

A Review of the Approach in Land Acquisition of Choi Yuen Tsuen (CYT) for the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) (Hong Kong Section) Project, and Recommendations for A Possible and Reasonable Approach in Land Acquisition in Future Government Projects

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Abstract: In order to resolve the twenty-eight objections raised by the Choi Yuen Tsuen (CYT) villagers who firmly insisted on “no clearance and no removal” related to the land clearance at CYT, which required resumption of about 17 hectares of private agricultural land and clearance of about 10 hectares of government land, to make way for the construction of the stabling sidings and emergency rescue station for the XRL (Hong Kong Section), the Administration provided, in addition to the prevailing ex-gratia allowances, a Special Ex-gratia Re-housing Package exclusively for households in CYT affected by the XRL project. The package comprised of cash allowance and a domestic removal allowance. Upon obtaining endorsement for the Special Ex-gratia Re-housing Package from the Executive Council and receiving funding approval from the Finance Committee of the Legislative Council, the Administration explicitly stated that this Special Ex-gratia Re-housing Package was exclusively authorized and restricted to households residing at the sites to be resumed and cleared under the XRL project only. It was evaluated that it would be conducive to smooth resumptions, so that the sites required for the XRL project could be cleared as soon as possible for the timely implementation of the project. For the avoidance of doubt, the Administration expressed that this Special Ex-gratia Re-housing package would not be applicable to squatters or other residents of temporary structures who might be affected by any other land resumption and clearance exercises. Though the Administration had handled the CYT clearance with an unprecedented humane approach entailing the release of various types of ex-gratia cash allowance up to over HK\$95 million to the some 230 households in CYT, (another land compensation of HK\$160 million to land owners), the 1st phase of the site clearance operation in CYT on 4 November 2010 met with resistance and protests. The second clearance on 19 November 2010 at CYT also aborted due to obstruction by petitioners. The Hon Leung Kwok Hung, Legislative Councillor, queried the Administration about the site clearance in the Legislative Council Meeting on 24 November 2010. The Administration thus cleared the CYT site on a piecemeal basis phased over a period of more than six months and finally resumed and cleared CYT on 16 May 2011 without invoking forced eviction. Notwithstanding the Administration had expressly stipulated that the Special Ex-gratia Re-housing Package was exclusively

authorized and restricted to households cleared under the XRL project, it would be extremely difficult for the Administration to persuade other affected villagers to accept less favourable terms of compensation or ex-gratia allowance in future project clearances. Consequentially future clearances of squatters for Government projects similar to that of CYT on standard compensation terms would definitely encounter difficulties. Future clearances would likely attract opposition from local villagers or residents with support from the social activists and concern groups, as in the CYT case, under current social atmosphere. It has become common realization that the best possible compensation terms from the Government may only be obtained by organized protests and strong resistance. In order to alleviate foreseeable difficulties under such circumstances, HKILA puts forward some recommendations to the Government of the HKSAR with a view to achieving smooth operations.

Key Words: Guangzhou-Shenzhen-Hong Kong Express Rail Link; Laws of Hong Kong, Chapter 519 Railways Ordinance; land acquisition; social activists and concern groups; Special Ex-gratia Re-housing Package; clearance of Choi Yuen Tsuen; resistance and protest; review of land clearance policy.

1. Introduction

Confronted with villagers' resistance, against social activists protest and petitions as well as queries from Legislative Councillors, the Administration of the Hong Kong Special Administrative Region Government (the Administration) started the clearance of CYT on 4 November 2010 and ultimately completed clearance of the whole site in mid May 2011. The Administration had handled the CYT clearance with an unprecedented humane approach, which included a very generous special ex-gratia rehousing package entailing the release of various types of ex-gratia cash allowance up to over HK\$95 million to the some 230 households in CYT. Against the above background, the Hong Kong Institute of Land Administration (HKILA) attempts to review the policies and strategies the Administration had applied in the CYT clearance, assess the possible implications for future land clearances, and make recommendations in various aspects on this issue.

2. The XRL Project

The XRL is an express rail system, which will link up Hong Kong, Shenzhen and Guangzhou. The Mainland section of the XRL will start from Shibi in Guangzhou with stations at Humen in Dongguan, and Longhua and Futian in Shenzhen before entering

Hong Kong via Huanggang. The terminus of the Hong Kong Section will be located in West Kowloon.

It was the Administration's plan to start construction of the Hong Kong Section of the XRL (HKSXRL) at the end of 2009 for completion in 2015-2016.

