

**Legislative Council Panel on Transport
Subcommittee on Matters Relating to Railways**

**Funding Arrangement of The Hong Kong Section of
Guangzhou-Shenzhen-Hong Kong Express Rail Link**

In order to take forward the Hong Kong section of the XRL project, the Administration wishes to submit in the near future for the Public Works Subcommittee (PWSC)'s recommendation to Finance Committee's approval for the following funding applications:

- (a) the construction of the railway works for the Hong Kong section of the XRL (at an estimated cost of \$55.0 billion in money-of-the-day prices);
- (b) the construction of the non-railway works for the Hong Kong section of the XRL (at an estimated cost of 11.8 billion in money-of-the-day prices); and
- (c) special ex-gratia payments in relation to the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (at an estimated cost of \$86 million).

2. The draft PWSC paper on (c) is attached at **Annex** for Members' consideration. The draft PWSC papers on (a) and (b) will follow in due course.

**Transport and Housing Bureau
November 2009**

ITEM FOR PUBLIC WORKS SUBCOMMITTEE OF FINANCE COMMITTEE

HEAD 701 – LAND ACQUISITION

Civil Engineering – Land Acquisition

1035CA – Special ex-gratia payments in relation to the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail link

Members are invited to recommend to Finance Committee the payment of ex-gratia cash allowance and domestic removal allowance at a total estimated cost of \$86 million to households affected by land resumption and clearance required under the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL).

PROBLEM

We need to clear Choi Yuen Tsuen (CYT) in Yuen Long and other areas in the New Territories to make way for the implementation of the Hong Kong section of the XRL in a timely manner.

PROPOSAL

2. The Secretary for Transport and Housing proposes to provide ex-gratia cash allowance and domestic removal allowance as part of a special ex-gratia rehousing package exclusively for eligible residents of CYT and other areas in the New Territories affected by the land resumption and clearance of sites required under the Hong Kong section of the XRL project. The total cost of the proposed ex-gratia cash allowance and domestic removal allowance under the special ex-gratia rehousing package is estimated at \$86 million.

JUSTIFICATION

3. The Hong Kong section of the XRL connects us directly to the national high-speed rail network. It is of great strategic importance to both Hong Kong and the development of our country. As the Mainland section will be completed in 2012, any delay in the Hong Kong section will defer the realization of economic benefits of the project. The loss in direct economic benefits to passengers in terms of savings in journey time etc is estimated to be in the region of \$5 million per day of delay. This has not taken into account the loss in economic activities (such as more business opportunities for our professional service sectors, as well as more Mainland visitors for our tourism, retail and catering sectors) facilitated by shorter cross-boundary journey time enabled by the XRL, which is difficult to quantify.

4. Vacating the required sites in the New Territories, including CYT, is on the critical path of the construction of the Hong Kong section of the XRL. In view of the need for early implementation of this unique and strategically important project, and the consequential overriding public interest, we propose that in addition to the ex-gratia compensation and rehousing arrangement available under existing policy (set out in the note on “Present Compensation and Rehousing Arrangements under Existing Policy for Land Resumption and Site Clearance in the New Territories” at **Enclosure 1**), a special ex-gratia rehousing package (details at **Enclosure 2**) be provided. It should be emphasized that the intention of the arrangement is not to compensate for the loss of structures but rather to provide ex-gratia assistance for long-term residence having regard to the circumstances surrounding the residents at CYT and other areas affected by land resumption and clearance of the sites required under the Hong Kong section of the XRL project (see the “Background” section in paragraphs 29 to 40 below). We hope that the package will facilitate smooth clearance of CYT and other relevant sites, thereby enabling timely implementation and completion of the project.

Proposed special ex-gratia rehousing package exclusively for households affected by the land resumption and clearance of the sites required under the Hong Kong section of the XRL project

5. The cash allowance element of the package comprises two components, i.e. Domestic Removal Allowance (DRA) for all affected households and Special Assistance (in the form of an ex-gratia cash allowance (EGCA)) for Qualified Households (as defined in paragraph 12 below).

(a) Domestic Removal Allowance

6. Under the existing policy, only occupiers of domestic structures covered by the 1982 Squatter Structure Survey (“1982 surveyed squatters”) are eligible for a DRA ranging approximately from \$3,000 to 10,000, depending mainly on the size of the family, to help them meet the initial cost of moving. Rates of the DRA are set out in **Enclosure 3**.

7. We propose that all households affected by the Hong Kong section of the XRL project and covered by the pre-clearance survey on 11 November 2008 be eligible for the DRA. Extending the DRA to all affected households will encourage early vacation and make way for the timely handover of sites for the implementation of the XRL project.

(b) Special Assistance for Qualified Households

8. To meet their special rehousing needs, we propose that Qualified Households affected by the clearance exercise for the Hong Kong section of the XRL project be offered one of the following Special Assistance options –

- (a) an EGCA of \$600,000 (the “EGCA-only option”); or
- (b) an EGCA of \$500,000 and an opportunity to purchase a surplus Home Ownership Scheme (HOS) flat without being subject to the Comprehensive Means Test (CMT) (the “EGCA-HOS option”) ¹.

