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Panel on Development

Meeting on 22 January 2019

Updated background brief on the ex-gratia compensation and rehousing arrangements for the Kwu Tung North and Fanling North New Development Areas project

Purpose

This paper provides background information on the ex-gratia compensation and rehousing ("C&R") arrangements for the Kwu Tung North ("KTN") and Fanling North ("FLN") New Development Areas ("NDAs") project, and a summary of the major views and concerns expressed by Members of the Legislative Council ("LegCo") on the relevant issues.

Background

Compensation and rehousing arrangements for Government's development clearance exercises

2. According to the Administration, when land is required to be resumed and cleared for development projects such as public works projects, affected households who are owners or legal tenants of private land may claim compensation (commonly referred to as "statutory compensation") in accordance with the relevant laws of Hong Kong (including Lands Resumption Ordinance (Cap. 124), Roads (Works, Use and Compensation) Ordinance (Cap. 370), etc.). The entitlements to compensation, the procedures involved, as well as the basis and principles of assessing the compensation are set out in the relevant ordinances, while the authority for final determination of the compensation amounts under the ordinances rests with the Lands Tribunal.

3. Apart from statutory compensation, the Government offers ex-gratia allowance ("EGA") and ex-gratia land compensation to eligible affected parties. According to the Administration, EGAs are non-statutory payment to the people affected by acquisition projects and are intended to help minimize their hardship arising from land resumption and clearances. Various types of EGAs are available for eligible occupiers of legal/permitted domestic properties, genuine farmers, owners/occupiers of legal commercial properties, etc. Separately, with a view to enabling speedy payment of land compensation, the Government would offer to eligible affected landowners an ex-gratia land compensation as an alternative to statutory claims under the respective ordinances. The rates of the various types of EGAs and ex-gratia land compensation are revised by the Government upon the approval of the Finance Committee ("FC") from time to time, where appropriate.

4. Meanwhile, it has been the Government's stated objective that no one would be rendered homeless in clearance exercises. Pursuant to this objective, the Administration will arrange rehousing to public rental housing ("PRH")/ interim housing for eligible affected households, and/or grant them EGA according to their eligibility.

Enhancements to the general ex-gratia compensation and rehousing arrangements for the Government's development clearance exercises

5. On 10 May 2018, the Government announced its proposal to enhance the general ex-gratia C&R arrangements for domestic occupants of squatters and business undertakings operating from surveyed/licensed structures or in the open air affected by government development clearance exercises. The enhancements comprise the following key features:

- (a) replacing "project-specific" packages with a unified and enhanced general ex-gratia C&R package applicable to all future government development clearance exercises;
- (b) offering to eligible households non-means tested rehousing in dedicated rehousing estates ("Dedicated Estates") to be built and operated by the Hong Kong Housing Society;
- (c) relaxing the eligibility criteria and increasing the amount of cash EGAs for eligible households residing in surveyed/licensed structures;

- (d) suitably extending the arrangements on non-means tested rehousing and enhanced cash EGAs to eligible households currently residing in surveyed/licensed non-domestic structures, subject to appropriate measures being taken to confine such households to a finite number; and
- (e) relaxing the eligibility criteria of applicable EGAs for business undertakings on brownfields and in squatters.

6. Details of the enhanced general ex-gratia C&R package are set out in Enclosure 1 to [FCR\(2018-19\)48](#). A comparison of the key features of the original general ex-gratia C&R arrangements and the enhancements is given in **Appendix I**.

7. The proposed enhancements were approved by FC on 18 July 2018. The implementation of the enhanced general ex-gratia C&R package for domestic occupants in squatters and cases of businesses operating from squatters was backdated to the date of announcement of the enhancement proposal (i.e. 10 May 2018), while that for business undertakings on brownfields was backdated to 11 April 2017 (i.e. the date on which the Government announced the introduction of an EGA arrangement for open-air/outdoor business undertakings).

