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商務及經濟發展局 旅遊事務署



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By Fax and Email

15 January 2016

Ms Debbie YAU
Clerk to Bills Committee on Kai Tak Cruise Terminal Bill
Legislative Council Complex,
1 Legislative Council Road,
Central,
Hong Kong
(Fax: 3151 7052)

Dear Ms YAU,

Bills Committee on Kai Tak Cruise Terminal Bill
Letter from Hon James TO Kun-sun

Thank you for your letter dated 16 December 2015, enclosing the letter dated 15 December 2015 from Hon James TO Kun-sun to the Bills Committee Chairman.

Our consolidated reply to the issues related to the Kai Tak Cruise Terminal Bill as raised in Hon TO's letter are set out at **Annex**.

Should you have further enquiries, please feel free to contact us anytime.

Yours sincerely,

(George Tsoi)

for Commissioner for Tourism

Bills Committee on Kai Tak Cruise Terminal Bill

Responses to the Issues related to Kai Tak Cruise Terminal Bill

Raised in the Letter dated 15 December 2015

from Hon James TO Kun-sun

	Issues	Response of the Administration
1.	Port Facility Security Plan (Q.1 & 2)	<ul style="list-style-type: none">● As mentioned in the Legislative Council brief issued by the Administration in July 2015, the Port Facility Security Plan (the Security Plan) was prepared by the terminal operator and approved by the Marine Department under the <i>Merchant Shipping (Security of Ships and Port Facilities) Rules (Cap. 582A)</i> and the <i>International Ship and Port Facility Security Code</i>. The Security Plan is a set of detailed operational guidelines and procedures on the security arrangements within the Kai Tak Cruise Terminal (KTCT) and is implemented by the terminal operator. The Security Plan covers the issuance and surrender of passes for access to the restricted areas; locations of the restricted areas; clearance procedures for passengers of the cruise ships at berth and emergency contacts of the terminal operator who are responsible for security arrangements. However, the Security Plan has not stipulated enforcement powers against certain misconducts and corresponding penalties. The Security Plan is a confidential document and cannot be made public for security reason.● The Bill and the current Security Plan are compatible. When the Bill is enacted as an ordinance and comes into force, it will co-exist with the Security Plan. In the course of drafting the Bill, we have consulted the departments involved in drawing up the Security Plan, namely the Marine Department, Hong Kong Customs and Excise (C&E) Department, Immigration Department (ImmD) and Hong Kong Police Force, to ensure that there was no inconsistency between the Security Plan and the Bill.

	Issues	Response of the Administration
2.	<p>Prohibited acts within the Terminal Area (Q. 3 & 22)</p>	<ul style="list-style-type: none"> ● According to the Bill, both the “permanent and non-permanent restricted areas” are within the Terminal Area. Therefore, the provisions in the Bill (including Parts 3 and 5) that are applicable to the Terminal Area are applicable to both “permanent and non-permanent restricted areas”. ● The Bill’s provisions applicable to the restricted areas (such as Part 4) are only applicable to the “permanent restricted areas” and the “non-permanent restricted areas” that have not been declared to have ceased their restricted areas status under clause 10(1) at that specified period. ● As the restricted areas have permanent customs, immigration, quarantine and police facilities with computers and communication systems containing confidential data, they should be subject to more stringent control than other areas within the Terminal Area. ● The policy objective of the Bill is to bring the relevant legal framework for regulating the use of KTCT broadly on par with that for other cross-boundary ferry terminals in Hong Kong, including the China Ferry Terminal and the Macau Ferry Terminal stipulated under the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313H). As such, we have made reference to Cap. 313H in stipulating certain prohibited or regulated acts and their corresponding penalties. The penalties for these acts under the Bill are largely in line with those under Cap. 313H. For instance, a person who drops litter within the Terminal Area is liable to a fine at Level 1 (i.e. HK\$ 2,000 at maximum) while any person who drops litter at a cross-boundary ferry terminal is liable to a maximum fine of HK\$ 2,000 under Cap. 313H. ● Since the implementation of the Security Plan in 2013, the operation of KTCT has been smooth and orderly so far. There has not been any incident involving the contravention of the Security Plan. Given that the Security Plan has not stipulated penalty for the misconducts, there is no statistics on

