

**LEGISLATIVE COUNCIL
PANEL ON PLANNING, LANDS AND WORKS**

**Paper on
Land Resumption Policy**

A. Background

Land resumption policy and related matters were discussed at the meeting of the LegCo Panel on Planning, Lands and Works on 13.1.00. At that meeting, it was suggested that there were differences between past and present procedures on land resumption, and the Deputy Director of Home Affairs agreed to co-ordinate the concerned departments on the preparation of a paper to explain past and present mechanisms for land resumption for Members' reference.

B. Past and Present Practices and Procedures

2. As far as land resumption is concerned, the only significant change that has taken place is the coming into effect of several ordinances such as the Roads (Works, Use and Compensation) Ordinance (Cap 370) (1982) and the Railways Ordinance (Cap 519) (1997) which provide resumption powers and set out similar procedures relating to land resumption. Originally all resumptions were carried out under the Lands Resumption Ordinance (Cap 124). The procedures under these various ordinances are set out in Section C below.

3. At the 13.1.00 meeting, several points were mentioned suggesting there were areas where change had taken place. Our position on these points is as follows :-

- (a) **Small areas of land remaining as a result of resumption of part of a lot or lots.** Lands Department has maintained a consistent position on such matters and has notified the Heung Yee Kuk of the criteria that are adopted in deciding whether or not part of a claimant's ownership not strictly required for the scheme should be acquired. Generally speaking, the test is whether the remaining land not required in the resumption is capable of reasonable beneficial use to the lot owner.
- (b) **Lots affected by more than one scheme with parts resumed at different times, possibly under different Ordinances.** This does not represent a change except in so far as we now have a number of resumption ordinances rather than one as mentioned in para. 2 above, a consequence of the fact that more and more public works are taking place. The rules for assessing compensation under the Ordinances are essentially

the same. As regards timing, we are unable to justify acquisition until such time as the boundaries have been finalised and a scheme authorized.

- (c) **The four compensation zones.** A lack of clarity was mentioned. The zonal basis for the ex-gratia compensation payable has been in existence since 1978. The original seven zones were reduced to four in 1985. The zones are shown on a coloured plan which is available for public inspection. There are periodic reviews of zonal boundaries, and the payment rates. The definition of Zone A rate was expanded in 1996 to include "essential projects having a territory-wide significance".
- (d) **Negotiation on the amount of land to be resumed.** It was said that in the past, the Administration would negotiate with affected land owners on the amount of land to be resumed. This was, and still is the practice today where, for example, a building straddled the scheme boundary or small parts of a lot would be left if the scheme boundary was to be rigidly adopted as the resumption boundary.
- (e) **Letter of notification to owners 3 months before gazetting.** The assertion that this used to be our practice is mistaken. The actual practice is set out in paragraph 12 below.
- (f) **Deadlines for lodging appeals on compensation.** Where the relevant ordinance sets time limits for the lodging of claims, we take a reasonable and sympathetic view on out-of-time claims. If Government refuses to accept a claim then the owner can apply to the Lands Tribunal for an extension of time to lodge a claim.
- (g) **"Resites" for farmers.** Our approach to such matters has not changed. Genuine farmers may be allowed an agricultural resite if they can identify suitable alternative private land outside the layout boundaries of the scheme.

C. The Ordinances

4. From time to time, Government may have to acquire private land for public purposes such as highways projects, drainage works, river training works, public housing developments, implementation of approved zoning or layout plans or any item in the Public Works Programme where private land is required.

5. Private land can be acquired by proceedings under a number of ordinances, including (but not exclusively);

- (a) the Lands Resumption Ordinance, Cap 124;

- (b) the Roads (Works, Use and Compensation) Ordinance, Cap 370;
- (c) the Railways Ordinance, Cap 519; and
- (d) the Water Pollution Control (Sewerage) Regulation, Cap 358.

Resumption under Lands Resumption Ordinance, Cap 124

6. This Ordinance enables Government to acquire private land required for "a public purpose". Resumption for "a public purpose" as defined under Section 2 of the Ordinance, Cap 124 would be recommended to the Chief Executive in Council only after the Secretary for Justice confirms that in her opinion the proposed use to which the site is to be put is indeed a public purpose.

