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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:

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|-----------|--|
| 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.