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Paper for the House Committee meeting on 9 June 2000

**Report of the Panel on Housing
on Cottage Area Clearance**

Purpose

This paper sets out the views of the Panel on Housing on Government's policy on Cottage Area (CA) Clearance, in particular its stance on the granting of special ex gratia allowance to clearers of CAs.

Background

2. CA residents were first permitted to live in these CAs in 1952 by the Emergency (Resettlement Areas) Regulations under the Emergency Regulations Ordinance. The enactment of the Resettlement Ordinance in 1958 which consolidated these Regulations defined the residents' contractual right to occupy these CAs subject to, inter alia, the payment of prescribed permit fees. With the repeal of the Resettlement Ordinance in 1973, the Housing Authority (HA) became the authority to manage CAs and to permit the CA residents to reside on designated land by paying licence fees. The cottage structures were erected by residents themselves at their own expenses. As licencees, CA residents are able to assign their structures to "authorized persons" of public rental housing estates, temporary housing, interim housing and CAs, with the approval of HA.

3. The Panel on Housing, in considering Government's intended submission for funds for the demolition of CAs, reviewed with the Administration the question of granting "compensation/special ex gratia allowance" to clearers of CAs. Between December 1998 and June 2000, three meetings were held on this subject.

4. According to the Administration, there are altogether five remaining CAs which have to be cleared by 2001 according to Government's pledge made in the 1997 Policy Address. These are situated at Tung Tau, Fo Tan, So Kon Po, Mount Davis and Lai Chi Kok. Of these five CAs, the clearance of Tung Tau Cottage Area is funded by HA while the clearance of So Kon Po, Mount Davis and Lai Chi Kok has yet to be finalized and subject to the approval of the Finance Committee. As for Fo Tan CA, funding has been provided by the Secretary for the Treasury under delegated authority and is scheduled to take place in July 2000. There will be no dispute about "compensation/special ex gratia allowance" as all the structures in Fo Tan CA are Government-owned.

Deliberations of the Panel

5. The Panel has taken note of the representations made by CA residents and groups and the historical background of the arrangements made between the Government and CA residents over contractual rights and obligations. According to the Coalition on Safeguarding the Rights of Cottage Areas (the Coalition), the structures which would be demolished were built by CA residents with the permission of the Administration. The special status of CA is recognized in the Government's Long Term Housing Strategy Review. Although CA residents do not have legal rights to the land, they should be compensated for the loss of the building structures which were their own assets. The Panel also notes that the factory owners in Tung Tau CA and the Apostolic Faith Church of Hong Kong have also made a similar request.

6. The Administration reiterates that as a matter of principle, it is not desirable to use public funds for paying a special ex gratia allowance to CA residents. Neither the Government nor HA is legally liable to pay any "compensation" to CA residents by demolishing their structures. The Administration considers that relaxation of the rehousing arrangements for affected residents by, e.g., offering public rental housing to eligible households without the income-cum-asset test and domestic property ownership restriction, should suffice. The Government intends to grant a domestic removal allowance ranging from \$3,670 for one-person household to about \$11,000 for households with 6 persons and above.

7. Noting the impending clearance of Tung Tau CA in July 2000, the Panel met again on 5 June 2000 to further discuss the compensation arrangements for CA Clearance. At the meeting, the Administration maintained its earlier stance of not providing special ex gratia allowance to CA residents. It further pointed out that legal advice from both the Department of Justice and the Housing Department's legal advisor confirmed that neither the Government nor HA is legally liable to pay any compensation to CA residents. Reference was made to the judgement of the Court of Appeal delivered on 27 September 1999 in respect of the Tiu Keng Leng Cottage Area Clearance judicial review case which confirmed the legal point of view.

8. In view of the distinct historical background of CAs, the Panel has examined with the Administration on the feasibility of granting a special ex gratia allowance to CA residents for loss of self-owned structures. Members of the Panel are of the view that unlike compensation, a special ex gratia allowance could be considered in exceptional cases, and at the discretion of the Administration. They consider that since the special status of CAs has been recognized in the Long Term Housing Strategy Review, special consideration should be given to assisting the CA clearers. The Panel also notes that CA residents' obligation to vacate their structures upon receipt of the 3-month Notice-To-Quit was not in force when they erected their structures in the 50s. In this connection, members of the Panel are unanimous in their support of the passage of the following motion moved by Hon CHAN Yuen-han at the meeting -

"That the Panel on Housing supports that residents of Cottage Areas should be reasonably compensated and urges the Administration to freeze the clearance of Cottage Areas until reasonable compensation arrangements have been worked out."

Members have also requested that factory operators and the Apostolic Faith Church of Hong Kong, both of whom are affected by the Tung Tau CA Clearance, should have the same compensation arrangements as that of CA residents. Members have cautioned that should the Government refuse to take into account the views of the Panel, it would seriously undermine its relationship with the Legislative Council.

9. Members of the Panel consider that the subject of the granting of a special ex gratia allowance should be further pursued. The Panel agrees that the matter should be brought to the attention of the House Committee at its meeting on 9 June 2000. If the view of the Panel has the support of members of the House Committee, the Panel recommends that the Chairman of the House Committee should put forward members' request to the Chief Executive for consideration.

10. The Administration has been requested to seriously reconsider the views of the Panel and revert back to the Panel at its special meeting scheduled for 19 June 2000.

Advice sought

11. Members are invited to note the deliberations of the Panel and to support its recommendation as given in paragraph 9 above.

Council Business Division 1
Legislative Council Secretariat
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