3. Strategic Importance of the XRL

Upon completion, the HKSXRL will become part of the national rail network, connecting the Beijing-Guangzhou Passenger Line and Hangzhou-Fuzhou-Shenzhen Passenger Line. The travelling time between Hong Kong and the Central and Southern Mainland and various major Mainland cities will be greatly shortened as a result. For example, XRL passengers departing Hong Kong will take only four hours to arrive at Changsha, five hours to Wuhan, Xiamen and Fuzhou, and eight and ten hours to Shanghai and Beijing respectively. Through interchanging with the Pearl River Delta Rapid Transit System, the XRL will also connect Hong Kong with major cities of the Pearl River Delta.

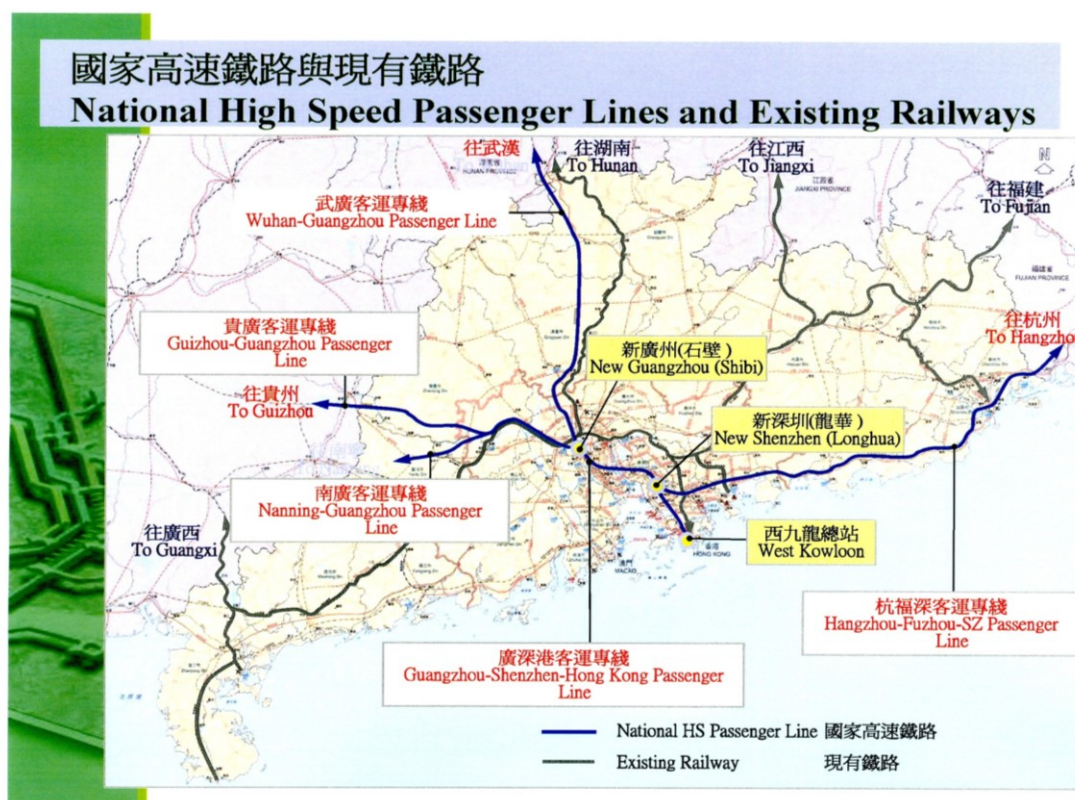


Fig. 1 (Extracted from Legislative Council Document CB(1) 166/09-10(01))



Fig. 2 (Extracted from Legislative Council Document CB(1) 166/09-10(01))

4. The Railways Ordinance

For construction of railways in Hong Kong, a railway scheme has to be prepared under Section 4 and published under Section 6 in the Gazette under the Railways Ordinance, Cap.519 (the Ordinance). Under Section 10(1) of the Ordinance, any person may object to the scheme by delivering an objection in writing to the Secretary for Transport and Housing (the Secretary) within 60 days after the first publication of the notice in the Gazette. Section 11(2) of the Ordinance provides that the Secretary shall submit the scheme and all unwithdrawn objections to the Chief Executive in Council for consideration not later than nine months after the expiry of the 60-day objection period under Section 10(1) or, where the scheme is amended, three months after the expiry of the statutory period of lodging objections under Section 10(1) in respect of any such amendments, or where there is more than one amendment, the last of any such amendments, unless the Chief Executive allows an extension of time.