	Issues	Response of the Administration
		the penalties imposed for contravention of the Security Plan.
3.	Facilities for clearance of passengers and Police (Q.4)	<ul style="list-style-type: none"> ● Except for a police reporting centre located outside the restricted area, all the customs, immigration, quarantine and police facilities inside the terminal building are located within the “permanent restricted areas”. The “permanent restricted areas” also include important plant rooms within the Terminal Area and the waters off the apron of the Terminal, while the “non-permanent restricted areas” comprise baggage handling areas (ground floor), security check areas (second floor) and concourse (first floor), etc. ● When there is a temporary cessation of the restricted area status of a “non-permanent restricted area”, access control under the regulation of clause 12 of the Bill would not be applicable during the period of cessation to facilitate the organization of various activities. ● As the current Bill has yet to be enacted, there is no example for temporary cessation of the restricted area status of a statutory “non-permanent restricted area”. Yet, past experience indicated that the activities that were held within the proposed “non-permanent restricted areas” under the Bill included exhibitions, brand promotion activities, cocktail receptions, car shows, as well as shooting of films and advertisements.
5.	Tenancy agreement signed with the terminal operator and the contract signed with the property manager (Q. 5 & 6)	<ul style="list-style-type: none"> ● The areas within the Terminal Area that are under the respective purview of the terminal operator and the property manager are set out in <u>Appendix I</u>. Neither the tenancy agreement entered into with the terminal operator nor the contract signed with the property manager mentioned the enforcement powers of the terminal operator and the property manager under the Bill. As the tenancy agreement and the contract are signed by the Government with the terminal operator and the property manager respectively, the Government cannot unilaterally disclose the contents of these

	Issues	Response of the Administration
		<p>documents to the public.</p> <ul style="list-style-type: none"> ● The power for enforcing the provisions under the Bill by the terminal operator and the property manager will be delegated by the Commissioner for Tourism (the Commissioner) in accordance with clause 6(3) of the Bill. In delegating the power, the Commissioner will clearly specify the restrictions and the areas of application of the enforcement power. Therefore, there is no need to specify the respective areas of application of the tenancy agreement and the contract under the Bill.
6.	<p>Interpretation of “cruise ship” (Q. 7)</p>	<ul style="list-style-type: none"> ● There are similar cases under the legislation of Hong Kong in which the interpretations specify the public officers’ power to approve or endorse. For instance, the Banking Ordinance (Cap. 155), which stipulates in the interpretation that an “approved currency” includes “<i>a currency approved by the Monetary Authority</i>”. Another example is the Mental Health Ordinance (Cap. 136), which provides that the “approved social worker” means “<i>a social worker approved for the purposes of this Ordinance by the Director of Social Welfare</i>”. There is no separate empowering provision under these Ordinances. ● Notwithstanding the above, in light of the comments of the Bills Committee, we will consider refining the drafting approach for the interpretation of “cruise ship” and adding a separate provision for empowering the Commissioner to approve any other vessel as a “cruise ship” for the purposes of this Ordinance.
7.	<p>Approved as “cruise ship” for the purposes of this Ordinance (Q.8 & 13)</p>	<ul style="list-style-type: none"> ● From the policy perspective, KTCT should mainly be used for the berthing of cruise ships as far as possible. However, it should also have sufficient flexibility to be used for other appropriate purposes when there is no cruise ship at berth. Therefore, under certain circumstances, vessels other than those “carrying or intended to be used to carry passengers

	Issues	Response of the Administration
		<p>exclusively for sightseeing or pleasure purposes” may also berth at KTCT. An example is the floating book fair on a vessel that berthed at the Terminal and was open to public in the past.</p> <ul style="list-style-type: none"> ● In view of the above, considering the operational need of the terminal, our policy objective is that such types of vessels will be subject to the same regulatory regime including their access to and from and remaining within the Terminal Area as typical cruise vessels carrying passengers for sightseeing and pleasure purposes. ● There is no direct relation between defining particular vessels as “cruise ship” for the purposes of the Ordinance and the services that <u>could be</u> provided by the terminal operator. In fact, the target clients of the terminal operator are not limited to cruise ships. The terminal operator also provides venues for hire to event organizers for holding events within the terminal building. ● Under the tenancy agreement, the terminal operator may arrange cruise ships to berth at the berths in waters off the apron of the Terminal. In case the terminal operator needs to arrange berthing of any vessels other than cruise ships at the Terminal out of business considerations, he may seek approval from the Government. It is purely the terminal operator’s business decision as to whether he would lease the berths and ancillary facilities of the Terminal to vessels other than cruise ships. ● The tenancy agreement provides that the terminal operator must seek approval from the Government (represented by the Commissioner) if he intends to use the berths and ancillary facilities for the berthing of a vessel other than a cruise ship. As such, the current approval arrangements for berthing of vessels at the KTCT under the tenancy agreement are in line with the arrangements under the Bill.

