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Paper for the House Committee

**Report of the Subcommittee on
Frontier Closed Area (Amendment) Order 2013 and
Frontier Closed Area (Permission to Enter) (Amendment) Notice 2013**

Purpose

This paper reports on the deliberations of the Subcommittee on Frontier Closed Area (Amendment) Order 2013 and Frontier Closed Area (Permission to Enter) (Amendment) Notice 2013.

Background

2. Following a review of the coverage of the frontier closed area ("FCA") in 2006, the Administration announced in January 2008 that the coverage of FCA would be substantially reduced from about 2 800 hectares to about 400 hectares. The reduced FCA will comprise a narrow strip of land covering the re-aligned boundary patrol road ("BPR") and areas to its north, together with crossing points along the boundary (i.e. the Boundary Control Points and Sha Tau Kok Town).

3. According to the Administration, in order to implement the reduced coverage of FCA while maintaining the integrity of the boundary, it needs to construct a secondary boundary fence ("SBF") along BPR and new sections of BPR and the primary boundary fence ("PBF") at certain areas along the Hong Kong Special Administrative Region's boundary with the Mainland.

4. The reduced coverage of FCA will be implemented in three phases to tie in with the progress of the fence construction in different parts of the boundary. The first stage of the FCA reduction, covering the sections between Mai Po and

Lok Ma Chau Boundary Control Point, and Lin Ma Hang and Sha Tau Kok, was implemented on 15 February 2012. The fence construction works for the second stage, covering the section between Lok Ma Chau Boundary Control Point and Ng Tung River, have been completed. The third-stage, covering the section between Ng Tung River and Lin Ma Hang, is expected to be completed in 2015.

The Frontier Closed Area (Amendment) Order 2013

5. Under section 36 of the Public Order Ordinance (Cap. 245) ("POO"), the Chief Executive may, where he reasonably believes that it is necessary for the protection of national security or public safety, or the protection of public order or public health, by order declare any area or place to be a closed area. Under section 38 of POO, any person who enters or leaves a closed area without a permit or contravenes any condition to which such permit is subject shall be guilty of an offence and shall be liable on summary conviction to a fine of \$5,000 and to imprisonment for two years.

6. Pursuant to section 36 of POO, the Frontier Closed Area Order (Cap. 245 sub. leg. A) ("the FCA Order") was made on 7 September 1984 and the current coverage of FCA is specified in the Schedule to the FCA Order.

7. The Frontier Closed Area (Amendment) Order 2013 ("the Amendment Order") is made by the Chief Executive under section 36 of POO to implement the second stage of the FCA reduction. It substitutes the Schedule and plans to the FCA Order to specify the reduced boundaries of FCA by revising the relevant coordinates between the Lok Ma Chau Boundary Control Point and River Indus.

The Frontier Closed Area (Permission to Enter) (Amendment) Notice 2013

8. The Frontier Closed Area (Permission to Enter) (Amendment) Notice 2013 ("the Amendment Notice") is made by the Commissioner of Police under section 38A(1) of POO to amend the Schedule to the Frontier Closed Area (Permission to Enter) Notice (Cap. 245 sub. leg. H) ("the Notice"). The Notice provides for, among other things, the classes of persons permitted to enter FCA without Closed Area Permits ("CAP"). Such classes of persons include cross-boundary vehicle drivers and passengers entering FCA using specified routes. As the Amendment Order changes the FCA boundary, the Amendment Notice introduces consequential amendments to the relevant coordinates specified in the Notice.

9. The Amendment Order and the Amendment Notice will come into operation on 10 June 2013.

The Subcommittee

10. At the meeting of the House Committee on 12 April 2013, members agreed that a Subcommittee should be formed to study the Amendment Order and the Amendment Notice. The membership list of the Subcommittee is in **Appendix I**. A list of individuals who have provided written submissions to the Subcommittee is in **Appendix II**.

11. Under the chairmanship of Hon IP Kwok-him, the Subcommittee held one meeting with the Administration.

Deliberations of the Subcommittee

Implementation of the FCA reduction

12. The Subcommittee notes that the first stage of the FCA reduction has been implemented since February 2012. To implement the second stage of the FCA reduction, the Amendment Order seeks to specify the reduced FCA covering the section between Lok Ma Chau Boundary Control Point and River Indus with effect from 10 June 2013. According to the Administration, the construction works have been completed. Six villages will benefit from this stage of implementation. The third stage, covering the rest of the boundary from River Indus to Lin Ma Hang, is scheduled for implementation in 2015.

Security and accessibility of the reduced FCA

13. The Subcommittee has raised concern about the security of the reduced FCA. The Administration has advised that to implement the reduced coverage of FCA while maintaining the integrity of the boundary, a SBF along BPR and new sections of BPR and PBF at certain sections have been constructed, thereby enclosing the road and ensuring that PBF and BPR will be protected from deliberate or inadvertent interference. The Administration has further advised that the number of illegal immigration and smuggling activities recorded in the closed area before and after the implementation of the first stage reduction of FCA remains stable. The Police would continue to deploy its resources and manpower flexibly to ensure boundary security and integrity.