5. The XRL Railway Scheme

The railway scheme of the HKSXRL comprised -

- (a) an approximately 26-kilometre underground rail line and associated railway systems and facilities;
- (b) an emergency rescue station (ERS) and stabling sidings (SSS) and maintenance facilities at Shek Kong;
- (c) eight ventilation buildings and one emergency access point along the rail line;
- (d) a terminus at West Kowloon, with associated railway, transport, boundary control and ancillary facilities;
- (e) associated roads, footbridges and subways to support the railway operation and functions of the terminus as well as a public transport interchange (PTI) near Jordan Road in Kowloon;
- (f) re-construction, modification and re-alignment of existing roads, preventive or remedial works and ancillary works including drainage works, waterworks, slope works, landscaping works and re-provisioning of existing services and facilities;
- (g) construction of temporary ground level magazine sites at So Kwun Wat of Tuen Mun and near Tai Shu Ha Road West of Yuen Long; and
- (h) construction of temporary barge loading facilities at Siu Lam and Lung Kwu Sheung Tan of Tuen Mun, Kwai Chung, Cheung Sha Wan, Tsing Chau Wan of Lantau and West Kowloon.

6. Land Requirements

The Scheme affected about 226 hectares of government land in Yuen Long, Tsuen Wan and Kwai Tsing in the New Territories and Kowloon. About 50 hectares of private land were also affected.

6.1 Underground Strata Resumption

As the HKSXRL runs in deep tunnels, resumption of underground strata along the alignment was required. According to the assessment of the Mass Transit Railway Corporation Limited, the tunnels of the HKSXRL should in general not affect above-ground daily activities and agricultural uses nor affect the building structures above the resumed strata.

6.2 Above-ground Resumption

The Scheme required the clearance of a total area of about 25 hectares of private land, predominantly in the Yuen Long area, to make way for constructing the ERS and SSS, which are essential for the operation of

HKSXRL. The major clearance was in CYT of Shek Kong, involving the resumption of about 17 hectares of private land (mainly agricultural) and clearance of about 10 hectares of government land..

7. Gazetting of the Scheme

The original railway scheme of the HKSXRL was gazetted under Section 6 of the Railways Ordinance (Cap. 519) on 28 November and 5 December 2008. To accommodate detailed design development and address some of the concerns expressed in the objections received, amendments to the scheme of the HKSXRL were gazetted on 30 April and 8 May 2009.

8. Objections to the Scheme

There were a total of 119 objections to the Scheme concerning various matters including objections to clearance of agricultural land at CYT for building the ERS and SSS.

8.1 Objections against clearance of CYT for ERS and SSS

Twenty-eight objection cases related to the land clearance at Shek Kong, which required resumption of about 17 hectares of private agricultural land and clearance of about 10 hectares of government land at CYT to make way for the construction of the ERS and SSS. The CYT villagers firmly objected to the land resumption of CYT, insisting on “no clearance and no removal” for the reason that they had been living there for decades, relying on farming to make their living. They had strong sentimental ties to the land and social ties among the local community. Many elderly villagers said they could not adapt to the life style of public rental housing tenants, and they could not continue farming, thereby losing their only source of income. Clearance of CYT would presumably destroy the social network of their village community.

9. Government’s Proposed Special Ex-gratia Rehousing Package exclusively for Households affected by the Hong Kong Section XRL Project

In addition to the standard compensation and rehousing arrangements under the existing policy as detailed in **Appendix I**, the Administration proposed to provide a **special ex-gratia rehousing package** exclusively for eligible residents of CYT and other areas in the New Territories affected by the land resumption and clearance of sites required under the HKSXRL project.

The cash allowance element of the special ex-gratia rehousing package comprised

two components: (i) Domestic Removal Allowance for all affected households, and (ii) Special Assistance (in the form of an Ex-Gratia Cash Allowance) for “Qualified” households. The total cost of the proposed Domestic Removal Allowance and Ex-Gratia Cash Allowance was estimated at \$86 million at 2009 price.

9.1 Domestic Removal Allowance (DRA)

Under the existing Government policy, only occupiers of domestic structures covered by the 1982 Squatter Structure Survey (“1982 surveyed squatters”) are eligible for a DRA ranging approximately from \$3,000 to \$10,000, depending mainly on the size of the family, to help them meet the initial cost of moving.

The Administration proposed that **all** households affected by the HKSXRL project be eligible for the DRA as long as they were covered by the pre-clearance survey on 11 November 2008. It was believed that extending the DRA to all affected households would induce early vacation to make way for the timely handover of sites for the implementation of the HKSXRL project.