¹ Subject to the agreement of the Housing Authority (HA), Qualified Households eligible for the EGCA will be given priority to purchase surplus HOS flats in the New Territories that will be put up for sale in due course. The surplus HOS flats to be available for selection by Qualified Households would be designated by the HA. If there are strong justifications, the Secretary for Transport and Housing may allow the Qualified Households to choose a surplus HOS flat in other districts on a case-by-case basis.

9. Recipients of any of the above Special Assistance would have to give up certain entitlement to compensation and rehousing arrangements under existing policy (details are set out in paragraphs 13 to 15 of the note at **Enclosure 2**).

Eligibility Criteria for the Special Assistance for Qualified Households

10. To contain the squatter problem, the Government conducted territory-wide surveys on squatters in 1982 and their occupiers in 1984/85. The occupation of these squatter structures is tolerated until they are subject to clearance because of a public project, safety or environmental concerns.

11. As a matter of principle, tolerated squatter structures for residential purpose should be domestic structures covered by the 1982 Squatter Structure Survey or licensed domestic structures² (“the 1982 domestic structure requirement”), while squatter occupiers should be covered by the 1984/85 Squatter Occupancy Survey (“the 1984/85 occupancy requirement”). The two requirements, being the cornerstone of the prevailing squatter control policy, would be kept intact and form the two main eligibility criteria of the proposed special ex-gratia rehousing package for households affected by the land resumption and site clearance for the Hong Kong section of the XRL project.

12. Details of the eligibility criteria for being a Qualified Household are set out in paragraphs 7 to 10 of the note at **Enclosure 2**. In gist, a Qualified Household eligible for the proposed Special Assistance should meet the following conditions –

- (a) the household should reside in an affected structure at the date of the pre-clearance survey on 11 November 2008;
- (b) the affected structure should be either a 1982 surveyed domestic squatter or a structure licensed for domestic usage which is not built on a piece of building land;

² Licensed domestic structures refer to domestic structures on unleased Government land or on private agricultural land, which were built or have existed in compliance with a licence, modification of tenancy, or other similar form of Government permission issued by the Lands Department. The Government has stopped issuing new licenses except for a few regularization cases since 1982. Therefore, in general, a licensed structure should be a pre-1982 structure.

- (c) the household should be covered by the 1984/85 Squatter Occupancy Survey or can produce evidence proving that it has resided in the affected structure for the same duration;
- (d) no household member should own or co-own any domestic properties in Hong Kong, or own more than 50% share in any company that owns domestic property in Hong Kong, or have entered into any agreement to purchase domestic property from the date of the pre-clearance survey up to the date of receipt of the Special Assistance;
- (e) no household member should be granted any other form of ex-gratia allowance in respect of the same structure upon receipt of the Special Assistance except for the DRA as referred to in paragraphs 6 and 7 above;
- (f) no household member should at present be enjoying any form of subsidised housing or related benefits, or be subject to debarment as a result of previous enjoyment of any form of subsidised housing or related benefits;
- (g) all household members choosing the EGCA-only option should undertake not to apply for any form of subsidised housing or related benefits for a period of three years counting from the date of receipt of the Special Assistance;
- (h) all household members choosing the EGCA-HOS option should undertake not to apply for any form of subsidised housing or related benefits once and for all unless under very exceptional circumstances; and
- (i) households should apply for the Special Assistance and move out of the clearance site before specified deadlines.

13. If more than one household reside in one licensed domestic structure or 1982 surveyed domestic squatter, they will be collectively considered as one Qualified Household. On the other hand, a nucleus family, comprising parents and their dependent children, will be considered as one Qualified Household even if it occupies more than one licensed domestic structure or one 1982 surveyed

squatter, unless the Director of Lands considers otherwise based on the circumstances of the household(s) involved.

Discretion of Secretary for Transport and Housing

14. As mentioned in paragraph 11 above, the 1984/85 occupancy and the 1982 domestic structure requirements, which are the cornerstones of the squatter control policy, will be adopted in determining the eligibility for the Special Assistance. However, to enhance the flexibility of this special rehousing package in providing assistance to other households which have special rehousing needs but do not fully comply with the eligibility criteria above, the Secretary for Transport and Housing is authorized to determine whether such a household can be entitled to the Special Assistance as if it is a Qualified Household. The amount of EGCA granted to these households would range from \$300,000 to \$600,000 for the EGCA-only option, and from \$250,000 to \$500,000 for the EGCA-HOS option.

15. To this end, the Secretary for Transport and Housing will decide, at her discretion on a case-by-case basis, in respect of an application from a household –

- (a) whether a household which does not meet the requirements to be a Qualified Household should be eligible to receive the Special Assistance;
- (b) if such a household is eligible, whether and to what extent the amount of ex-gratia cash allowance to be offered to the household should be reduced; and
- (c) whether to allow a Qualified Household that elects the EGCA-HOS option to select a surplus HOS flat in other districts on compassionate ground.