Special ex-gratia compensation and rehousing arrangements for Kwu Tung North and Fanling North New Development Areas project

8. In view of the strategic importance and clearance scale of the KTN and FLN NDAs project and the Hung Shui Kiu ("HSK") NDA project, the Administration proposed in 2014 the special ex-gratia C&R arrangements for the affected eligible households in these projects ("2014 special ex-gratia C&R arrangements").¹

9. When the Government introduced the enhanced general ex-gratia C&R package, it sought to rationalize the C&R arrangements and replace "project-specific" packages, such that the unified and enhanced ex-gratia C&R package would be applicable to all Government's development clearance exercises, including that for KTN and FLN NDAs and HSK NDA projects. In this connection and given that the enhanced general ex-gratia C&R package is generally more favourable than the 2014 special ex-gratia C&R arrangements,

¹ Details of the compensation, allowances and rehousing arrangements are set out in the "[North East New Territories New Development Areas Project - Guide to General Ex-gratia Compensation and Special Ex-gratia Compensation for Land Resumptions and Clearances](#)" issued by the Lands Department in January 2014.

the Administration has reviewed the necessity of applying the 2014 special ex-gratia C&R arrangements for the KTN and FLN NDAs and HSK NDA projects.

10. After the review, the Administration has proposed that the Special Ex-gratia Cash Allowance ("SEGCA")² offered at a maximum level of \$600,000 will be retained exclusively for eligible domestic households of surveyed/licensed structures affected by the KTN and FLN NDAs and HSK NDA projects, as it is possible that the SEGCA amount which individual households are entitled to receive may be higher than the amount of the Ex-gratia Allowance for Permitted Occupiers ("EGAPO") under the enhanced general ex-gratia C&R package. Eligible households in KTN and FLN NDAs and HSK NDA projects may opt for either SEGCA or enhanced EGAPO.

11. Separately, the Special Rehousing Scheme (including the one-off bridging allowance arrangement and reduced SEGCA offer) announced under the 2014 special ex-gratia C&R arrangements will be dropped and aligned with the enhanced general rehousing arrangement under the enhanced general ex-gratia C&R package.

12. In the above connection, FC's approval was sought and given on 18 July 2018 on the proposed creation of new subheads under Head 701 — Land Acquisition under the Capital Works Reserve Fund ("CWRF") for the payment of SEGCA.³ According to the Administration, the estimated total cost to be incurred will be determined nearer the time of actual clearance to eligible domestic households affected by land resumption and clearance required under the KTN and FLN NDAs and HSK NDA projects respectively.

Major views and concerns expressed by Members

13. The Panel on Development ("the Panel") has all along been monitoring issues relating to the C&R arrangements for eligible clearerees affected by the Government's development clearance exercises. The Panel held two joint

² Under the 2014 special ex-gratia C&R arrangements, each qualified household may receive one of the following SEGCA options in the form of a lump-sum cash allowance regardless of the area occupied by the relevant structure:

- (a) a full SEGCA pitched at \$600,000; or
- (b) a reduced SEGCA pitched at \$500,000 if the household is purchasing a subsidized sale flat unit at Dedicated Estates.

³ New subheads 37CA and 38CA have been created respectively for the SEGCA for the KTN and FLN NDAs project and the SEGCA for the HSK NDA project.

meetings with the Panel on Housing on 26 and 29 June 2018 to receive public views on the relevant arrangements. Members have also raised questions on the subject at meetings of LegCo and FC. The major views and concerns expressed by Members are summarized in the ensuing paragraphs.

Pre-clearance survey

14. Some Members were concerned about the time gap between the commencement of the planning on the development of a site and the clearance of the site, during which some occupants of the structures at the site might be forced by land owners to move out without any compensation. At present, occupants who were forced to leave the structures before the relevant Pre-clearance survey ("PCS") or before the actual land clearances (after they had been registered in PCS) would not be able to receive any EGAs. In this regard, Members called on the Administration to exercise discretion to allow those households to apply for ex-gratia C&R arrangements on compassionate grounds. Some Members suggested that the Administration should consider pursuing land resumption for the NDA projects in one go in lieu of the current phased land resumption plan.