9.2 Special Assistance for Qualified Households in the form of an Ex-Gratia Cash Allowance (EGCA)

To meet their special rehousing needs, the administration offered to eligible Qualified Households affected by the clearance exercise for the HKSXRL project the following Special Assistance options –

- (a) an EGCA of \$600,000 (the “EGCA-only option”); or
- (b) an EGCA of \$500,000 together with an opportunity to purchase a surplus Home Ownership Scheme (HOS) flat without being subject to/having to pass the Comprehensive Means Test.

The Secretary would be authorized to decide, at her discretion, whether such households could be entitled to the Special Assistance under the Package as qualified households, and whether or to what extent the amount of EGCA to be offered to the households should be reduced. Eligibility Criteria for the Special Assistance for Qualified Households are listed at **Annex II**.

10. Authorization of the Scheme and the Special Rehousing Package

At the meeting of the Executive Council on 20 October 2009, the Council advised and the Chief Executive ordered that under section 11(4) of the Railways Ordinance, the XRL as described in the scheme with proposed changes be authorized and the special

ex-gratia rehousing package which would be applicable exclusively to households affected by the land resumption and clearance required under the HKSXRL be approved subject to a funding application for the special ex-gratia rehousing package be made to the Finance Committee of the Legislative Council.

Though with controversies, prolonged queries and filibuster, the Finance Committee finally approved the payment of ex-gratia cash allowance and domestic removal allowance at a total estimated cost of \$86 million on 15 December 2009.

Upon obtaining endorsement for the above special re-housing and cash compensation package from the Executive Council and receiving funding approval from the Finance Committee of the Legislative Council, the Administration explicitly stated that this special ex-gratia re-housing package was exclusively authorized and restricted to households residing at the sites to be resumed and cleared under the XRL project evaluating that it would be conducive to smooth resumptions, so that the sites required for the XRL project could be cleared as soon as possible for the timely implementation of the XRL project.

For the avoidance of doubt, the Administration expressed that this special ex-gratia rehousing package would not be applicable to squatters or other residents of temporary structures who might be affected by any other land resumption and clearance exercises.

11. Humane Manner in Site Clearance of CYT

As revealed in the Administration's report, the following arrangements in connection with the land acquisition and compensation in CYT had been done as of 30 June 2011:

(a) Ex-gratia Land Compensation

In order to resume the private land required in CYT, a total of \$160 million was paid as ex-gratia land compensation by the Administration to the land owners of CYT.

(b) Ex-gratia Cash Allowance (EGCA)

(i) Out of the 230 registered households, 190 households applied for EGCA under the Special Ex-gratia Rehousing Package. 140 applications were approved, of which 60 were fully eligible households. The Secretary for Transport and Housing had exercised discretion in approving 80 applications

from villagers who were not fully eligible. For over half of the approved applications, the applicants were offered an amount of EGCA of over \$500,000. The EGCA granted to all the approved cases amounted to about \$72 million.

(ii) Over \$1 million of Domestic Removal Allowance were paid.

(c) Crop Ex-gratia Allowance (CEGA)

The Administration also approved over \$14 million of Crop Ex-gratia Allowance (CEGA), involving some 160 cases. About 30 farmers who were engaged in active farming each received more than \$300,000 of CEGA on average. The highest offer amounted to over \$1 million. Some villagers were not satisfied with the amount of CEGA. At the request of the villagers, the Agriculture, Fisheries and Conservation Department (AFCD) reviewed all the crop allowance rates and the cases of all the farmers. After the review, the AFCD was of the view that the original allowance rates for edible aloe vera and organic crops might not reflect the market values. Therefore adjustments were made to the allowance rates of those two crops.

(d) Miscellaneous Permanent Improvements to Farm Ex-gratia Allowances

The Government approved over \$8 million of Miscellaneous Permanent Improvements to Farm Ex-gratia Allowances, which involved some 120 applicants.

(e) Rehousing Arrangements for CYT Villagers

The Lands Department and Housing Department had assessed and provided qualified applicants with accommodation in public rental housing or interim housing. 30 households had moved to public rental housing and interim housing.

The special Home Ownership Scheme (HOS) sale for clearerees affected by the XRL project allowed eligible villagers to purchase HOS flats without being assessed by comprehensive means test. 35 villagers purchased HOS units under the special sale scheme.

(f) Agricultural Resite

An inter-departmental working group (including representatives from the Transport and Housing Bureau, the Lands Department and the AFCD)

processed agricultural resite applications from CYT villagers. The working group examined 60 applications of which 50 applications (involving more than 70 households) were verified as genuine farmers. The 47 CYT households which opted for collective agricultural resite wish to practise farming on a piece of land near Yuen Kong San Tsuen and Tai Wo Tsuen. Owing to the concern of road access and some objections of the residents of the Yuen Kong San Tsuen and Tai Wo Tsuen in respect of construction of houses on the related agricultural land, the Administration invited the New Territories Heung Yee Kuk to mediate in the issue. The issue was finally settled on 9 February 2011. The Administration also obtained an agreement for the villagers to move into the pre-fabricated houses erected by the Mass Transit Railway Corporation Limited for temporary residence in early March 2011.