16. We will set up an Inter-departmental Advisory Panel to advise the Secretary for Transport and Housing in exercising the above discretions. The households will be given the opportunity to make written representation to the Panel and the Secretary for consideration. The decision of the Secretary shall be final. In exercising the discretion, the Secretary shall consider, but is not bound by guidelines listed in paragraph 27 of **Enclosure 2**. This Panel may also

consider other cases that may require discretionary handling, e.g. Public Rental Housing (PRH) allocation. The details of the discretion of the Secretary for Transport and Housing and mechanism for her to exercise the discretion are set out in detail in paragraphs 17 to 36 of the note at **Enclosure 2**.

Adequacy of Assistance to be Provided to Affected Residents

17. We believe that the special ex-gratia rehousing package, together with the existing compensation and rehousing arrangement under existing policy (at **Enclosure 1**), should provide suitable, flexible and adequate assistance to the affected villagers. Depending on whether they meet the relevant eligibility criteria, the affected residents may have the following choices –

- (a) owners of agricultural land – the applicable ex-gratia zonal compensation rate would be upgraded from Zone C rate to Zone A rate (see paragraph 36 of the “Background” section below);
- (b) residents who are genuine farmers – they may apply for a short term waiver to build a domestic structure (400 sq. ft. large and 17 ft high) on agricultural land purchased or rented on their own. If they are Qualified Households, the EGCA will assist them to meet the costs of the domestic structure and some farm facilities;
- (c) residents who prefer to live in PRH – if they meet the CMT, other PRH criteria and the 1982 domestic structure requirement, they would have priority in rehousing to PRH;
- (d) residents who would like to purchase a surplus HOS flat – if they are Qualified Households, they do not need to meet the CMT. The EGCA will assist them to meet the cost of buying a surplus HOS flat in the New Territories;
- (e) residents who prefer private accommodation in a rural environment – if they are Qualified Households, the EGCA will assist them to meet the cost of renting or buying such accommodation;

- (f) residents who do not meet the Qualified Household criteria – the Secretary for Transport and Housing may exercise discretion to provide suitable assistance to them; and
- (g) all households would receive domestic removal allowance to meet the initial moving costs.

18. We consider that the special ex-gratia rehousing package will be conducive to smooth clearance and resumption of the land required for the XRL project.. In particular, the discretion of the Secretary for Transport and Housing provides sufficient flexibility to handle households with special circumstances. Further enhancing the offer will be unfair to taxpayers. We will emphasize to the affected households that the terms and conditions in the special package are non-negotiable and it is strictly offered on an ex-gratia basis.

FINANCIAL IMPLICATIONS

19. Based on the information obtained from the pre-clearance survey conducted on 11 November 2008, we estimate the total cost of the ex-gratia cash allowance and domestic removal allowance of the special ex-gratia rehousing package to be \$86 million, made up as follows –

	\$ million
(a) Domestic Removal Allowance (at rates set out in Enclosure 3) ³	1.6
(b) EGCA of Special Assistance ⁴	84.0
	85.6
Sub-total	85.6

³ Based on information available to us so far, it is estimated that there are about 150 households in CYT and 10 households in other areas in the New Territories affected by land resumption and clearance of site under the Hong Kong section of the XRL project. The estimated cost of \$1.6 million is based on the assumption that all affected households will get the maximum amount of DRA (i.e. \$10,276) without netting off those who are already eligible under the existing compensation and rehousing policy.

⁴ Based on information available to us so far, the number of temporary structures being used for domestic purpose in CYT is about 130 and that in other places is about 10. The estimated cost of \$84 million is based on the assumption that all Qualified Households of these structures would obtain the maximum amount of EGCA of \$600,000 per household.

(c) Provision for contingency	0.4
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Total	86.0
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20. The proposed provision of ex-gratia cash allowance and domestic removal allowance carries no recurrent implications.

PUBLIC CONSULTATION

21. CYT villagers are the most affected group of the XRL project, as the village has to be vacated and cleared for building the emergency rescue station (ERS) and stabling sidings (SSS). We had extensive communication with the villagers. The Secretary for Transport and Housing visited CYT, meeting different groups of villagers and listening to their concerns. The Under Secretary for Transport and Housing has also made many visits to CYT and met with villagers. During the period from February to May 2009, the Highways Department, Lands Department, other concerned departments and MTR Corporation Limited met with CYT villagers, either individually or in small groups, for more than 40 times to understand their concerns and explain to them details of the Hong Kong section of XRL.

22. Since June this year, we delivered six issues of the “Newsletter for Choi Yuen Tsuen Residents” and have held six public fora with CYT residents to listen to their views, explain to them the alignment and site selection considerations, and update them on the latest development of the Hong Kong section of the XRL project. In order to better understand the needs of individual residents so as to design a reasonable ex-gratia rehousing package for them, we also engaged individual or small groups of residents in the format of informal meetings for more than ten times.

23. Subsequent to the decision of the Chief Executive in Council on the Hong Kong section of XRL project on 20 October 2009, we published a special information note on the compensation and rehousing arrangements applicable to the households affected by the land resumption and clearance for the XRL and organized two public fora in CYT to explain the package and assistance available to affected households. An information centre was also set up in vicinity to CYT for the week that followed to handle enquiries from residents and facilitate them

to understand the arrangements and to ascertain whether they are eligible for compensation or rehousing. A second information note setting out responses to questions frequently raised by residents regarding the arrangements was issued on 6 November 2009.