7. Resumption is normally initiated by Lands Department at the request of other Government departments for implementation of Public Works Programme items and from quasi-government organisations for the purpose of implementing developments such as public housing according to an approved Outline Zoning Plan or Master Layout Plan. Consultation will be made with relevant District Councils (which may also comprise Chairmen of the Rural Committees in the district) for all projects involving resumption and clearance. Views from public consultations and written objections are fully taken into consideration by ExCo in reaching its decision.

Resumption under the Roads (Works, Use and Compensation) Ordinance, Cap 370

8. This Ordinance provides for publication of road works proposals, objections to the proposals, authority to carry out the works and for the use of the road scheme, powers in relation to resumption of private land, creation of easements and other rights, closure of roads, compensation etc. Under the provisions of this Ordinance, the proposed road works are published in the Gazette containing a description of the general nature and the extent of the road works. The Gazette Notice (Chinese & English) will have to be affixed in prominent locations within the works area. Any person may, by notice in writing delivered to the Authority not later than 60 days after the first publication of the notice, object to the works or the use or both. The Secretary for Transport may authorize the scheme if no objections to the scheme have been received or if any objections received have been withdrawn.

9. If objections received cannot be resolved, the scheme has to be submitted to the Chief Executive in Council for a decision. The Chief

Executive in Council, after considering the scheme and any objections, may authorize the scheme with or without any changes, or decline to authorize the scheme. The power to order resumption of land of the authorized scheme has been delegated to the Director of Lands.

Resumption of Land under the Railways Ordinance, Cap 519

10. This Ordinance provides for publication of a proposed railway scheme, objections to the scheme, the authority to authorize the scheme and powers to resume land and to create rights of occupation of land etc. The procedures for land resumption under this Ordinance are essentially the same as those under the Roads (Works, Use and Compensation) Ordinance, Cap 370.

Resumption of Land under the Water Pollution Control (Sewerage) Regulation, Cap 358

11. For the purpose of the carrying out of works or the construction, maintenance, repair or demolition of works under this Regulation, or of any matter related or incidental to such purpose, provisions similar to those in the Roads (Works, Use and Compensation) Ordinance, Cap 370 shall apply. The land resumption procedures are hence similar to those specified in the Roads (Works, Use and Compensation) Ordinance, Cap 370.

D. Notice of Resumption

12. When a resumption is ordered under any ordinance, a Government Notice will be published in the Gazette. A copy of the Government Notice will be affixed on or near each affected lot. In addition, the Notice will be sent by recorded delivery to the registered owners. In normal circumstances, Government will give a period of THREE MONTHS' notice (or in special circumstances, a minimum period of one month as stipulated by the Ordinances) from the date when the Notice is affixed on or near the land. Upon expiry of the period specified, the land will revert to Government. This has been standard procedure for many years.

E. Offer of Land Compensation

13. Persons affected by land resumption will, subject to eligibility, be offered ex-gratia land compensation. If they do not accept the offer, they may make statutory claims.

Ex-gratia Land Compensation

14. Over the years, Government has developed policies and procedures to streamline the resumption process and payment of compensation. These include an offer of ex-gratia land compensation by Government shortly after serving a resumption notice which, if accepted, can result in prompt payment of compensation. The history and development of ex-gratia land compensation over the years is briefly described below :-

- (a) In 1978, seven ex-gratia compensation zones were adopted for assessment of compensation in the New Territories.
- (b) In 1985, the seven ex-gratia compensation zones were changed to four. The boundaries of the compensation zones have been reviewed annually since then.
- (c) In 1996, the definition of Zone A was widened to the effect that Zone A not only covers New Town Development Areas but also those areas that are affected by essential projects with territory-wide significance.

15. After the affixing of the Government Notice on the land to be resumed, a standard offer letter for compensation will be sent to the registered landowners. The letter offers a sum as land compensation in full and final settlement for the land to be resumed. For agricultural land, the offer is based on the ex-gratia compensation rates published in the Government Gazette and the Zonal Plan for Calculation of Compensation Rates which is available for inspection at the District Lands Offices. Owners of building land may be offered compensation based on the valuation of the land plus compensation at ex-gratia rates. The ex-gratia rates vary according to locations as shown on the Zonal Plan, and are reviewed every six months and if necessary revised to reflect changes in property market values. The rate applicable for each resumption is that prevailing as at the date of reversion. If the period of the resumption notice straddles an ex-gratia land compensation review date, the landowners affected will receive the higher rate irrespective of the actual date of reversion.

16. If a landowner does not accept the ex-gratia land compensation offer, he may make a statutory claim as stated in paragraph 17 below.