	Issues	Response of the Administration
		<ul style="list-style-type: none"> ● The scope of the ancillary purposes under clause 4 includes any use that supports the operation of KTCT. Examples include the re-provisioning and cleansing services for cruise ships, commercial activities (restaurants, shops, money exchange kiosk), visitor services (kiosks operated by the Hong Kong Tourism Board), and transportation (car parks and coach bays) facilities and services. ● To cope with special circumstances, clause 8(3)(c) allows the use of a life-saving appliance in an emergency (such as a rescue situation) within the Terminal Area. Also, clause 8(3)(a) stipulates that the navigation of a vessel into, within or out of the Terminal Area by a public officer (including firemen and ambulance personnel) is not subject to the restriction of clause 8(2).
8.	Contents of the tenancy agreement (Q. 14)	<ul style="list-style-type: none"> ● Parts of the Terminal Area (including the berths, areas for use of the terminal operation and the ancillary commercial areas) were leased to the current terminal operator by way of an open tender in 2012. The tenancy agreement signed between the Government and the terminal operator is for a period of 10 years and, subject to the agreement of the Government, may be extended for 5 years. During the tenancy period, the terminal operator must perform his obligations under the tenancy agreement, including deploying adequate manpower and resources to ensure the smooth operation of KTCT. ● The terminal operator is a private company. If the terminal operator fails to perform his obligations under the tenancy agreement for any reason (including insufficient working capital), the Government may consider terminating the tenancy agreement in accordance with the provisions of the agreement. ● The Government will ensure that the provisions of the tenancy agreement and the Bill (or the enacted Ordinance) are compatible.

	Issues	Response of the Administration
9.	<p>“Authorized officers” (Q. 15 to 18)</p>	<ul style="list-style-type: none"> ● Clauses 6(1) and (2) of the Bill provide that the Commissioner may make an authorization in relation to <u>specified provisions</u> only or <u>all</u> the provisions of this Bill <u>generally</u>. ● If a person is authorized by the Commissioner under the Bill <u>generally</u>, that person can exercise all functions of “authorized officer” under the Bill. If a person is only authorized certain functions (such as prohibiting the access by any person to the Terminal Area or any part of it by notice or sign) by the Commissioner under a <u>specified</u> provision, that person may only perform the functions so delegated. ● “Public officer” refers to a specific “public officer” (e.g. Commissioner of Police) while “a class of public officers” refers to a particular group of public officers with similar attributes (e.g. the staff of the ImmD of a certain rank who are on duty within KTCT). ● The primary enforcement officers of the Bill are police officers. In expressly providing that “an authorized officer” includes a police officer on duty within the Terminal Area, the Bill aims to empower the police officers on duty within the Terminal Area with all the functions vested in “authorized officers” under the Bill. The current interpretation for an “authorized officer” is flexible and allows the Commissioner to include, where appropriate and necessary, other public officers (e.g. staff of ImmD and C&E Department) in enforcing certain function(s) under the Bill. ● The powers vested in police officers under the Bill would not affect their exercising of the functions vested in them under other Ordinances (including the Police Force Ordinance and Crimes Ordinance). ● Clauses 6(1), (2) and (3) of the Bill stipulate that the Commissioner may authorize a public officer to be an authorized officer, and delegate his or her functions (except those under clauses 6(1), 6(3), 9(1) and 23(1)) to a public