24. In addition to the communication with CYT residents set out above, since the proposed alignment was gazetted on 28 November and 5 December 2008, we also had dialogue with other specific local communities that would be affected by the proposed alignment. We have met with the representatives of the local communities on various occasions. We have also organized several public briefings to exchange views with the affected parties, including a briefing for the rural community on the compensation and rehousing arrangements held in Pat Heung Rural Committee Office on 20 October 2009, subsequent to the decision of the Chief Executive in Council on the project.

25. Moreover, we also consulted the Subcommittee on Matters Relating to Railways of the Legislative Council Panel on Transport (the Railways Subcommittee) on 14 May, 17 and 23 September 2009 and 22 October 2009. We further consulted the Railways Subcommittee on the special ex-gratia rehousing package in the form of a draft submission to the Public Works Subcommittee on XX November 2009. Members *[To be provided later]*

ENVIRONMENTAL IMPLICATIONS

26. While the proposed provision of ex-gratia cash allowance and domestic removal allowance carries no environmental implications, the Hong Kong section of the XRL project is a designated project under Schedule 2 of the EIA Ordinance and an environmental permit is required for the construction and operation of the Hong Kong Section of the XRL. The Environmental Impact Assessment (EIA) report which was approved by the Director of Environmental Protection (DEP) on 28 September 2009 concluded that the environmental impacts of the Hong Kong Section of the XRL project can be controlled to within the criteria under the EIA Ordinance and the Technical Memorandum on EIA Process. DEP issued an Environmental Permit for the Hong Kong section of the XRL on 16 October 2009. The MTRCL will implement the measures recommended in the approved EIA report and will comply with relevant conditions and other statutory requirements for environmental protection.

HERITAGE IMPLICATIONS

27. The proposed provision of ex-gratia cash allowance and domestic removal allowance carries no heritage implications. Any heritage implications arising from the Hong Kong section of the XRL project have been elaborated in PWSC(2009-10)68 and PWSC(2009-10)69⁵.

LAND ACQUISITION

28. For the entire XRL project, we will resume a total of about 24 hectares (ha) of private land and about 19 ha of underground strata of land for the construction of the XRL project. We will also create rights of temporary occupation for about eight ha of land and for about 0.7 ha of underground strata. About 226 ha of government land in Yuen Long, Tsuen Wan and Kwai Tsing in the New Territories as well as in Kowloon will be affected. The land resumption and clearance will affect a total of about 160 households (including the affected CYT households) involving about 520 residents and about 43 commercial/industrial undertakings. Apart from the proposed \$86 million special ex-gratia payments, other compensation cost for land acquisition and clearance is estimated at \$1,843.5 million, of which a detailed breakdown is provided in PWSC(2009-10)68 on the railway works for the XRL project⁶.

BACKGROUND

29. The Hong Kong section of the XRL will run in a 26-km underground tunnel within Hong Kong. To cater for emergency rescue operations, there will be nine emergency access points (via eight ventilation buildings and one dedicated emergency access point) along the tunnel alignment. In addition, an ERS will be located at Shek Kong of Yuen Long. The ERS is an essential safety facility for a railway tunnel of this length. It would provide an emergency escape exit for passengers and access for rescue teams including firemen in case of fire or other emergencies in the tunnel or trains necessitating passenger evacuation.

30. Shek Kong is the most suitable location for the ERS. It is located approximately midway along the XRL alignment between West Kowloon and Futian Station. Setting up an ERS at Shek Kong will enable effective response to

⁵ Draft to be provided to the Subcommittee in due course.

incidents inside the tunnel. In addition, the Shek Kong site is flat and low-lying, well served by major roads, therefore allowing rescue teams to reach the ERS conveniently and to evacuate train passengers efficiently.

31. While complicated maintenance activities requiring large working space would be conducted in the Mainland, stabling facilities need to be set up in Hong Kong to provide the necessary stabling, routine cleaning and light maintenance services for XRL trains. The current Pat Heung depot of the West Rail Line does not have enough space for this purpose. We thus proposed co-locating the SSS with the ERS so that the two can share common facilities such as access roads, power supply and fire fighting facilities, thereby reducing the land resumption and minimizing the number of households affected.

32. To implement the co-location of the ERS and SSS at Shek Kong, there is a need to clear the site at CYT. The MTRCL has assessed alternative sites proposed by the CYT villagers. The proposals were not feasible due to encroachment into a military airfield, more households being affected, or costing more but having less operational efficiency as a rescue facility. Having considered MTRCL's assessment, the Administration considers there is no better alternative but to clear the CYT site. The site has to be made available for construction works by late 2010 to meet the target of commissioning the Hong Kong section of the XRL in 2015.

33. CYT, though not an indigenous village, has been in existence for at least 40 years. There are about 150 households in CYT spreading broadly across an area of about 27 hectares. Many households have elderly family members who may face great difficulties in adapting to non-village lifestyles after being cleared from CYT. Apart from a few households living in houses on privately owned building land, most villagers in CYT had their houses erected on private agricultural land and a few (about 10 households) on unleased Government land.