15. The Administration advised that for households registered in PCS but subsequently evicted from surveyed/licensed structures before the actual clearances, the Administration would consider introducing a discretionary mechanism allowing them to apply to the Director of Lands for ex-gratia C&R arrangements on compassionate grounds. As regards households evicted before PCS, the Administration believed that it was not practicable to introduce a discretionary mechanism for them. The resumption of private land in Phase 1 development of KTN and FLN NDAs would commence in 2019, and the Administration would compress the implementation timetable for the remaining phases of KTN and FLN NDAs. The Administration was also considering a mechanism allowing eligible households affected by clearances in the later phases of NDAs to voluntarily apply for early surrender of and departure from their squatter structures and in turn early application for the rehousing arrangement.

Arrangements for affected households

16. When Members discussed the Wang Chau Housing Development project and NDA projects in recent years, the C&R arrangements for the villagers affected by land clearance had often been a key point of contention. Some Members opined that the Administration should review and improve the arrangements in order to take better care of the needs of the people affected, including the immediate accommodation needs of those who were not eligible

for public housing. Some Members enquired whether the Administration would consider compensating the affected residents more favourably, such as by according priority to their applications for PRH. Given that the level of full SEGCA pitched at \$600,000 had remained unchanged for many years, some Members urged the Administration to review and adjust the allowance rate to help address the rehousing needs of the affected households.

17. Some Members called on the Administration to adopt a "rehouse first, develop later" approach in land resumption for development, and waive the income and asset test requirements for rehousing the affectees. They also urged the Administration to step up efforts in making suitable arrangements and closely communicate with all affected indigenous and non-indigenous villagers to increase their understanding of the enhanced ex-gratia C&R arrangements.

18. When discussing the proposed enhancements to the general ex-gratia C&R arrangements for the Government's development clearance exercises, some Panel members were concerned that given the stringent occupation requirement of 31 years or more before PCS under the the banding system for the computation of the amount for EGAP0, most affectees were unlikely able to receive the full EGAP0 rate, notwithstanding that the maximum EGAP0 amount could reach \$1,209,000 after removal of the existing \$600,000 cap under the enhancement proposal.

19. The Administration explained that the prevailing banding system for assessing the quantum of EGAP0 payable to eligible clearerees based on their length of continuous occupation in squatter structures was already adopted before the enhancement proposal. In principle, the longer the duration of continuous occupation, the higher the proportion to the full EGAP0 rate for the eligible clearerees. Moreover, the EGAP0 rates were calculated on the basis approved by FC and the rates were updated every six months in accordance with the latest rental data available to the Rating and Valuation Department on the average unit rental of village type houses and/or tenement buildings. The Administration highlighted that, apart from EGAs, a key feature under the enhancement proposal was offering a non-means tested rehousing option for eligible households, in the form of rental and subsidized sale flats units in Dedicated Estates, to address the genuine rehousing needs of the eligible households.

20. In reply to a question at the Council meeting of 10 January 2018 regarding whether the Administration would consider setting up a dedicated fund for development projects to expedite the disbursement of compensations to affected villagers, the Administration advised that it would pay

compensation and EGAs to those eligible under the applicable subheads created under Head 701 of CWRP through the block vote mechanism. The Administration currently had no plans to establish other dedicated funds apart from CWRP.

Arrangements for affected brownfield operations

21. In respect of the C&R arrangements for eligible business undertakings operating in the open air or from squatter structures (including brownfield operations) affected by the Government's development clearance exercises, some Members urged the Administration to (a) further shorten the minimum continuous operational period requirement; (b) allow affected business undertakings which had operated in the same district and met the minimum continuous operational period requirement, albeit at different land lots during the period, to receive EGAs; and (c) extend the EGA coverage from land owners and operators/occupants to sublessors.

22. The Administration advised that to ensure prudent use of public funds, the Administration did not consider it appropriate to further shorten the proposed seven-year minimum continuous operational period requirement (which was shortened from 10 years under the enhanced general ex-gratia C&R package announced in May 2018) of open-air/outdoor business undertakings eligible for EGAs. Business undertakings which were dissatisfied with the EGA amount could make statutory claims for disturbance payments (e.g. business loss due to the removal of the business). In addition, the Administration had no plan to extend the coverage of ex-gratia compensation from land owners and operators/occupants to sublessors. In view of Panel members' suggestion, the Administration had subsequently revised the continuous operational period requirement in the funding proposal to FC by allowing consecutive continuous occupation of different surveyed/licensed structures or lots (for open-air/outdoor business undertakings) by households or business undertakings in the same affected area, i.e. within the boundary of the area to be cleared for development, be counted towards the minimum continuous occupation period immediately preceding the date of PCS.