12. Resistance and Protest against Clearance of CYT

Even with the provision of such an unprecedented generous ex-gratia cash allowance, the 1st phase of site clearance operation in CYT on 4 November 2010 met with resistance and protests. In the operation, Government officers took over deserted land and farms as well as empty premises left by villagers and shop owners who had moved out beforehand. On 19 November 2010, a second clearance at CYT also aborted due to obstruction by petitioners. The Hon Leung Kwok Hung, Legislative Councillor, queried the Administration about the site clearance in the Legislative Council Meeting on 24 November 2010. With the resultant humane approach and the restrained strategy, the Administration eventually cleared the CYT site on a piecemeal basis phased over a period of more than six months. The whole site was finally resumed and cleared on 16 May 2011 without invoking forced eviction.

13. Implications of the CYT Clearance

The information regarding the special ex-gratia allowances payable in clearance of CYT is easily accessible by the public through electronic means. Though the Administration had expressly stipulated that the special ex-gratia rehousing package was exclusively authorized and restricted to households cleared under the XRL project, it would be extremely difficult for the Administration to persuade other affected villagers to accept less favourable terms of compensation or ex-gratia allowance in future project clearances. Consequentially future clearances of squatters for Government projects similar to that of CYT on standard compensation terms will definitely face tremendous difficulty. All future clearances will likely attract opposition from local villagers or residents with support from the social activists and concern groups, as in the CYT case, under current social atmosphere. It has become common realization that the best possible

compensation terms from the Government may only be obtained by organized protests and strong resistance.

14. Imminent Large Projects Ahead

14.1 New Development Areas (NDA) in the New Territories:

The Finance Committee in May 2008 gave approval for the Planning Department and Civil Engineering and Development Department to carry out the North East New Territories New Development Areas Planning and Engineering Study, which was commissioned in June 2008. The overall objective of the Study is to establish a planning and development framework for the Kwu Tung North, Fanling North and Ping Che/Ta Kwu Ling NDAs to meet long-term housing, social, economic and environmental needs, and to formulate an implementation programme. According to the planning schedule, the relevant construction works of the NDA may commence in 2014 at the earliest for population intake in 2019.

Whilst the works for developing the NDAs will inevitably involve land resumption and clearance, the issues of compensation and re-housing of residents affected will certainly arouse heated discussions and arguments. With the lesson learnt from the CYT clearance, the affected villagers would likely demand compensation or treatment not less favourable than those offered for the CYT clearance, and most probably higher taking into account the factor of inflation.

14.1.1 Public Consultation on the Preliminary Outline Development Plans (PODP) for the NDAs

In the Stage Two Public Engagement of the NDAs Study, meetings and public forums were held for briefing sessions on the PODPs for the NDAs. Amongst them, a meeting was conducted for villagers at Kwu Tung Village, Sheung Shui on 29 November 2009 and a Public Forum on 23 January 2010 at Luen Wo Hui Community Hall, Fanling. During these meetings and public forums, the Kwu Tung villagers expressly demanded the Administration to preserve the village with slogans of “no moving” and “no clearance”. Alternatively, if clearance was unavoidable, the villagers must be rehoused within the same area. Some villagers also expressly demanded compensation terms no less

favourable than those of the CYT clearance.

14.2 Liantang/Heung Yuen Wai Boundary Control Point:

The new Liantang/Heung Yuen Wai Boundary Control Point (LT/HYW BCP) will provide a new access across the border in the north-eastern New Territories to the eastern part of Guangdong. The development of LT/HYW BCP comprises the construction of a BCP with a layout of about 18 hectares (including an integrated passenger clearance hall) and a dual 2-lane trunk road of about 11 km in length.

The Administration had already authorized and gazetted the project under the Roads (Works, Use and Compensation) Ordinance (Cap. 370) on 27 April 2012 and 4 May 2012.

The BCP development will affect private land and require resumption and resite of Chuk Yuen Village, an indigenous village in Ta Kwu Ling, and clearance of densely populated squatter areas at Loi Tung area.

Similar to the NDAs, the issues of compensation and re-housing of residents affected will certainly be grave problems to be resolved in land acquisition of the LT/HYW BCP Project. The affected villagers in mid July 2012 protested against the Administration asking for similar terms of compensation and resite arrangements as those of the clearance of CYT.