34. For the houses in CYT which are built on private agricultural land or on unleased Government land, most of them are licensed domestic structures or 1982 surveyed squatters.

35. The CYT households, like other households in the New Territories, if affected by land resumption or clearance, may be eligible for the compensation or

⁶ Draft to be provided to the Subcommittee in due course.

rehousing arrangements under the existing policy as described in the note at **Enclosure 1**.

36. Land compensation under the existing policy is only available to owners of private land, either building or agricultural land. For land resumption in the New Territories, the Administration adopts an ex-gratia compensation system which consists of four compensation zones, namely A to D. The four zones attract ex-gratia compensation rates in descending order⁷. CYT falls within Zone C if only its location is taken into account. However, in recognition that the Hong Kong section of the XRL project is an essential project with territory-wide significance, the Committee on Planning and Land Development⁸ has agreed to upgrade the ex-gratia compensation rate from Zone C to Zone A. As a result, the ex-gratia compensation rate for building land in CYT has been increased from \$433.75 per sq. ft. to \$1,041 per sq. ft. and for agricultural land from \$219.5 per sq.ft. to \$526.8 per sq. ft.⁹

37. However, the majority of the CYT villagers are not the owners of the land on which they are living. Some built their own houses on unleased Government land or rented land from “Tso Tong” of indigenous villagers or other

⁷ The rate of each zone is set at a different percentage of the basic rate. The current definition of compensation zones A to D and their ex-gratia compensation rates are set out below -

Zone	Definition	Compensation
A	New Town Development Area (namely areas within the New Town boundaries as shown on gazetted outline zoning plans for new towns) and those areas that are affected by essential projects with territory-wide significance.	120% of basic rate for agricultural land. Valuation plus 120% of basic rate for building land.
B	Areas which may be brought under urban development in the near future, either by extension to the adjoining layout areas due to their proximity to such areas or by reason of their known potential for urban development.	75% of basic rate for agricultural land. Valuation plus 75% of basic rate for building land.
C	Areas in which no urban development is planned and which are unlikely to be affected by later extension to layout areas, but where resumption is required sometimes for purposes directly connected with urban layout developments and sometimes for local improvement schemes.	50% of basic rate for agricultural land. Valuation plus 50% of basic rate for building land.
D	Areas not included in other zones	30% of basic rate for agricultural land. Valuation plus 30% of basic rate for building land.

⁸ The Committee on Planning and Land Development is an internal committee chaired by the Secretary for Development and comprising representatives from the relevant Bureaux and Departments. One of its functions is to consider and review policies on production, acquisition, use and disposal of land.

⁹ These are prevailing rates effective from 1 October 2009 and will be subject to 6-monthly review.

private parties. The rest rent structures erected by others. They are therefore not entitled to land compensation under the existing policy. Nonetheless, many of them have lived in the houses as if they were their permanent residence, even though the houses are regarded as temporary or tolerated structures under the existing policy. The residents are worried that the present compensation and rehousing arrangements under the existing policy are unable to help them re-establish residence elsewhere. In particular, some CYT villagers do not prefer to move to PRH even if they may be eligible. They would wish to stay put in their familiar form of rural housing. A number of CYT villagers have been reiterating their objection to land resumption and clearance (不遷不拆). Their views were also reflected in their formal objections lodged against the railway scheme.

Assistance to Households Who are Interested in Continued Farming

38. In considering the case of CYT residents, we are aware that many of the villagers of CYT, especially the elderly members, have been practising farming activities for decades. In this regard, residents who are genuine farmers may, under existing policy, apply for a short term waiver to build a domestic structure (400 sq. ft. large and 17 ft high) on agricultural land purchased or rented on their own to continue farming. If they are Qualified Households, the EGCA will also assist them to meet the costs of the domestic structure and some farm facilities.

39. During the public consultation on the Hong Kong section of the XRL project, we have also noted clear public demand for promoting organic and community farming in Hong Kong, which is a healthy hobby for citizens of all ages and has the potential to develop into a sustainable industry for Hong Kong. In this regard, we consider it appropriate to reform the unused part of the land at the shallow section of the rail tunnel on the northern side of the ERS of the Hong Kong section of the XRL project, about two hectares of land, as shown at **Enclosure 4**, for “community farming” after recovery. If the CYT site can be vacated in late 2010 for construction of the Hong Kong section of the XRL project, we expect that the full piece of land will be recovered and available by end of 2014. We will explore if part of the land may be made available early. The provision of community farming at the site will help meet the villagers’ aspiration to continue their way of living if they so wish.

40. Our current plan is that the community farm site will be leased to a non-governmental organization at nominal rent to operate a community farm on a non-profit making basis. This will help promote organic and community farming in Hong Kong and will allow CYT villagers, especially the elderly villagers, and other members of the public to practise farming as a hobby and/or a source of income. We will work out the implementation details, including compliance with the necessary statutory procedures, in consultation with the relevant departments.