Motions passed by the Panel on further improving the compensation and rehousing arrangements

23. When discussing the proposed enhancements to the general ex-gratia C&R arrangements at the meeting on 29 May 2018, the Panel passed four motions appealing the Administration to, among others, review also the compensation mechanism for the agricultural sector; extend the option of

village relocation to non-indigenous villages affected by the Government's clearance exercises; as for the NDA projects, conduct land resumption in one go to avoid protracting the impact on the villagers, and ensure those occupants registered in the freezing survey but evicted by the landowners subsequently could still be eligible for compensation; and arrange interim rehousing for the affected residents before the Dedicated Estates were ready for population intake.

24. In response to these motions,⁴ the Development Bureau undertook to, among others, take follow-up actions following two directions:

- (a) the Government would reduce the number of phases in the remaining works as far as practicable, so as to expedite land clearance. Taking the KTN/FLN NDAs as an example, the Government would consolidate the remaining phases into one single phase, and plan to seek funding from LegCo for undertaking detailed design for the remaining works in the first half of 2019 together with the funding application for construction of the advance and first stage works. At the same time, the Administration would perform a gate-keeping role so as to minimize the impact of government or private construction works on nearby residents and environment, and undertake appropriate measures to protect public safety; and
- (b) the Government would work out a mechanism, allowing eligible households affected by clearances in the later phases of NDAs or other large-scale development projects to voluntarily apply for early surrender of and departure from their squatter structures and in turn early application for the ex-gratia C&R package. Nonetheless, for practical considerations, whether and if yes how the applications would be entertained would be subject to capacity (e.g. whether rehousing units are available ahead of the original due date) and prioritization of claims (e.g. those closer to the first phase should be given priority).

Council questions

25. Three questions relating to the C&R arrangements for development clearance exercises were raised at the Council meetings of 31 May 2017, and 10 January and 28 March 2018. The relevant hyperlinks are in **Appendix II**.

⁴ The Administration's responses to the four motions passed are in LC Paper Nos. [CB\(1\)1261/17-18\(01\)](#), [\(02\)](#), [\(03\)](#) and [\(04\)](#).

Latest developments

26. At the Panel meeting to be held on 22 January 2019, the Administration will brief members on the estimates of the subhead for the payment of SEGCA under the KTN and FLN NDAs project, as well as the proposal of upgrading the following projects to Category A concerning the KTN and FLN NDAs:

- (a) site formation and engineering infrastructure works for first phase development (PWP Item Nos. 7747CL-2 and 7759CL);
- (b) detailed design for remaining phase (PWP Item No. 7828CL);
- (c) increasing treatment capacity and upgrading treatment level of the Shek Wu Hui sewage treatment works to cope with the sewage generated by the two NDAs and adjoining areas (PWP Item No. 4388DS); and
- (d) site formation and infrastructure works for the proposed police facilities in Kong Nga Po (PWP Item No. 7793CL).

Relevant papers

27. A list of relevant papers with their hyperlinks is in **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
18 January 2019

**A comparison of the key features of the prevailing
general ex-gratia compensation and rehousing ("C&R") arrangements and
the proposed enhancements of the Government**

| | General ex-gratia C&R arrangements | Proposed enhancements |
|--|---|---|
| Rehousing for domestic occupants in squatters | Means-tested rehousing to public rental housing ("PRH") of Hong Kong Housing Authority ("HKHA") for eligible households residing in surveyed/licensed domestic structures continuously for at least two years immediately preceding the date of Pre-clearance Survey ("PCS") | New non-means-tested rehousing to rental and subsidized sale flat units at Dedicated Estates to be built by Hong Kong Housing Society ("HKHS") for eligible households residing in surveyed/licensed domestic structures continuously for at least seven years immediately preceding the date of PCS ⁵ <i>(Note: the current means-tested rehousing option will be retained)</i> |
| Eligibility of Ex-gratia Allowance for Permitted Occupiers ("EGAPO") | Eligible households residing in surveyed/licensed structures continuously for at least 10 years immediately preceding the date of PCS | Eligible households residing in surveyed/licensed structures continuously for at least two years immediately preceding the date of PCS |
| Amounts of EGAPO | Ranging from about \$48,000 to \$600,000 , depending on the size of an eligible structure and the length of continuous residence of a household | Ranging from about \$60,000 to \$1,200,000 , depending on the size of an eligible structure and the length of continuous residence of a household |