15. Review of Existing Policies

The Administration will, as a normal practice, review yearly the current ex-gratia allowances payable to affected persons and examine periodically the compensation and re-housing issues under the relevant prevailing legislation and policies. Notwithstanding this, in the light of increasing public awareness, concern and their critical opinions about these matters and more importantly, the implications arisen from the CYT land resumption and clearance, it would seem necessary now for the Administration to take a closer examination of all these issues and policies.

16. Recommendations

Having examined the past land resumption and clearance exercises undertaken by the Administration and the CYT case, the HKILA would like to put forward the following recommendations:

(a) Public Consultation

In accordance with the requirement of prevailing ordinances, the Administration, after gazetting the proposed project, is required to conduct public consultation for two months. The responsible project office would accordingly conduct consultation with the affected local village offices, the rural committees and District Councils concerned. However, such consultation is sometimes seen to be not thorough enough. Nor could it attract the community's widest attention and consequently public support to the proposed project is hardly solicited. Furthermore, under the present political climate, it would be against the community's wish if they were not to be consulted on a full scale on district development projects, particularly for those people who would be directly affected by the project.

HKILA recommends that in implementation of major public development projects, the Administration should always take it seriously to early consult the public thoroughly with such development and enlighten them with the necessary details. Having gauged public's primary concern and solicited their major opinion as well as support to the proposed development, the Administration would definitely proceed with the project more smoothly with less confrontation and resistance.

(b) Caring for the Need of the People to be affected by the Proposed Project

HKILA suggests the Administration to gazette early the proposed project in accordance with the relevant ordinance so that a freezing survey to record the use and occupation of land to be affected by the proposed project could be conducted in good time. This could eliminate people's occupation of the subject project area in speculation for compensation. HKILA further suggests the project office to set up a Land Clearance Committee the main functions of which are to communicate directly with the affected people, especially those who raise objection during the gazetting period, and to accommodate their needs as far as possible. The revised project, if any, shall then be re-gazetted for implementation. If the affected people's needs are mostly accommodated, it is very likely that the project would be implemented smoothly.

(c) Humane Approach

Since the Administration had taken a humane approach in the CYT clearance, the public including the affected villagers as well as the Legislative Councillors would demand the Administration to adopt a similar approach in all future land resumption and site clearances. The gist of the humane approach is to cater

for the needs and circumstances of the villagers as far as possible and permissible under the law and policies. This includes helping the villagers and accommodating their needs by phased land clearance.

(d) Ex-gratia Cash Allowance for Squatters/Compensation for Domestic Structures on Agricultural Land

Since ex-gratia cash allowance had been paid for CYT households, inevitably the Administration will face demand for the same treatment from the clearerees in future clearances. This has already been voiced out in the NDAs consultation forum. Besides, in the previous clearance exercises arising from Government projects, the clearerees had pursued that Government should compensate the replacement cost of their domestic squatter structures. They claimed that their structures were their private properties which had been constructed at their own costs. They argued that under the current policy, ex-gratia allowances would be payable for the clearance of farm structures on private land, e.g. cow-shed, pigsty and chicken shed, agricultural storage, etc. It is unreasonable for Government not to offer compensation for the clearance of their domestic squatter structures occupied by human beings. Although it is the Administration's stance that under the Land Resumption Ordinance, buildings or structures erected in breach of the lease are not entitled to legal compensation, hence compensation is not payable for structures on private agricultural land not used for agricultural purposes. This argument is too subtle for the squatters to follow and is generally unacceptable.

Similar to the ex-gratia allowance for qualified farm structures on private land, HKILA suggests an ex-gratia allowance may be payable for squatters whose structures are covered by the 1982 Squatter Structure Survey and the occupiers are registered in the 1984/85 Squatter Occupancy Survey. Such an allowance should be assessed at standard rates based on the type and size of the structure. The assessment of allowance could be based on current replacement rate less the depreciation factor of the domestic structures, by making reference to the principle and current mechanism for the assessment of ex-gratia allowance for farm structures on agricultural land. It is suggested that the clearerees receiving this ex-gratia allowance will not be eligible for any other ex-gratia allowances (including Domestic Removal Allowance) in respect of the same structure and they will also be ineligible to apply for any form of public housing or related benefits in the next two years. It is anticipated that the proposal will have substantial financial implications to the Government in view of the fact that

there is a considerable number of eligible domestic squatter structures throughout Hong Kong.

(e) Provision of Public Rental Housing or Home Ownership Scheme Flats with the Comprehensive Means Test waived for Eligible Affected Villagers

This should be applicable to all future clearances as far as practicable since it is in line with the CYT clearance as well as being the key element of the humane approach to cater for the needs of affected villagers. Of course, this should be applied within reasonable limits.