Transport and Housing Bureau
November 2009

**PRESENT COMPENSATION AND REHOUSING
ARRANGEMENTS UNDER EXISTING POLICY
FOR LAND RESUMPTION AND SITE CLEARANCE
IN THE NEW TERRITORIES**

This notes summarizes the present compensation and rehousing arrangements under existing policy for land resumption and site clearance in the New Territories.

Village removal

2. In recognition of the tradition of the New Territories, indigenous villagers or non-indigenous who owned building lots since before World War II or by succession may be provided with village resites when their building lots are resumed.

Agricultural Resite

3. As farming is a traditional occupation of many New Territories residents, special ex-gratia compensation arrangements are made for “farmers” in the New Territories affected by land resumption or clearance. These include among others a crop compensation, assessed on the basis of the market value of the crops under cultivation; an ex-gratia allowance (EGA) for qualified farm structures on private land, assessed at standard rates based on the type and floor area less depreciation value which makes references to the conditions of the affected farm structures; and another EGA for miscellaneous permanent improvements to farms e.g. farm installation and fixtures such as water ponds, wells, fences, irrigation pipes/ditches, boundary walls, gates, bunds and other minor annexures, assessed at standard rates which are based on the standard replacement rates of the items less their depreciated value.

4. A genuine farmer certified by Agriculture, Fisheries and Conservation Department (AFCD) may opt for an EGA in the form of Rehabilitation Allowance (RA) if despite that he is eligible for public rental housing (PRH) he still chooses to continue farming elsewhere and to give up his priority to public housing. Such RA is payable to him based on a standard rate calculated with reference to removal expenses and construction costs of a replacement temporary building.

5. If a genuine farmer chooses to continue farming elsewhere, he would be eligible for agricultural resite, i.e. to rent (or purchase) private agricultural land to continue farming

and as such may apply for a short term waiver to permit erection of a domestic structure of 400 square feet large and 17 feet high on such agricultural land at a rate of \$43 per square metre per annum.

Land compensation

6. Land compensation is available to owners of private land, either building land or agricultural land, if their private land is resumed by the Government for a public purpose. The New Territories is divided into 4 compensation zones (A, B, C and D). For owners of building land, compensation offers may be made based on professional valuation plus an ex-gratia compensation at the relevant zonal rate. For owners of agricultural land, compensation may be offered on the relevant zonal ex-gratia compensation rates. There is no valuation vis-à-vis the structures on agricultural land as agricultural land (unlike the building land) should not accommodate any structures thereon.

Structures

7. The following structures are not eligible for any form of compensation or EGA:
- (a) temporary licensed structures covered by Government licences or by a Modification of Tenancy which generally is recognized as a form of licence; or
 - (b) tolerated unauthorized squatters covered by 1982 Squatter Survey; or
 - (c) simply unauthorized structures.

Occupiers

Domestic Removal Allowance

8. Although the domestic structures per se (except those on building lots and arguably those structures used as farmers' dwelling houses) do not attract compensation or EGA, occupiers of domestic structures surveyed for dwelling purpose in the 1982 Squatter Survey conducted by the then Housing Department are eligible for a Domestic Removal Allowance ranging from \$3,000 – \$10,000, depending mainly on the size of the family, to

help them to meet the initial cost of moving.

Public rental housing (PRH), Interim Housing (IH) and Ex-gratia allowance for permitted occupiers (EGAPO)

9. To meet genuine housing needs, the following types of permitted occupiers at present may be eligible for rehousing to PRH or IH, or for EGAPO in lieu of IH:

- (a) permitted occupiers of a licensed domestic structure on unleased Government land or on private agricultural land are eligible for PRH if they pass the Comprehensive Means Test (CMT) and other relevant criteria as required by the Housing Department. If they are not eligible for PRH but meet the criteria for IH, they will be offered IH or EGAPO in lieu of IH. The amount of EGAPO is calculated based on standard rates with reference to the size of the structure and should allow the occupiers to rent alternative accommodation for three years; and
- (b) permitted occupiers of a domestic squatter structure on private agricultural land or unleased Government land are eligible for PRH if the structure was covered by the 1982 Squatter Structure Survey and the occupiers were registered in the 1984/85 Squatter Occupancy Survey and they pass the CMT and other relevant criteria as required by the Housing Department. If they are not eligible for PRH but meet the criteria for IH, they will be offered IH or EGAPO in lieu of IH.

10. At present, recipients of EGAPO will not be eligible for any other form of EGAs (including Domestic Removal Allowance as referred to in paragraph 8 above) in respect of the same structure, and they will be barred from applying for any form of public housing or related benefits for the next two years. The applicable rate of EGAPO is about \$130,000 for a squatter of 400 square feet based on the applicable rate at the date of pre-clearance survey.

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**SPECIAL EX-GRATIA REHOUSING PACKAGE EXCLUSIVELY
FOR HOUSEHOLDS AFFECTED BY LAND RESUMPTION AND
SITE CLEARANCE REQUIRED UNDER THE HONG KONG
SECTION OF GUANGZHOU-SHENZHEN-HONG KONG
EXPRESS RAIL LINK**

BACKGROUND

The Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) is a strategic project of territory-wide significance. Timely commencement and implementation of the XRL project is in the best interest of Hong Kong.