	Issues	Response of the Administration
		<p>officer, a terminal operator or a property manager under the Bill. The provisions also specify that such authorization and delegation of functions must be made in writing. We consider that the contents (including the specific criteria and conditions) of such written authorization and delegation are more important than the format. Also, we understand that not all legislation involving authorization and delegation of functions regulate the format of the relevant documentation. Therefore, we consider it not necessary to regulate the format of relevant documentations under the Bill.</p> <ul style="list-style-type: none"> ● Clause 6(5) of the Bill provides that a function delegated to a terminal operator or a property manager under section 6(3) may be sub-delegated to his employees. The delegation by the Commissioner under section 6(3) would be made in writing. In delegating his or her functions to a terminal operator and a property manager under section 6(3), the Commissioner would set out appropriate conditions (including the rank of the sub-delegated employees and the requirement to ensure that the sub-delegated employees clearly understands the relevant conditions) for the sub-delegation under section 6(5) having regard to the needs. These conditions would be set out in the documentation when the Commissioner delegates the functions under section 6(3).
10.	<p>The power to order a person to leave the Terminal</p> <p>(Q. 19)</p>	<ul style="list-style-type: none"> ● The objective of clause 7(2) of the Bill is to empower the Commissioner and the authorized officers to order a person to leave the Terminal Area or any part of it in order to ensure the safe and smooth operation of the KTCT, as well as to prevent the terminal operation from disruption or being affected by terrorist attacks and other security threats. Under the Bill, the scope of application of such an order is not limited to the contravention of Part 5, nor is the order required to be made in writing. ● In the light of Members' concerns and comments raised on clause 7(2) at the past Bills Committee meetings, particularly in relation to the circumstances for exercising the power to

	Issues	Response of the Administration
		<p>order a person to leave the Terminal Area, the Administration would consider making appropriate amendments to stipulate that such power may only be exercised on the grounds of operation, safety and security within the Terminal Area.</p> <ul style="list-style-type: none"> ● The authorized officers and delegates vested with the power to enforce clause 7(2) of the Bill will be given such power by authorization or delegation by the Commissioner under clause 6 of the Bill. The Administration has no intention to delegate the power to enforce clause 7(2) to a cleaner.
11.	<p>Controlling access to and from the Terminal Area (Q. 20 & 21)</p>	<ul style="list-style-type: none"> ● The restricted areas (regardless of whether they are permanent or non-permanent restricted areas) within the Terminal Area are subject to the restrictions in Part 4 of the Bill, particularly clause 12 therein. Clause 11 of the Bill provides that the Commissioner must cause the boundaries of or entrances to a restricted area to be demarcated by signs or in any other manner. Samples of these signs are shown in <u>Appendix II</u>. ● Clause 7(3) of the Bill stipulates that the Commissioner may prohibit, by notice or sign exhibited, access by any class of persons to the Terminal Area or any part of it. Past experiences showed that possible examples of such notices and signs include prohibitions imposed on non-cruise passengers from entering the waiting halls where boarding passengers were being processed; non-ticket holders from entering certain parts of the Terminal Area where activities were held for ticket holders only; persons below certain age from participating in activities held at certain parts of the Terminal Area; or delineation of specific passageway for pets under specific circumstances (e.g. when a pet exhibition is being held at the Terminal). ● The above shows that it would be difficult to generalize the corresponding controls having regard to the circumstances and needs of different activities held within the Terminal Area. It would therefore be difficult to set out in the form of bylaw the abovementioned and other possible future restrictions that have

	Issues	Response of the Administration
		to be imposed within the Terminal Area.

