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Urgent By Fax

28 July 2008

Mr Paul Zimmerman
Founding Member
Designing Hong Kong Limited
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Hong Kong

Mega Tower Project

I refer to your letter dated 20 July 2008.

It is our established land policy that we would process developers' applications for land exchange in order to allow the implementation of the approved plans/schemes within the statutory planning framework, whilst upholding the principle of optimization of the use of land. In applying this policy, we will have to satisfy ourselves the following: the Government land involved is incapable of reasonable separate alienation or development; the land does not have any foreseeable public use; and that the developers are required to pay full market value premium and this results in a financial return to the Government no less favourable than by separate alienation.

In response to the Hon. Yeung Sum's question at the meeting of the LegCo Panel on Development held on 18 July 2008, the Secretary for Development said that to meet the present-day public aspirations for lower development intensity, the Town Planning Board was reviewing the Outline Zoning Plans through a due process, including public consultation and processing objections and representations. However, this should not be used as the justifications for shelving any land exchange applications processed in accordance with the existing policy and on the basis of approved development

projects which remained valid. The Secretary explained in general the need for Government to act in accordance with the law and respect the rule of law and contracts. Government would risk legal challenges if it did not so act.

It would be wrong to suggest that the Secretary said she feared legal action arising from the Mega Tower case. We have made clear in paragraph 2 of the relevant paper for the Panel meeting held on 18 July that in various previous attempts to challenge the decisions of the Government on lease modifications or land exchanges through the judicial route, the courts in Hong Kong have reaffirmed that such decisions are within the private law domain. The Government is performing a role which is no different from that of a private landlord. However, the reality is that in Hong Kong, with the rule of law, everyone is always at liberty to launch a legal challenge against the decision of the Government. If a case is initiated against the Government, it will be up to the Court to determine if the Government's decisions or actions are legally in order and met the expectations claimed, if any.

For further details about the case, you may wish to look at the Panel paper mentioned above and the Secretary's reply to the Hon Yeung Sum's oral question asked on 4 June 2008 which are available at the Legislative Council's website.

I believe the above would help clarify any misunderstanding you may have as regards the discussion related to the Mega Tower project at the meeting of the Development Panel on 18 July 2008.

Yours sincerely,

(Brian Lo)
for Secretary for Development

c.c. Clerk, Legislative Council Panel on Development
Permanent Secretary for Development (Planning and Lands)
Director of Planning
Director of Lands
Director of Buildings