⁵ Transitional arrangements will be offered by making use of vacant units of HKHS's rental and HKHA's PRH estates before the Dedicated Estates are completed and ready for population intake (estimated to be in around 2023/2024 for the Dedicated Estates at Pak Wo Road, Fanling and Hung Shui Kiu New Development Area).

| | General ex-gratia C&R arrangements | Proposed enhancements |
|---|--|--|
| Domestic occupants in surveyed/licensed non-domestic structures | Households residing in surveyed/licensed non-domestic structures turned into domestic use are not eligible for rehousing and EGAPO | Discretionary one-off voluntary registration will be conducted by Lands Department for households residing in surveyed/licensed non-domestic structures turned into domestic use, and those satisfying the relevant prescribed requirements may be considered eligible for relevant C&R arrangements in future |
| Eligibility of Domestic Removal Allowance ("DRA") | Only eligible households residing in surveyed/licensed domestic/non-domestic structures continuously for at least two years immediately preceding the date of PCS | All affected households covered by PCS and cleared by the Government |
| Amounts of DRA | Ranging from \$5,365 to \$20,251 , depending on the size of households | Ranging from \$9,410 to \$28,840 (at the prevailing level), depending on the size of households |
| Eligibility of EGAs for business undertakings | Outdoor/open-air business undertakings with minimum continuous operational period of at least 10 years immediately preceding the date of PCS (according to the proposed EGA arrangement for such business undertakings announced by the Administration in April 2017) | Outdoor/open-air business undertakings with minimum continuous operational period of at least seven years immediately preceding the date of PCS |

**Ex-gratia compensation and rehousing arrangements for
the Kwu Tung North and Fanling North New Development Areas project**

List of relevant papers

| Council/ Committee | Date of meeting | Paper |
|-------------------------------|--|--|
| Panel on Development | 22 July 2013 | <p>Administration's paper on proposed enhancements to the general ex-gratia compensation and rehousing arrangements for development clearance exercises (LC Paper No. CB(1)1543/12-13(02))</p> <p>Administration's follow-up paper (LC Paper No. CB(1)315/13-14(01))</p> <p>Minutes of special meeting (LC Paper No. CB(1)640/13-14)</p> |
| Finance Committee | 15 November 2013 and 6 December 2013 | <p>Administration's paper on Capital Works Reserve Fund — Head 701 — Land Acquisition (a) Ex-gratia Allowance for Permitted Occupiers of Licensed Domestic Structures and Surveyed Domestic Squatter Structures Affected by Clearance (b) Domestic Removal Allowance (c) Ex-gratia Allowance for Shops, Workshops, Godowns, Slipways, Schools, Churches and Ornamental Fish Breeding Undertakings (d) Ex-gratia Allowance for the Clearance of Graves, Kam Taps and Shrines (LC Paper No. FCR(2013-14)33)</p> <p>Minutes of meetings on 15 November 2013 (LC Paper No. FC55/13-14) and 6 December 2013 (LC Paper No. FC50/13-14)</p> |