Tourism Commission

Commerce and Economic Development Bureau

January 2016

Appendix I

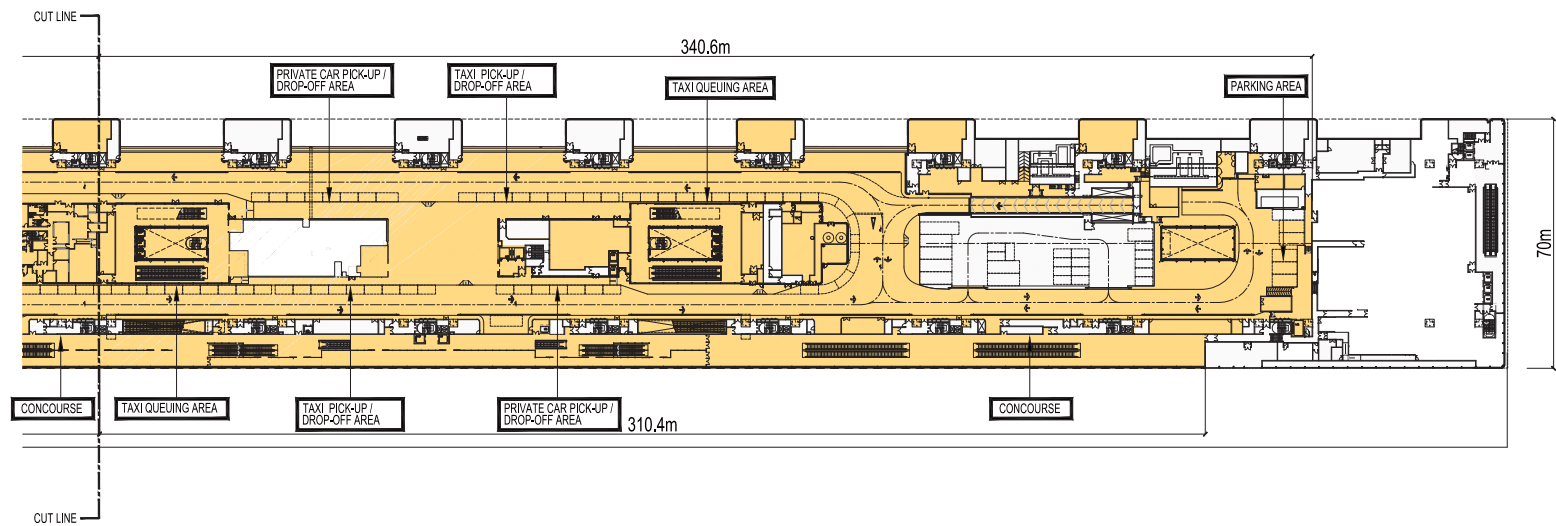
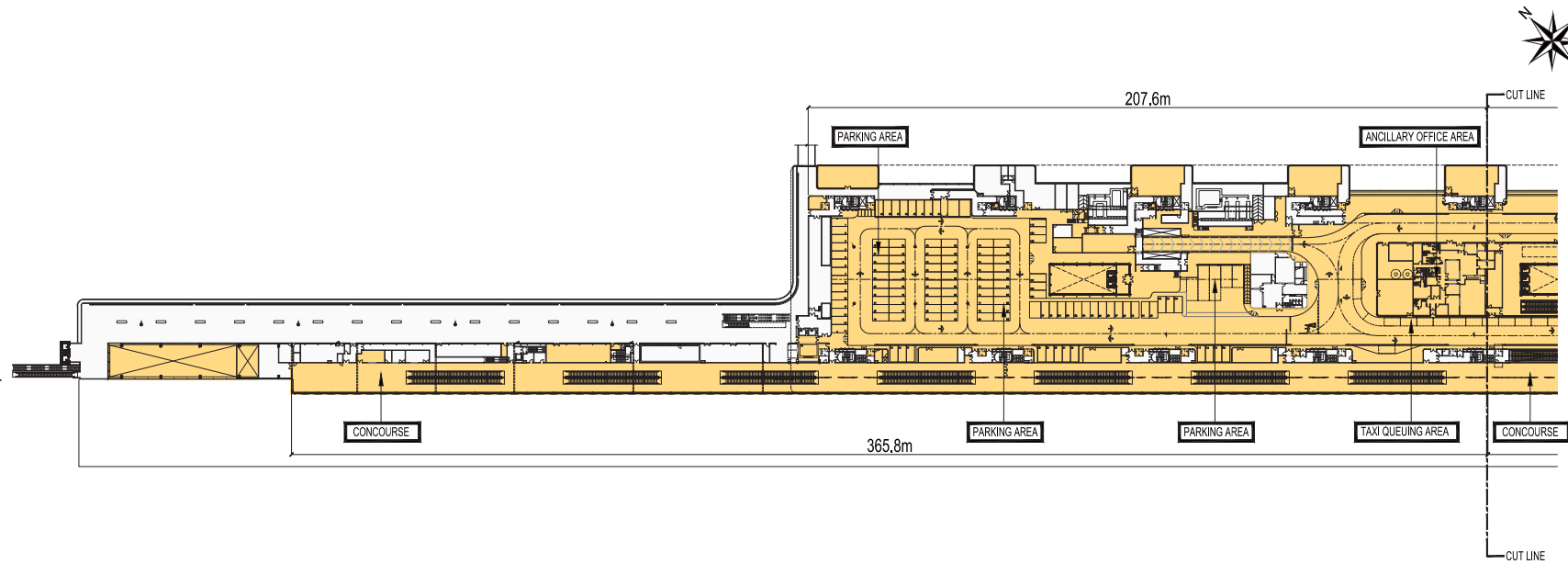
Bills Committee of the Kai Tak Cruise Terminal Bill