14. Some members have pointed out that after the implementation of stage one FCA reduction, local residents of the excised area have the practical needs to visit Sha Tau Kok Town, which remains in the closed area for security reasons, to purchase their daily necessities as it is the most convenient shopping area to these residents. These members have expressed concern whether local residents of the released area are allowed to enter the closed area, in particular Sha Tau Kok Town.

15. The Administration has advised that, under POO, any person who enters or leaves the closed area is required to possess a valid CAP. POO also states that the Commissioner of Police or an authorized person may issue a permit to allow any person to enter or leave the closed area. In general, persons who are able to show a need to enter a closed area to the satisfaction of the Police, such as those who live or work within the closed area, will be considered for the issue of permits. In addition, upon the implementation of the first stage of FCA reduction, residents who used to live in the excised area before FCA reduction continue to be issued with CAP in view of their connection with areas remaining in FCA such as the Sha Tau Kok Town. The same practice will be followed in the second stage FCA reduction.

Release of Sha Tau Kok Town

16. Some members have expressed concern about the decision to keep Sha Tau Kok Town within the reduced FCA. These members consider that the arrangement has caused much nuisance and inconvenience to local residents. They have enquired about the plan for totally opening up Sha Tau Kok Town to facilitate the residents in the vicinity as well as to capitalize on the opportunity to further enhance the cross-boundary activities.

17. The Administration has advised that Sha Tau Kok Town should remain within FCA having considered the security risk associated with the lack of proper boundary control point facilities and a physical barrier to delineate the boundary between Hong Kong and the Mainland in Chung Ying Street, as well as the continued smuggling and illegal immigration activities in Sha Tau Kok.

Development proposals in the area to be excised from FCA

18. The Subcommittee notes that some of the land to be excised from FCA in the second stage of its reduction of FCA would have potential for development, e.g. for uses such as higher education, high-technology and cultural and creative industries. Some members have enquired whether consideration will be given to using the excised area for development of eco-tourism. Some members, however, have expressed concern that the infrastructure facilities, such as road

networks, should be upgraded before implementing the development proposals.

19. The Administration has advised that apart from Lok Ma Chau Loop which is planned for higher education purpose, the land to be excised from the second stage FCA reduction will be primarily for conservation purposes, as recommended under the Study on Land Use Planning for Closed Area ("the Study") and now stipulated in the Development Permission Area ("DPA") Plans. Eco-tourism would be promoted according to the recommendation of the Study but there may be limited scope for large-scale commercial development.

20. The Administration has further advised that the Panel on Development was consulted on the Study in 2008 and 2009. Various development proposals such as the feasibility of constructing cycling tracks and hiking trails had been recommended in the Study. Following the completion of the Study in 2010, the Recommended Development Plan prepared under the Study formed the basis for the formulation of five DPA Plans (i.e. Ma Tso Lung and Hoo Hok Wai, Man Kam To, Ta Kwu Ling North, Lin Ma Hang and Shau Kok DPA Plans) with a proposed sustainable planning framework respecting the existing rural settings, local traditions and ways of life without compromising the ecologically and environmentally sensitive areas. These five DPA Plans were gazetted in July 2010. Furthermore, members' concerns about the land use for the adjacent areas will be addressed to a large extent in the context of the North East New Territories New Development Areas Planning and Engineering Study, which has been actively followed up by the Panel on Development.

21. Members generally consider that the development proposals in the area to be excised from the FCA reduction fall outside the scope of the Amendment Order and Amendment Notice. The Subcommittee takes the view that the subject of the land use planning in the closed area should be followed up by the Panel on Development as appropriate.

22. Some members have enquired whether public consultation was conducted before implementing the second stage FCA reduction. The Administration has pointed out that the review of the coverage of FCA commenced as early as in 2003, and the review results were announced in January 2008. The final plan of the FCA reduction has incorporated the views received during the review. The Panel on Security, Heung Yee Kuk, the Town Planning Board, the Advisory Council on the Environment, the relevant District Councils, and relevant Rural Committees were consulted on the results of the FCA review, the timetable of implementation and the construction works of SBR. Overall, the consulted parties were generally supportive of the proposals. As regards the second stage FCA reduction, the Administration has informed the relevant Rural Committees and the District Councils of the relevant arrangements, and they

have raised no objection to the reduction of FCA.

Recommendation

23. The Subcommittee raises no objection to the Amendment Order and the Amendment Notice. The Subcommittee does not propose any amendment to the Amendment Order and the Amendment Notice.

Advice sought

24. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
8 May 2013

**Subcommittee on
Frontier Closed Area (Amendment) Order 2013 and
Frontier Closed Area (Permission to Enter) (Amendment) Notice 2013**

Membership list

Chairman Hon IP Kwok-him, GBS, JP

Members Hon James TO Kun-sun
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan, JP
Hon WONG Kwok-kin, BBS
Hon YIU Si-wing
Hon Dennis KWOK (since 30 April 2013)
Hon CHUNG Kwok-pan

(Total : 8 members)

Clerk Miss Betty MA

Legal Adviser Mr Kelvin LEE

Date 30 April 2013

**Subcommittee on
Frontier Closed Area (Amendment) Order 2013 and
Frontier Closed Area (Permission to Enter) (Amendment) Notice 2013**

Individuals who have provided written submissions

1. a member of the public
2. Mr HAU Chi-keung, North District Council member
3. Mr YEUNG Wai-sing, Eastern District Council member