2. This special ex-gratia rehousing package is exclusively authorized and restricted to households residing at the sites to be resumed and cleared under the XRL project (“affected households”). It will be conducive to smooth resumption, so that the sites required for the XRL project can be cleared as soon as possible for the timely implementation of the XRL project.

3. For the avoidance of doubt, this special ex-gratia rehousing package is not intended to be applicable to squatters or other residents of temporary structures who may be affected by any other land resumption and clearance exercises.

4. The terms and conditions of the special ex-gratia rehousing package set out in the paragraphs below are non-negotiable.

INTERPRETATION

5. Unless the context suggests otherwise –
- a. “licensed domestic structure” means a domestic structure on unleased Government land or on private agricultural land, which was built or has existed in compliance with a licence, modification of tenancy, or other similar form of Government permission issued by the Lands Department (LandsD);
 - b. “1982 surveyed squatter” means a domestic structure covered by the 1982 Squatter Structure Survey;
 - c. “registered occupier” means an occupier of a 1982 surveyed squatter who was registered in the 1984/85 Squatter Occupancy Survey;
 - d. “date of pre-clearance survey” means 11 November 2008;
 - e. “Secretary” means Secretary for Transport and Housing;

- f. “Director” means Director of Lands.

SPECIAL EX-GRATIA REHOUSING PACKAGE

6. This special ex-gratia rehousing package consists of –
- a. Special Assistance for Qualified Households (“Special Assistance”); and
 - b. Domestic Removal Allowance to all affected households.

(A) Special Assistance for Qualified Households

Eligibility Criteria of the Special Assistance

7. A household is regarded as a Qualified Household to receive Special Assistance (as described in paragraph 11 below) if –
- a. it was residing in one of the clearance sites under the XRL project and was covered by the pre-clearance survey conducted by LandsD;
 - b. the affected structure, in which the household is residing, is either a 1982 surveyed squatter or a licensed domestic structure;
 - c. the affected structure is not built on building land; and
 - d. the household is a registered occupier or can produce evidence showing that it has resided in the affected structure mentioned in sub-paragraph (b) above for the same duration prior to the date of pre-clearance survey.
8. A household cannot be a Qualified Household if any member of the household, from the date of pre-clearance survey up to the date of granting of the Special Assistance –
- a. owns or co-owns any domestic property in Hong Kong;
 - b. owns more than 50% share in any company that owns domestic property in Hong Kong;
 - c. has entered into any agreement to purchase domestic property; or
 - d. is enjoying any form of subsidised housing or related benefits, or subject to debarment as a result of previous enjoyment of subsidized housing or related benefits.
9. If more than one Qualified Household reside in a licensed domestic structure or 1982 surveyed squatter, they will be considered as one Qualified Household for the purpose of the Special Assistance.

10. A nucleus family, comprising parents and their dependent children, is considered as one household even if it occupies more than one licensed domestic structure or 1982 surveyed squatter, unless the Director considers otherwise.

Details of the Special Assistance

11. Each Qualified Household may choose one of the following forms of Special Assistance to help meet its special rehousing needs –

- a. an ex-gratia cash allowance (EGCA) of \$600,000 (“EGCA-only option”); or
- b. an EGCA of \$500,000 and an opportunity to purchase a surplus Home Ownership Scheme (HOS) flat without being subject to the Comprehensive Means Test (“EGCA-HOS option”)¹.

12. Qualified Household that elects the EGCA-HOS option may purchase a surplus HOS flat in a sales exercise assigned by the Housing Authority (HA) with priority. A Qualified Household may only select a surplus HOS flat in the New Territories unless otherwise allowed by the Secretary by virtue of her discretion under paragraph 17.

Avoidance of Double Benefits

13. A Qualified Household that elects either option in paragraph 11 must give up its eligibility for Public Rental Housing (PRH) (including Singleton and Doubleton Allowances in lieu of rehousing), Interim Housing (IH) and Ex-gratia Allowance for Permitted Occupiers (EGAPO) and Rehabilitation Allowance (RA) for genuine farmers under the existing compensation and rehousing policy.

14. A Qualified Household that elects the EGCA-only option is barred from applying for any form of subsidised housing or related benefits, including but not limited to PRH, for a period of three years counting from the date of receipt of the Special Assistance.

15. A Qualified Household that elects the EGCA-HOS option is barred from applying for any form of subsidised housing or related benefits once and for all unless under very exceptional circumstances.

(B) Domestic Removal Allowance for All Affected Households

16. All affected households covered by the pre-clearance survey, irrespective of whether they are qualified for the Special Assistance in paragraph 11 above, are eligible for the Domestic Removal Allowance.

¹ It is an established policy that households affected by clearance with established eligibility for allocation of public rental housing (PRH) flats are eligible for applying to purchase HOS flats on Green Form (GF) status. Subject to the agreement of HA, households eligible for the EGCA will be waived to meet the PRH eligibility so that they would be allowed to purchase surplus HOS flats on GF status.