Statutory Compensation

17. When land is resumed, the Ordinance under which the legal interest is extinguished or affected provides for payment of compensation. The compensatable interest is specified by the particular Ordinance and if the offer of ex-gratia compensation is not acceptable to the former

landowners, they may submit statutory claims. If the amount of the claim cannot be agreed, either the claimant or Government may refer the claim to the Lands Tribunal for a final determination. Interest on statutory compensation is payable by Government from the date of resumption until the date of payment.

F. Other Ex-gratia Allowances and Rehousing Arrangements

Ex-gratia Allowances

18. Ex-gratia allowances may be payable to various categories of occupation of the land affected. The most common categories affecting agricultural land are removal of crops, fruit trees, flowers, bamboos, pine trees, fish ponds, graves, urns and miscellaneous permanent improvement items to farms such as fences, gates, irrigation pipes etc. Ex-gratia rehabilitation allowances may be payable to genuine cultivators who are eligible for public housing, but opt to continue farming elsewhere and give up their priority for public housing. "Tun Fu" ceremonies may also be payable where appropriate. These ex-gratia rates are updated on a regular basis. Ex-gratia allowances may also be payable to eligible commercial and industrial operators.

Rehousing Arrangements

19. Genuine residents affected by clearances arising from implementation of public works projects are offered rehousing in public rental housing/interim housing and domestic removal allowance, according to their eligibility. The existing eligibility criteria for rehousing are set out at **Annex**. Residents who are not eligible for rehousing may be offered accommodation in transit centres and considered for subsequent rehousing to interim housing on homelssss grounds.

Lands Department
Housing Department
September 2000

**Rehousing Eligibility Criteria for
Residents Affected by Land Resumption/Clearance**

I. SQUATTER CLEAREES

A. Eligibility criteria for Public Rental Housing

To be eligible for public housing, the affected squatters must satisfy the following eligibility criteria –

- (1) Genuine residents of domestic structures covered by the 1982 Squatter Structure Survey at the time of pre-clearance survey;
- (2) Covered by the 1984/85 Squatter Occupancy Survey;
- (3) At least half of the family members must have lived in Hong Kong for seven years. For this purpose, all children under the age of 18 who are residing in Hong Kong without any condition of stay, regardless of their place of birth, are deemed as having satisfied the seven-year residence rule provided that one of their parents has lived in Hong Kong for seven years.
- (4) Not owning any domestic property within 24 months prior to the pre-clearance survey until the date of intake; and
- (5) Satisfy a comprehensive means test covering both income and net asset of the applicants and their family members. *[This criterion is applicable to squatters affected by clearance operations announced on or after 11 September 1998 only.]*

Note: Clearees not satisfying criterion A(3) above but all other criteria may be rehoused to refurbished flats in older estates.

B. Eligibility criteria for interim housing

- (1) Genuine residents of domestic structures covered by the 1982 Squatter Structure Survey at the time of pre-clearance survey;
- (2) Not owning any domestic property within 24 months prior to the pre-clearance survey until the date of intake; and
- (3) Satisfy a comprehensive means test covering both income and net asset of the applicants and their family members. *[This criterion is applicable to squatters affected by clearance operations announced on or after 15 April 1999 only.]*

II. OCCUPANTS OF PRIVATE BUILDINGS AFFECTED BY LAND RESUMPTION

A. Eligibility criteria for public rental housing

To be eligible for public rental housing upon land resumption, the occupants must satisfy the following eligibility criteria –

- (1) Genuine residents of private building before the date of negotiation, date of gazette or whichever date the resumption is first known to the public.
- (2) At least half of the family members must have lived in Hong Kong for seven years. For this purpose, all children under the age of 18 who are residing in Hong Kong without any condition of stay, regardless of their place of birth, are deemed as having satisfied the seven-year residence rule provided that one of their parents has lived in Hong Kong for seven years.
- (3) Not owning any domestic property within 24 months prior to the pre-clearance survey until date of intake; and
- (4) Satisfy a comprehensive means test covering both income and net asset of the applicants and their family members. *[This criterion is applicable to occupants of tenement buildings affected by land resumption announced on or after 11 September 1998 only.]*

Note:

- (1) Occupants not satisfying criterion (2) above but the other criteria may be rehoused to refurbished flats in older estates.
- (2) Owner-occupiers may not be eligible for rehousing due to non-compliance with criteria (3) & (4) above. They are however eligible for statutory compensation.