groups upon redevelopment by URA:

- Category 1 tenants will be offered re-housing (if eligible) or ex-gratia payments based on the previous LTO formula plus an incentive of 70% (subject to a maximum of \$200,000) if the tenant agrees to move out by a set date. Minimum payments of \$70,000 for a one-person household and \$80,000 for a two-person or larger household will apply.

- Category 2 tenants will be offered re-housing (if eligible) or ex-gratia payments based on the previous LTO formula. The same minimum payments will apply.
- Category 3 tenants who move in before the occupancy survey will be offered re-housing (if eligible) or ex-gratia payments based on $3 \times RV$ plus $0.5 \times RV$ incentive as for new URAO projects. The same minimum payments will apply.
- Tenants who move out of the project area to public housing before the project commences will not be offered further assistance by the URA as their housing needs have already been met.
- Tenants who moved out voluntarily before the project commenced and before the expiry of their tenancy or earlier than three months before expiry of the TTN (if served) will not be offered assistance by the URA.

10. Arrangements for the three categories of tenants may therefore be summarized as follows:

	Required to move out under LTO	Still resident at clearance
Pre-9 July 2004	Cat 2 Pre-LTO 2004 formula* or re-housing (if eligible)	Cat 1 Pre- LTO 2004 formula + 70%* ⁺ or re-housing (if eligible)
Post 9 July 2004		Cat 3 $3 \times RV$ plus $0.5 \times RV$ * or re-housing (if eligible)

* Subject to minimum payments

⁺ Subject to maximum payment of \$200,000

11. In addition, certain measures are proposed to prevent abuses. In particular, the URA is concerned that landlords may use the abolition of security of tenure to require existing tenants to move out and then sub-divide the property and let it to multiple tenants in order to obtain multiple minimum payments. This would lead to the first tenant being forced out. To discourage this practice, the URA will only pay a maximum of 3.5 x RV in respect of properties where original (category 2) tenants have moved out and been replaced by a greater number of new (category 3) tenants. No minimum payments will be paid in these cases. The original category 2 tenants will, however, receive payments on the LTO basis provided there is no evidence that they were involved in an attempt to abuse the URA's compensation policies.

12. Also, as indicated to the Bills Committee, the URA reserves the general right not to make payments to landlords or tenants where there is evidence that compensation policies are being abused. Policies may be reviewed by the URA Board from time to time to reflect current circumstances and the needs of individual projects. In cases where individual tenants are dissatisfied with the decision of the URA, the case may be referred to the URA's Review Committee for examination. The Review Committee comprises a number of panels with three members; a URA Board member as Chairman and two co-opted members, who have no other connection with the URA to ensure impartiality.

Compensation and Ex-gratia Allowances for Property Owners

13. The URA's policies on compensation and ex-gratia allowances for property owners are closely based on those applied by the Government in its resumption exercises. Policies on ex-gratia allowances are set by the Finance Committee of the Legislative Council. The packages offered for domestic and non-domestic properties (principally shops) are summarized below.

Domestic Properties

14. Offers for owner-occupied domestic flats comprise the market value of the flat plus a Home Purchase Allowance (HPA), which is the difference between the value of the owner's flat and the value of a notional seven-year-old replacement flat in the same locality. Owners of

tenanted and vacant flats are offered market value plus a Supplementary Allowance of 50% of the HPA.

15. In assessing the HPA rate for each project, the URA appoints seven professional valuation firms by open tender. The firms are asked to assess the HPA rate in accordance with their professional standards and guidelines issued by the Director of Lands. The HPA rate for the project is then determined by taking a weighted average of the seven valuations.

16. In addition, owners of domestic flats are offered an ex-gratia Incidental Costs Allowance (ICA) currently set at \$92,500 for owner occupiers and \$70,700 for owners of tenanted and vacant flats. The ICA is adjusted from time to time in line with inflation/deflation. The ICA is designed to assist owners with costs such as removal, legal fees and stamp duty on a replacement flat.

17. The provision of flat-for-flat compensation for domestic property owners requires a stock of premises for this purpose. The URA has no such stock and it would be very difficult and costly to provide one. Even if the URA could offer such flats, there is no guarantee that they would be attractive to owners. Financial compensation is designed to give owners maximum flexibility in identifying replacement premises which best suit their needs and preferences.

Non-domestic Properties

18. Owners of non-domestic properties are offered the market value of their properties plus ex-gratia allowances in line with Government policy. Owner-occupiers receive four times the rateable value of the property ($4 \times RV$) while owners of tenanted or vacant properties receive $1 \times RV$ ($3 \times RV$ is offered to the tenant). In the projects announced by the former LDC, the URA offers owner-occupiers the higher of 35% of the market value (in line with previous LDC policy) or $4 \times RV$. Similarly, owners of tenanted properties are offered the higher of 10% of market value or $1 \times RV$.

19. These payments are in place of business loss claims, which can be made under the Lands Resumption Ordinance. If a business operator feels that the ex-gratia amount offered is not adequate to cover the business loss, he may make a claim to the Lands Tribunal. During the

acquisition process, owners can also make a claim for business loss to URA.

20. Similar considerations apply to the provision of shop-for-shop compensation for shop operators as to flat-for-flat compensation for domestic property owners. The URA has no stock of shops for this use. Also, considerations of size, frontage, location etc. are of great importance for commercial premises. Cash compensation is a much more flexible way to allow operators to find properties which best suit their particular needs.

Urban Renewal Authority
November 2004