

ITEM FOR FINANCE COMMITTEE

CAPITAL WORKS RESERVE FUND

HEAD 701 - LAND ACQUISITION

Ex-gratia allowance for pig and poultry farmers affected by land resumption and clearance

Members are invited to approve –

the payment of ex-gratia allowance to pig and poultry farmers legitimately operating on private agricultural land whose farm structures are not covered in the 1982 squatter control survey conducted by the Housing Department and are affected by land resumption and clearance.

PROBLEM

When the Government resumes land for development purposes, pig and poultry farmers operating farms on illegally occupied Government land and on private agricultural land with structures surveyed in 1982 are eligible for an ex-gratia allowance (EGA)¹. Their counterparts operating on Government land under Government land licences/short term tenancies (STTs), or on private agricultural land whose farm structures are not covered in the 1982 survey are not eligible for the EGA. This existing arrangement warrants a review.

/PROPOSAL

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The formula of the EGA comprises two components, namely, the loss of profit during the period required to re-establish their business and half of the average replacement cost of fixtures required for production, excluding farm building element.

PROPOSAL

2. We propose that in land resumption and clearance exercises affecting pig and poultry farmers legitimately² operating on private agricultural land whose farm structures are not covered in the 1982 squatter control survey should also be eligible for the EGA. If approved, the new eligibility criteria would apply to all on-going and future Government land resumption and clearance exercises. Currently, the Deep Bay Link project is the only on-going land resumption and clearance exercise involving pig and poultry farmers legitimately operating on private agricultural land whose farm structures are, however, not covered in the 1982 squatter control survey.

JUSTIFICATION

3. The reasons for the proposed change in eligibility criteria are as follows –

- (a) Pig and poultry farmers legitimately operating on private agricultural land whose farm structures are not covered in the 1982 squatter control survey are operating a legitimate business on private land. They should not be treated less favourably than their counterparts who illegally occupied Government land for such use more than 20 years ago.
- (b) Some of these farmers may be able to establish that they have legal interests (e.g. with a valid tenancy agreement) in the land to be resumed and could thus theoretically make statutory claims for compensation. It is therefore in line with our practice of granting EGA to the affected clearers in order to obviate the need for both parties to go through the cumbersome process of claiming statutory compensation and to facilitate clearance. Some may not be able to establish that they have legal interests in the land due to the lack of documentary proof of a valid tenancy agreement as it is not uncommon for farmers to make verbal contracts with landowners, especially where the land is not of high value. In these cases, it is still in line with our general practice of providing some financial relief, in the form of EGA under circumstances as approved by the Finance Committee (FC), to clearers who are not eligible for statutory compensation.

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This refers to pig and poultry farmers who are operating under valid livestock keeping licences issued by the Agriculture, Fisheries and Conservation Department and whose farm structures have been or should have been approved by the Lands Department under normal circumstances.

4. We have looked into the case of pig and poultry farmers operating on Government land under Government land licences or STTs whose farm structures are not covered in the 1982 squatter control survey. It is noted that there is a condition in Government land licences/STTs stating that the Government may terminate the licences/STTs and re-enter the land concerned at any time by giving a three-month prior notice. These farmers are not eligible for statutory compensation as they have no legal interest in the land. They have full knowledge of the limitation of their right before accepting such licences/STTs. We therefore consider that these farmers should continue to be not eligible for the EGA.

CONSULTATION

5. We consulted the Legislative Council Panel on Food Safety and Environmental Hygiene on 28 January 2003 and Members supported our proposal. The affected farmers also welcomed our proposal.

FINANCIAL IMPLICATIONS

6. Subject to Members' approval of the proposal set out in paragraph 2 above, we estimate that about \$2.4 million would be needed for the payment of the EGA to the affected farmers in the Deep Bay Link project if they all meet the criteria for payment of the EGA. Based on known land clearance and resumption exercises in the coming three years, we also estimate that the near-term pay-out for the EGA could amount to some \$5.3 million.

BACKGROUND INFORMATION

7. People whose legal interests in land are affected by the Government's land resumption or clearance operations can make statutory claims under the relevant Ordinance. As the process of making statutory claims is often time-consuming, it has all along been the Government's practice, with the FC's approval, to make monetary offers to the affected persons in the form of a non-statutory EGA to enable them to receive early payment and to facilitate clearance work. If an affected person does not accept the Government's offer, he/she may lodge a statutory claim with the Government. If no agreement can be reached on the claim, either party may refer the case to the Lands Tribunal for a decision. In cases where the affected persons have no legal interests in the land to be cleared, the Government may offer EGAs to the eligible persons in accordance with the criteria approved by the FC. Again, these EGAs are non-statutory in nature and they serve to provide a kind of financial relief to the eligible clearers. There is a total of 29 types of EGAs relating to land resumption, clearance and marine works which the FC has approved over the years. One of the EGAs approved over the years is the EGA for pig and poultry farmers affected by land resumption and clearance.

8. The Deep Bay Link project requires the clearance of 12 pigeon farms on private agricultural land. These farmers are not eligible for the EGA for pig and poultry farmers under the existing practice because their farm structures are not covered in the 1982 survey. Subject to Members' approval of the proposal set out in paragraph 2 above, these farmers will become eligible if they meet the criteria for the payment of the EGA.

Health, Welfare and Food Bureau
February 2003