The Secretary's Discretion

17. Solely for the purpose of implementing the special ex-gratia rehousing package approved by the Chief Executive in Council, the Secretary shall, on application of a household, decide at her discretion –

- a. whether a household which does not meet the requirements to be a Qualified Household in paragraphs 7 to 10 above should be eligible for the Special Assistance;
- b. if such a household is so eligible, whether and to what extent the amount of ex-gratia cash allowance to be offered to the household should be reduced; and
- c. whether to allow a Qualified Household that elects the EGCA-HOS option above to select a surplus HOS flat in other districts on compassionate ground.

18. The Secretary's decision shall be final.

Limits of the Secretary's Discretion

19. The Secretary shall not offer an EGCA to a Qualified Household in excess of the amount prescribed in paragraph 11 above.

20. The Secretary's discretion set out in paragraph 17 above shall only be exercised in respect of the households affected by the land resumption and clearance under the XRL project.

21. For the avoidance of doubt, the Secretary has no discretion in respect of households affected by land resumption and site clearance arising from other public projects.

Inter-departmental Advisory Panel

22. In the exercise of the discretion in paragraph 17 above, the Secretary shall consult an Inter-departmental Advisory Panel comprising of officers of appropriate rank from the Transport and Housing Bureau and other concerned departments.

23. The Inter-departmental Advisory Panel shall give advice to the Secretary as regards her decision on matters in paragraph 17.

24. The Inter-departmental Advisory Panel does not have any role to play in respect of other public projects.

25. This Inter-departmental Advisory Panel may also consider other cases that may require discretionary handling, e.g. Public Rental Housing (PRH) allocation.

Considerations to be taken into account by the Secretary and the Inter-departmental Advisory Panel

26. Each application made to the Secretary under paragraph 17 above shall be considered by the Secretary taking into account the supporting materials provided by the household and the advice given by the Inter-departmental Advisory Panel.

27. The Secretary and the Inter-departmental Advisory Panel may also take into consideration, but not bound by, the following factors before a decision in paragraph 17 above is made by the Secretary –

- a. the duration for which the household has been living in the clearance site – in general, a longer duration may suggest that the household has stronger connection or attachment to the site. More favourable consideration should be given;
- b. status of the structure in which the household is residing – in general, less favourable consideration will be given to a household occupying a structure converted from a non-domestic structure. Applications from households occupying structures erected after 1982 for the Special Assistance should not be approved by the Secretary unless under very exceptional circumstances;
- c. the age profile of the household members – in general, elderly members may find it more difficult to adapt to a new environment. More favourable consideration should be given to such household;
- d. the size of the household – in general, a large household size may require a larger accommodation and a smaller household may require a smaller one;
- e. the household's existing living conditions;
- f. the circumstances that may deserve compassion (if any);
- g. any other factors that the Secretary and the Inter-departmental Advisory Panel may consider relevant.

Mode of Operation and Procedures

28. Notice of the resumption will be served on the affected households after the making of the resumption order.

29. A household should, from now to within two weeks from the date of the notice of resumption order mentioned above, complete an application form prescribed by LandsD together with all supporting materials to substantiate its claim as a Qualified Household to the Director.

30. The household will be given the opportunity on the application form to indicate whether it wishes to have its application referred to the Secretary for

consideration of substantiating its eligibility for the Special Assistance if it fails to meet the criteria of a Qualified Household under paragraphs 7 to 10.

31. The Director shall inform a household in writing whether it meets the criteria of a Qualified Household within three weeks from receiving the last piece of supporting materials from the household.

32. If a household does not meet the criteria as a Qualified Household and has indicated its wish to have its application referred to the Secretary for further consideration under paragraph 17, the Director shall refer its application to the Secretary and the Inter-departmental Advisory Panel.

33. The Secretary would decide the eligibility of a household for the Special Assistance and, if affirmative, the amount of ex-gratia cash allowance of the Special Assistance to be granted in consultation with the Inter-departmental Advisory Panel within three weeks upon referral from the Director.

34. For the purpose above, the Inter-departmental Advisory Panel will convene meetings to consider the applications. The applicant households will not attend the relevant meetings.

35. The Transport and Housing Bureau will inform the household of the Secretary's decision(s) within one week after the Secretary makes the decisions.

36. A household submitting the above application(s) may be required to give further materials to support its application at the request of the Director, the Inter-departmental Advisory Panel and/or the Secretary.

Forfeiture of Eligibility to the Special Assistance

37. A household must submit the application form to the Director by the deadline specified in paragraph 29. Otherwise the household will be considered as giving up its eligibility for the Special Assistance and the opportunity to apply for the Secretary to substantiate its eligibility as a Qualified Household.

38. A household receiving the Special Assistance must vacate from the clearance site by 15 October 2010. Any failure to vacate the clearance site by 15 October 2010 will entitle the Government to recover from the household any amount of allowance already paid to the household.

39. Notwithstanding paragraphs 37 and 38, the household's entitlement(s) under the existing compensation and rehousing policy is (are) not affected.

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Domestic Removal Allowance (DRA)

Household size	Rate of DRA per household
1 person	\$2,907
2 – 3 persons	\$6,197
4 – 5 persons	\$8,048
6 persons or over	\$10,276

