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By Fax (2509 9055)

24 January 2007

Ms Joanne MAK
Clerk to Panel
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Ms MAK,

**Panel on Home Affairs
Supplementary Information on
Management and Resumption of Private Streets**

I refer to your letter dated 28 September 2006. We would like to provide the following supplementary information on the captioned subject for Members' reference please:

- (a) Private Street Resumption Committee (Annex A);
- (b) Compensation and Legal Issues (Annex B); and
- (c) Situation in Fort Street and Kam Ping Street, Eastern District (Annex C).

Yours sincerely,

(Ms Margaret HSIA)
for Director of Home Affairs

c.c. Director of Buildings (Attn: Assistant Director/Existing Buildings 1)
Director of Lands (Attn: Assistant Director (Acquisition))
Director of Highways (Attn: Assistant Director (Development))
Director of Food and Environmental Hygiene (Attn: Assistant
Director (Operations)3)
District Officer (Eastern)
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Private Street Resumption Committee

(a) Membership

The Private Street Resumption Committee (the Committee) was established in 1986 to co-ordinate departmental efforts in drawing up the Private Street Resumption Programme (the Programme) and overseeing the progress of resumption. The Committee is under the chairmanship of the Director of Home Affairs with representatives from nine other policy bureaux or departments. Membership of the Committee is as follows:

Chairman:	Director of Home Affairs
Members:	Secretary for the Environment, Transport and Works (or representative)
	Commissioner for Transport (or representative)
	Director of Highways (or representative)
	Director of Buildings (or representative)
	Director of Lands (or representative)
	Director of Housing (or representative)
	Director of Fire Services (or representative)
	Director of Food and Environmental Hygiene (or representative)
	Director of Drainage Services (or representative)

(b) Functions of the Committee

The Committee draws up an implementation programme according to the established selection criteria, namely multiple-ownership, safety risks, environmental improvement and traffic considerations. It coordinates departmental efforts; establishes inter-departmental working procedures; and considers and agrees the method of financing the programme. It also reviews from time to time the resumption procedures and initiates improvements where appropriate.

(c) List of the 79 deleted private streets endorsed by the Committee (with years and reasons for their deletion), consultation with concerned parties and decision on the deletion

Based on the advice of District Officers, 166 private streets were identified in the urban areas for consideration by the Committee for resumption under the Programme. The Committee discussed and reviewed these private streets and endorsed their resumption or deletion based upon the recommendations of member departments and District Officers concerned.

Over the years, the Committee had endorsed the resumption of 70 streets and deletion of 79 streets from the Programme. The list of the deleted streets and the reasons for their deletion are shown at Appendix.

The Committee or District Officers had kept the District Councils (DCs) or relevant parties informed of the progress of the Programme including details of the deleted streets where appropriate. Representatives of the Committee had attended DC meetings to answer enquiries relating to the progress of the Programme, and explained Government's policy on private street resumption and reasons for deletion of individual streets, where appropriate.

With regard to the resumption of private streets in Eastern District, representatives of the Committee had briefed the Eastern District Board and Eastern Provisional District Board members on 14 September 1995 and 17 September 1998 respectively in respect of 12 of the deleted streets.

(d) Follow up action on deleted private streets

The Administration has taken various measures to improve the environmental hygiene conditions at private streets deleted from the resumption programme, such as:

- District Officers assist residents in the formation of Owners' Corporations or Mutual Aid Committees to facilitate better management of their properties.
- The Food and Environmental Hygiene Department (FEHD) provides basic routine street sweeping service to those private streets which are not locked up and are freely accessible by the public.
- Drainage Services Department (DSD) will check and clear choked drains on an emergency basis in private streets accessible to the public upon receipt of complaints.
- Water Supplies Department provides emergency water supply in case of water pipe bursting.
- If the situation warrants, HyD will carry out road works, such as using bitumen for emergency patch up works to the subsided road surface in private streets to remove immediate danger on receipt of a complaint.