Responses to matters in relation to the Kai Tak Cruise Terminal Bill raised in the letter from Hon James TO dated 15 December 2015

Areas managed by the terminal operator and the property manager

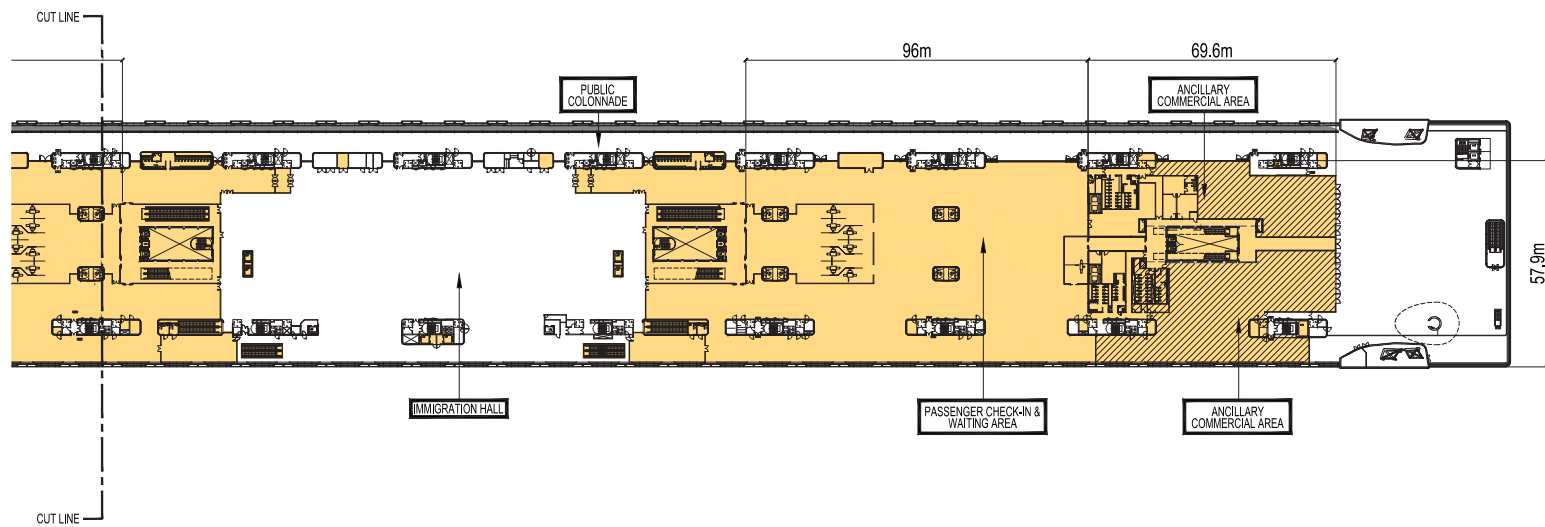
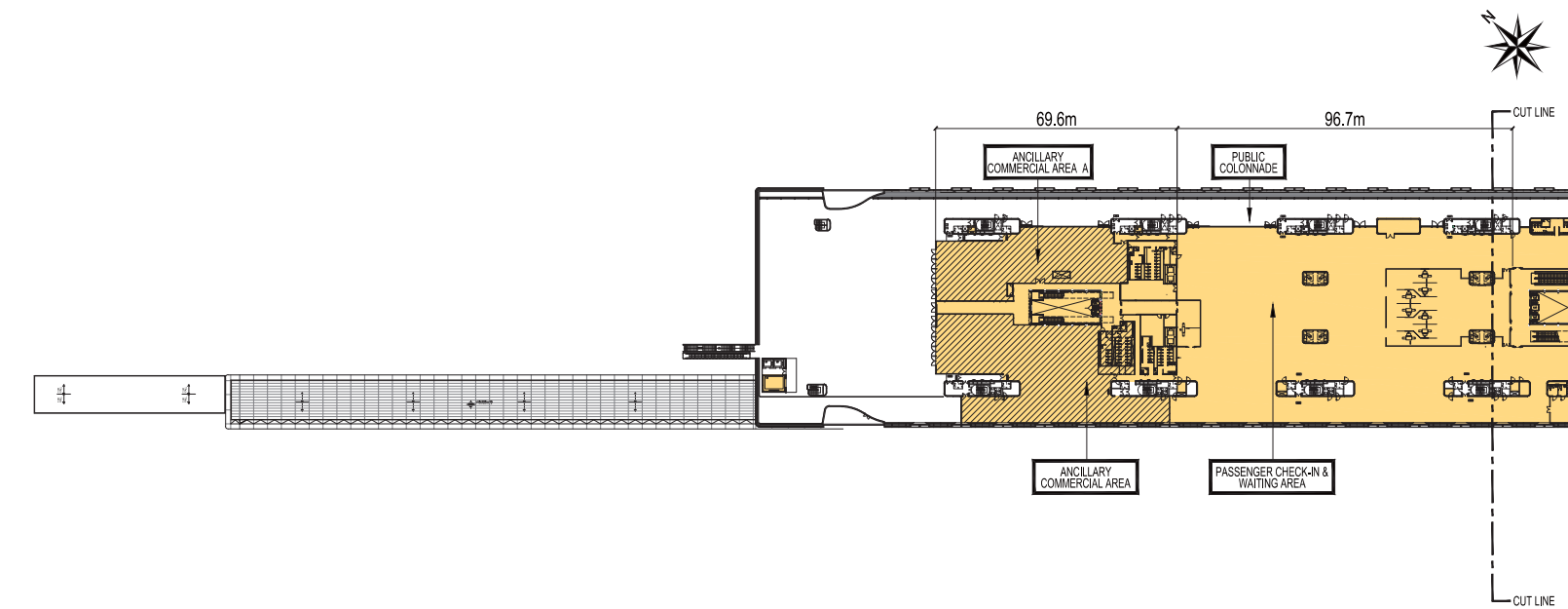
The following floor plan shows in orange the areas managed by the terminal operator on different floors of the Kai Tak Cruise Terminal Building. Moreover, the Apron linked with the terminal building is managed by the terminal operator.