(f) Review of existing Ex-gratia Allowance

In the CYT clearance, some farmers alleged that organic crops were very expensive and hence demanded higher crop compensation. Eventually the Administration, after reviewing the allowance rate, offered higher cash allowance acceptable to the farmers. To facilitate smooth site clearance for the imminent projects, the Administration should therefore review all ex-gratia items as soon as possible, because some of them are probably outdated. This would be construed as a positive and reasonable approach to enable a fair treatment to the clearers.

(f) Forced Eviction of Intransigent Villagers

With the implementation of reasonable and permissible humane policies as well as the strategy of phased clearance, the Administration should take firm action against those intransigent villagers/residents who persistently demand higher compensation and resist clearance. Concerted efforts from all relevant Government departments would be necessary to effect site clearance including the possibility of forced eviction to ensure the delivery of the site on time. Without the backup of forced eviction as its ultimate weapon, Government will not be able to discharge its duty and function to provide land for development of public projects. Furthermore, negotiations and offers of compensation packages, no matter how well-based and generous, may not produce the desired result, if there is misconception that Government will under no circumstances use force to evict any residents. All in all, there will always be the odd ones who refuse to compromise and persistently hold out for more.

17. Epilogue

The Administration of Hong Kong SAR Government had in the past reviewed and

added new ex-gratia compensation items for land clearance to make way for implementation of public projects. There had been an immense increase of land compensation rate and payable ex-gratia items for land clearance for the construction of the Shing Mun Reservoir in 1920s and more recently the XRL Project. In order to alleviate foreseeable difficulties in future land clearances and to ensure smooth operation, HKILA puts forward the above recommendations to the Government of the HKSAR for consideration.

August 2012

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Compensation And Rehousing Arrangements Under Existing Policy For Land Resumption And Site Clearance In The New Territories Of The Hong Kong Special Administrative Region, The People's Republic Of China

The compensation and rehousing arrangements under existing policy for land resumption and site clearance in the New Territories include:

1. Compensation for Village removal (the Village Removal Terms)

In recognition of the tradition of the New Territories, indigenous villagers, or non-indigenous villagers who owned building lots since before World War II or by succession, may be provided with resites when their building lots are resumed.

2. Compensation for Land & Buildings

Compensation is payable to owners of private land, either building land with or without buildings or agricultural land, if their private land is resumed by the Government for a public purpose.

The New Territories is divided into four compensation zones (A, B, C and D). For owners of building land, with or without buildings, compensation offers may be made based on professional valuation (legal compensation) plus an ex-gratia compensation at the relevant zonal rate.

For owners of agricultural land, compensation may be offered at the relevant zonal ex-gratia compensation rates. There is no offer of legal compensation for buildings or structures on agricultural land as agricultural land (unlike the building land) should not accommodate any non-agricultural structures thereon.

3. Compensation/Ex-gratia Allowances for Agricultural Activities

As farming is a traditional occupation of many New Territories residents, special ex-gratia compensation arrangements are available for “farmers” in the New Territories affected by land resumption or clearance. These include among others a crop compensation, assessed on the basis of the market value of the crops under cultivation; an ex-gratia allowance (EGA) for qualified farm structures on private land, assessed at standard rates based on the type and floor area less depreciation value according to the conditions of the affected farm structures; and another EGA for miscellaneous permanent improvements to farms e.g. farm installation and fixtures such as water ponds, wells, fences, irrigation pipes/ditches, boundary walls, gates, bunds and other minor annexures, assessed at standard rates which are based on the standard replacement rates of the items

less their depreciated value.

A genuine farmer certified by Agriculture, Fisheries and Conservation Department may opt for an EGA in the form of Rehabilitation Allowance (RA), if despite that he is eligible for public rental housing (PRH) he still chooses to continue farming elsewhere and gives up his eligibility for public housing. Such RA is payable to him based on a standard rate calculated with reference to removal expenses and construction costs of a replacement temporary building.

4. Agricultural Resite

If a genuine farmer chooses to continue farming elsewhere, he may be eligible for agricultural resite, i.e. to rent (or purchase) private agricultural land to continue farming and as such may apply for a short term waiver to permit erection of a domestic structure of 400 square feet large and 17 feet high on such agricultural land at a standard rate per square metre per annum.

5. Compensation/Ex-gratia Allowances for Temporary Structures

The following structures are not eligible for any form of compensation or EGA:

- (a) temporary licensed structures covered by Government licences or by a Modification of Tenancy which generally is recognized as a form of licence; or
- (b) tolerated unauthorized squatters covered by 1982 Squatter Structure Survey; or
- (c) illegal or unauthorized structures.