Appendix to Annex A

79 Streets Deleted from the Private Street Resumption Programme

District	Name of Street	Reason for Deletion	Year of Deletion
Central & Western (23 streets)	Algar Court	Site reduction upon redevelopment	1997
	Alveston Terrace	Lane rarely used by public	1995
	David Lane	Site reduction upon redevelopment	2000
	Fuk Sau Lane	Loss of vehicular access	2000
	Ho Kwok Lane	Lane rarely used by public	1995
	Ki Ling Lane	Protruding balcony problem	1998
	Kom U Street	Site reduction upon redevelopment	1999
	Kwong Yuen Street East	Redevelopment by Land Development Council	1991
	Lane between Po Tuck Street & Clarence Terrace	Lane rarely used by public. Existence of a retaining wall which requires substantial maintenance cost	1992
	Leung I Fong	Large portion is government land and remaining small portion is in good condition.	1992
	Lok Hing Lane	Government land	1994
	On Hing Lane	Lane rarely used by public	1995
	Pan Kwai Lane	Site reduction upon redevelopment	1999
	Sai Wa Lane	Site reduction upon redevelopment	1999
	To Li Terrace	Lane rarely used by public	1995
	Un Fuk Lane	Lane rarely used by public	1995
	Wa Ning Lane	Site reduction upon redevelopment	2001
	Wing Sing Street	Redevelopment by Land Development Council	1995
	Wo Fung Street	Site reduction upon redevelopment	1999
	Yan Shau Lane	Lane rarely used by public	1995
	Yim Fong Lane	Lane rarely used by public	1995
	Yu Lok Lane	Open space project by LCSD	2001
	Yu Po Lane East/Yu Po Lane West	Redevelopment by Land Development Council and site reduction upon redevelopment	1998
Eastern (13 streets)	Ching Wah Street (except the ramp)	Protruding balcony problem	1998
	Church Lane	Protruding balcony problem	1998
	Fort Street Nos. 21-66	Protruding balcony problem	1998
	Hei Wo Street	Protruding balcony problem	1998
	Hoi Foo Street	Site reduction upon redevelopment	1998
	Hoi Hong Street	Protruding balcony problem	1998
	Hoi Wan Street	Protruding balcony problem	1998
	Jupiter Street	Protruding balcony problem	1998
	Kai Yuen Street (No. 36-54)	The street only serves local community and was not open to the public for through traffic. There may be compensation claims.	1993
	Kin Wah Street Nos. 17-57 & 18-30	Protruding balcony problem	1998

District	Name of Street	Reason for Deletion	Year of Deletion
	Ming Yuen Western Street	Site reduction upon redevelopment	1998
	Nation Street	Objection from Kut Cheung Mansion Mutual Aid Committee on the ground that the existing underground well for flushing water supply may be affected. No Owners' Corporation to sign agreement to undertake future maintenance of underground well.	1995
	Quarry Bay Street (Inner pt. from No. 61)	Protruding balcony problem	1998
Kowloon City (22 streets)	Access Road off Kadoorie Avenue	In good condition.	1992
	Baker Court	Protruding balcony problem	1998
	Belfran Road	Owners may claim compensation for loss of car parking spaces	1998
	Braga Circuit	Lane rarely used by public	1992
	Fuk Chi Street	Lane rarely used by public	1992
	Hung Kwong Street	Loss of vehicular access	1992
	Lai Wa Street	Loss of vehicular access	1992
	Mei Wa Street	Loss of vehicular access	1992
	Sung Chi Street	Protruding balcony problem	1998
	Sung Kit Street	Loss of vehicular access	1992
	Sung On Street, Sung Ping Street & Hok Yuen Street East	Protruding balcony problem	1998
	Wan Fat Street	Loss of vehicular access	1992
	Wan Fuk Street	Loss of vehicular access	1992
	Wan Hing Street	Loss of vehicular access	1992
	Wan King Street	Loss of vehicular access	1992
	Wan Lei Street	Loss of vehicular access	1992
	Wan Lok Street	Loss of vehicular access	1992
	Wan Shun Street	Loss of vehicular access	1992
	Wan Tat Street	Loss of vehicular access	1992
	Wing Yiu Street	Loss of vehicular access	1992
Wu Kwong Street	Loss of vehicular access	1992	
Yau Moon Street	Loss of vehicular access	1992	
Sham Shui Po (1 street)	Sai Yeung Choi Street North & Wong Chuk Street	Protruding balcony problem	1998
Southern (2 streets)	Aberdeen Main Road (Part)	In good condition. Availability of a public footpath of adequate width along the kerbline.	1995
	Old Main Street Aberdeen (part)	Vested government land	1996
Wan Chai (11 streets)	Chi Shing Lane	Site reduction upon redevelopment	1998
	Great George Street	Protruding balcony problem	1994
	Lun Fat Street	Protruding balcony problem	1998
	Monmouth Terrace	Protruding balcony problem	1998
	Paterson Street (Part)	Protruding balcony problem	1998
	Percival Street (Part)	Protruding balcony problem	1998
	St. Francis Yard	Protruding balcony problem	1998
	Tang Lung Street	Protruding balcony problem	1998