| Council/ Committee | Date of meeting | Paper |
|-------------------------|----------------------------|--|
| Panel on Development | 23 May and 27 June 2017 | <p>Administration's paper on ex-gratia allowance for business undertakings affected by the Government's development clearance exercises (LC Paper No. CB(1)801/16-17(01))</p> <p>Minutes of meetings on 23 May (LC Paper No. CB(1)1417/16-17) and 27 June 2017 (LC Paper No. CB(1)100/17-18)</p> <p>Administration's response (LC Paper Nos. CB(1)1202/16-17(01) and CB(1)1346/16-17(01)) to the motions carried at the meetings</p> |
| Panel on Housing | 6 November 2017 | <p>Administration's paper on Public Works Programme Item No. B780CL — Site formation and infrastructure works for public housing development at Wang Chau, Yuen Long (LC Paper No. CB(1)155/17-18(04))</p> <p>Minutes of meeting (LC Paper No. CB(1)416/17-18)</p> <p>Administration's response (LC Paper No. CB(1)308/17-18(01)) to issues raised by members and the two motions carried at the meeting</p> <p>Administration's response to the issues raised in the letter dated 30 November 2017 from Hon CHU Hoi-dick regarding "Head 711 project no. B780CL — Site formation and infrastructure works for public housing development at Wang Chau, Yuen Long" as set out in LC Paper No. CB(1)310/17-18(01) (LC Paper No. CB(1)435/17-18(01))</p> |

| Council/ Committee | Date of meeting | Paper |
|-------------------------|--|---|
| Panel on Development | 20 December 2017 and 23 January 2018 | <p>Administration's paper on implementation arrangements for Hung Shui Kiu New Development Area Project (LC Paper No. CB(1)817/16-17(08))</p> <p>Minutes of meetings on 20 December 2017 (LC Paper No. CB(1)718/17-18) and 23 January 2018 (LC Paper No. CB(1)826/17-18)</p> <p>Administration's response (LC Paper Nos. CB(1)828/17-18(01) and CB(1)807/17-18(01)) to issues raised by members and the motion carried at the meeting</p> <p>Administration's response to Dr Hon KWOK Ka-ki's papers on implementation arrangements for the Hung Shui Kiu New Development Area Project dated 29 December 2017 and 29 January 2018 as set out in LC Paper Nos. CB(1)405/17-18(01) and CB(1)545/17-18(01) (LC Paper No. CB(1)827/17-18(01))</p> |
| Panel on Development | 29 May 2018 | <p>Administration's paper on proposed enhancements to the general ex-gratia compensation and rehousing arrangements for Government's development clearance exercises (LC Paper No. CB(1)951/17-18(01))</p> <p>Minutes of meeting (LC Paper No. CB(1)55/18-19)</p> <p>Administration's follow-up paper (LC Paper No. CB(1)1262/17-18(01))</p> <p>Administration's responses to the motions carried at the meeting (LC Paper Nos. CB(1)1261/17-18(01), (02), (03) and (04))</p> |

| Council/ Committee | Date of meeting | Paper |
|---|-------------------------------------|--|
| Panel on Development and Panel on Housing | 26 June 2018 and 29 June 2018 | Minutes of joint meeting on 26 June 2018 (LC Paper No. CB(1)139/18-19) Minutes of joint meeting on 29 June 2018 (LC Paper No. CB(1)140/18-19) |
| Finance Committee | 17 and 18 July 2018 | Administration's paper on Capital Works Reserve Fund — Head 701 — Land Acquisition — (a) Ex-gratia Allowance for Permitted Occupiers of Licensed Domestic Structures and Surveyed Domestic Squatter Structures Affected by Clearance, (b) Domestic Removal Allowance, (c) Ex-gratia Allowance for Shops, Workshops, Godowns, Slipways, Schools, Churches and Ornamental Fish Breeding Undertakings, (d) Ex-gratia Allowance for Open-air/Outdoor Business Undertakings and Head 701 — Land Acquisition — Civil Engineering — Land acquisition — 37CA — Special Ex-gratia Cash Allowance for the Kwu Tung North and Fanling North New Development Areas Project — 38CA — Special Ex-gratia Cash Allowance for the Hung Shui Kiu New Development Area Project (FCR(2018-19)48) |

Hyperlinks to relevant Council Questions:

| Date | Council Question |
|-----------------|--|
| 31 May 2017 | Council question on rehousing of residents affected by land resumption and squatter clearance programmes |
| 10 January 2018 | Council question on compensation and rehousing arrangements for villagers affected by development projects |
| 28 March 2018 | Council question on compensations and rehousing for residents affected by North East New Territories NDAs Planning |