6. Compensation/Ex-gratia Allowances for Occupiers of Temporary Structures

(a) Domestic Removal Allowance

Although temporary structures used for domestic purposes per se (except those on building lots and arguably those used as farmers' dwelling houses) do not attract/do not qualify for compensation or EGA, occupiers of domestic structures surveyed for dwelling purpose in the 1982 Squatter Structure Survey conducted by the then Housing Department are eligible for a Domestic Removal Allowance ranging from \$3,000 – \$10,000, depending mainly on the size of the family, to help them to meet the initial cost of moving.

(b) Public Rental Housing (PRH), Interim Housing (IH) and Ex-gratia allowance for permitted occupiers (EGAPO)

To meet genuine housing needs, the following types of permitted occupiers at present may be/are eligible for re-housing to PRH or IH, or for EGAPO in lieu of IH:

- (i) permitted occupiers of a licensed domestic structure on unleased Government land or on private agricultural land are eligible for PRH if they pass the Comprehensive Means Test (CMT) and other relevant criteria as required by the Housing Department. If they are not eligible for PRH but meet the criteria for IH, they will be offered IH or EGAPO in lieu of IH. The amount of EGAPO is calculated based on standard rates with reference to the size of the structure and should allow the occupiers to rent alternative accommodation for three years; and

- (ii) permitted occupiers of a domestic squatter structure on private agricultural land or unleased Government land are eligible for PRH if the structure was covered by the 1982 Squatter Structure Survey and the occupiers were registered in the 1984/85 Squatter Occupancy Survey and they pass the CMT and other relevant criteria as required by the Housing Department. If they are not eligible for PRH but meet the criteria for IH, they will be offered IH or EGAPO in lieu of IH.

At present, recipients of EGAPO will not be eligible for any other form of EGAs (including Domestic Removal Allowance as referred to in paragraph 6 above) in respect of the same structure, and they will be barred from applying for any form of public housing or related benefits for the next two years. The rate of EGAPO, which is determined based on the applicable rate at the date of pre-clearance survey, is about \$130,000 for a squatter structure of 400 square feet.

Eligibility Criteria For The Special Assistance For Qualified Households

To contain the squatter problem, the Government conducted two territory-wide surveys on squatters; one in 1982 on the number and size of all squatter structures, the other on their occupiers in 1984/85. All squatter structures covered by the above-mentioned surveys are tolerated until they are subject to clearance because of a public project, or for safety or other environmental reasons.

As a matter of principle, tolerated squatter structures for residential purpose must be domestic structures covered by the 1982 Squatter Structure Survey or licensed domestic structures (“the 1982 domestic structure requirement”), while squatter occupiers should be covered by the 1984/85 Squatter Occupancy Survey (“the 1984/85 occupancy requirement”). The two requirements, being the cornerstone of the prevailing squatter control policy, would be kept intact and form the two main eligibility criteria of the proposed special ex-gratia rehousing package for households affected by land resumption and site clearance for the HKSXRL project.

A Qualified Household eligible for the proposed Special Assistance should meet the following conditions –

- (a) the household should have been residing in an affected structure on the date of the pre-clearance survey on 11 November 2008;
- (b) the affected structure should be either a 1982 surveyed domestic squatter or a structure licensed for domestic usage which is not built on a piece of building land;
- (c) the household should be covered by the 1984/85 Squatter Occupancy Survey or can produce evidence proving that they have resided in the affected structure for the same duration;
- (d) no household member should own or co-own any domestic properties in Hong Kong, or own more than 50% share in any company that owns domestic property in Hong Kong, or have entered into any agreement to purchase domestic property from the date of the pre-clearance survey up to the date of receipt of the Special Assistance;
- (e) no household member should be granted any other form of ex-gratia allowance in respect of the same structure upon receipt of the Special Assistance except for the DRA as referred to in paragraphs 6 and 7 above;
- (f) no household member should at present be enjoying any form of subsidised housing or related benefits, or be subject to debarment as a result of previous enjoyment of any form of subsidised housing or related benefits;
- (g) all household members choosing the EGCA-only option should undertake not to apply for any form of subsidised housing or related benefits for a period of three years

- counting from the date of receipt of the Special Assistance;
- (h) all household members choosing the EGCA-HOS option should undertake not to apply for any form of subsidised housing or related benefits once and for all unless under very exceptional circumstances; and
 - (i) households should apply for the Special Assistance and move out of the clearance site before specified deadlines.