District	Name of Street	Reason for Deletion	Year of Deletion
	Thomson Road (both sections)	Protruding balcony problem	1998
	Tien Pao Street	Street redeveloped by private developer	1992
	Tsui In Lane	Large portion is government land and remaining private portion is in good condition. There would be site reduction upon redevelopment.	1993
Wong Tai Sin (1 street)	Rear Lane of Hong Keung Mansion	Site reduction upon redevelopment	1996
Yau Tsim Mong (6 streets)	Knutsford Terrace & Rear Lane	Resumption would entail a substantial compensation claim since part of the site was developed. No serious environmental problem found.	1991
	Li Tak Street	Protruding balcony problem	1998
	Observatory Court	Large portion has been redeveloped. Free surrender of the remaining portion was not possible due to multiple	1992
	Sham Chun Street	Site reduction upon redevelopment	1995
	Unnamed street between 198-200 Tong Mi Road	Site reduction upon redevelopment	1994
	Wong Tai Street	Large part of the street is an open yard and does not form a right of way. Free surrender was not possible due to multiple ownership.	1992

Compensation and Legal Issues

Resumption of private streets is carried out by the Government in accordance with the powers provided in the Roads (Works, Use and Compensation) Ordinance, Cap. 370, and the assessment of compensation is based on the provisions of the Ordinance.

Part II of the Schedule to the Ordinance sets out nine matters for which compensation may be claimed; the basis on which compensation is to be assessed; persons who may claim compensation; and the various time limitations for claims. For land resumption claims, persons such as the former owners or such other person having an estate or interest in the land before resumption may apply for compensation. This provides the legal basis for potential claimants to make a valid claim.

It has been Government's policy that resumption of private streets should not involve the paying out of compensation. Compensation under Roads (Works, Use and Compensation) Ordinance, Cap. 370 will only be paid if the claim is unforeseen before the resumption and is subsequently found justifiable.

If it is envisaged that the street to be resumed will incur valid compensation claims, it will usually be deleted from the Programme. Based on this policy, the Committee had, over the years, endorsed deletion of the streets from the programme which were, prima facie, subject to potential compensation claims.

Foreseeable Compensation Claims

As can be seen from the Appendix to Annex A, streets were deleted from the Programme due to various reasons some of which may lead to foreseeable compensation claims. Examples of foreseeable compensation claims are –

(a) Compensation implications and legal issue on trespassing problems arising from protruding balconies

- Legal protruding balconies over private streets could attract compensation claims. When the private street is resumed, the substratum, the area at street level as well as air space above the resumed area will revert to the Government. In other words, owners will lose title to the area of balconies protruding over the resumed street. As a result, they may claim for compensation for their loss.
- Resumption of private streets with balconies above the streets will also give rise to “trespassing problem”, i.e. property owners who keep their balconies after resumption will constitute trespass under the law.
- The Committee had considered possible measures to overcome the trespassing problem, i.e. by the deemed granting of statutory licences to ensure no change to the owners’ rights to keep their balconies over the resumed streets; and by excluding the overhanging structures in resumption. However, there were practical and legal difficulties with these proposed measures. For example, the deemed granting of statutory licence may be interpreted as the former owners can continue to occupy the Government land. Regarding the exclusion of overhanging structures in resumption, it may impose future constraints in carrying out road works and use of road to a height above the strata resumed. Hence, there is no practical solution to overcome the trespassing problem.

(b) Compensation implications arising from the reduction in site area

- According to Building (Planning) Regulation (BPR) 23(2)(a), in determining the area of a site on which a building is erected for the purpose of establishing the permitted plot ratio and site coverage of the building, no account shall be taken of any part of a street or service lane. If a private street or service lane is not subject to a right of way, it is not a ‘street’ for the purpose

of the BPR. This means that some of the private street or service lane areas are of value and their relevant areas could be included for plot ratio calculation upon redevelopment. Resumption of these private street or service lane areas may have compensation implications. However, under the existing policy, resumption of private streets should not involve paying out of any foreseeable compensation.

(c) Compensation implications arising from loss of vehicular access

- Some private streets can only be turned into pedestrian and emergency vehicular access but not public carriageway after resumption (e.g. they are too narrow). As no vehicular access can serve the ground floor retail shops or residents of upper floors, this may incur compensation claims for loss of vehicular access which owners/occupiers of abutting premises enjoyed before resumption. However, under the existing policy, resumption of private streets should not involve paying out of any foreseeable compensation.

Assessment of Compensation

Generally speaking, for normal road improvement project, the Administration would only prepare the compensation estimate when the project has reached an advanced stage. The claimants shall submit compensation claims to prove their eligibility and substantiate the amount of claims after the commencement of the road projects and such claims will be assessed in accordance with the provisions of the relevant ordinance.

Under the Programme, private streets were deleted by the Committee based on prima facie evidence that they would be subject to potential compensation claims. Under such circumstances, the Administration had not ascertained which of the affected parties would submit compensation claims. That said, the Administration had once paid unforeseen compensation of \$25 million due to a claim resulting from the resumption of a private street.

The Administration has considered Members' suggestion of granting an enhanced plot ratio upon redevelopment of the concerned site as an alternative to cash compensation. The grant of bonus plot ratio is governed by BPR 22 which allows the Building Authority, upon redevelopment of a site, to grant bonus plot ratio when an area within a lot abutting a street is dedicated to the public for the purposes of passage, or when part of a lot abutting a street is acquired by the Government, either by agreement or by resumption, for the purpose of street widening.

However, there is no provision to enable the Building Authority to grant bonus plot ratio in the future in respect of area to be resumed under the resumption programme. Hence, it does not seem to be feasible to consider granting bonus plot ratio (to the future developer of the lot concerned) in the resumption of private street in lieu of cash compensation to the existing individual owners of the lot.

Regarding Members' suggestion of stipulating in the law that the Government would not need to make compensation if 80% to 90% of the affected owners consented not to seek compensation, the Administration is of the view that private streets are private property and are protected by law, owners who agree to surrender their lots without compensation could not force those who disagree to follow.

Situation in Fort Street and Kam Ping Street, Eastern District

Members have raised concern on the environmental hygiene condition of Fort Street and Kam Ping Street in Eastern district. The following paragraphs set out the action taken by the Administration to improve the environmental condition of the streets.

(a) Fort Street

Members are concerned of the blocked drains along Fort Street. The Owners Corporations of Kava Mansion and Fort Mansion have earlier jointly repaired the defective drain at the back lane in their lots and the problem of blocked drains at the back lane has been resolved. DSD has also assisted the residents by carrying out urgent rodding exercise for blocked drains at Fort Street. The Administration will continue to assist the Owners Corporations in the repair of the defective drains within their private lots.

Regarding the suspected illegal occupation of Fort Street for carparking purposes, the Eastern District Office (EDO) has referred the case to the Police for investigation. The Police has discovered no matters requiring further police investigation. To address the issue of law and order problem in private streets, EDO would assist owners to refer any law and order problems found in the private streets to the Police for follow up action as and when necessary.

(b) Kam Ping Street

Kam Ping Street, previously a private street, was resumed in 1991. Regarding its environmental hygiene condition, the Inter-departmental Action Group on Implementation of Team Clean Initiatives under the lead of EDO has taken a series of measures to tackle the problems. These include:

- FEHD conducts daily inspection to monitor its cleanliness and mounts special night blitz operations against dog fouling. Besides, dog excreta collection bins will be provided in the vicinity.
- EDO will refer complaints to relevant departments for follow up actions on illegal platforms/ramps at shop entrances and take up a coordination and mediation role when necessary. Relevant departments will exercise their authorities in taking law enforcement actions against those illegal platforms/ramps.
- The Police will continue to take actions on illegal parking at the street as and when necessary.

EDO will continue to monitor the environmental hygiene condition of the streets and coordinate departmental efforts to improve the condition of the streets when required.