Other areas are mainly managed by the property manager, whose responsibilities include security and cleansing. Some of the areas are also managed by individual departments (e.g. immigration and customs clearance facilities, police reporting centre as well as offices).



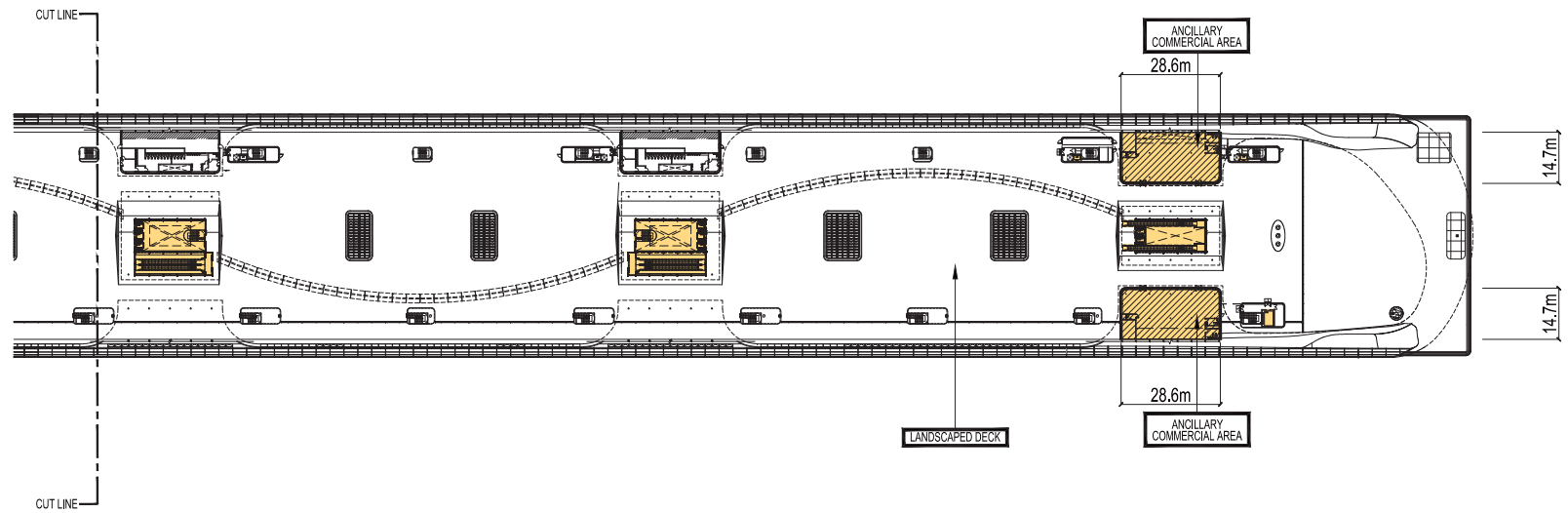
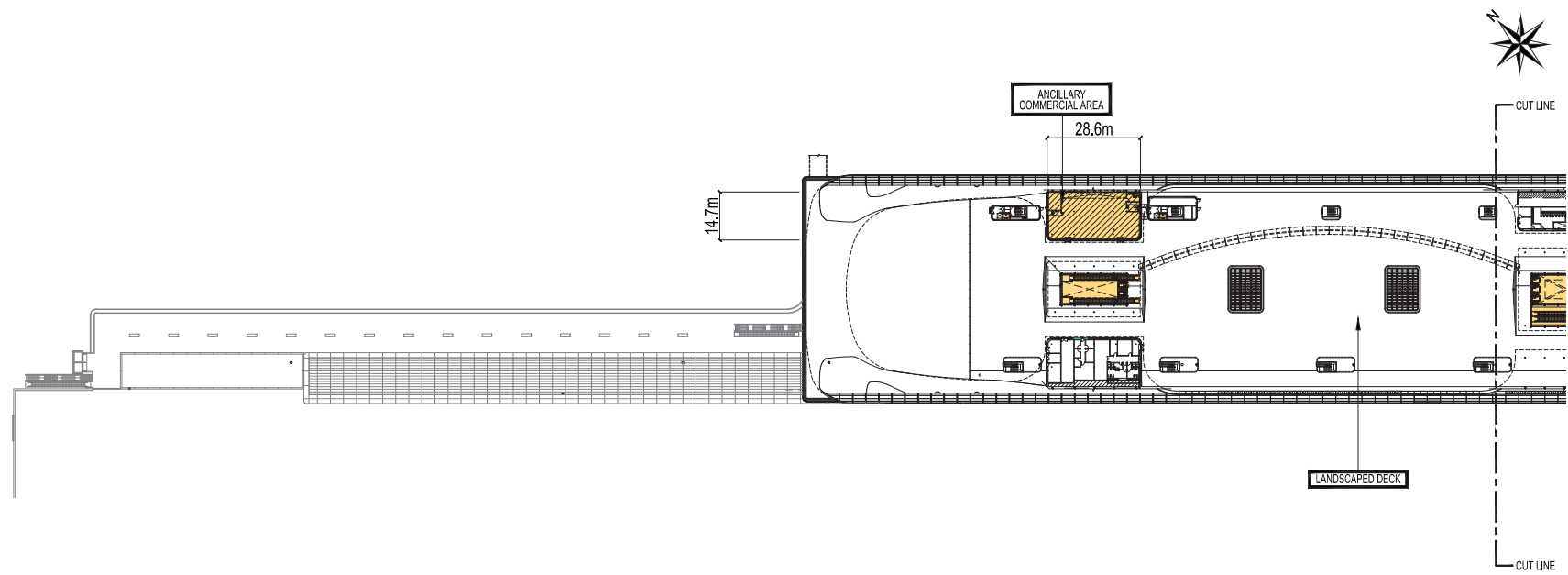
FIRST FLOOR PLAN

LEGENDS:
 TENANCY AREA WITHIN CRUISE TERMINAL BUILDING



SECOND FLOOR PLAN

LEGEND:
 TENANCY AREA WITHIN CRUISE TERMINAL BUILDING



ROOF PLAN

Appendix II

Bills Committee of the Kai Tak Cruise Terminal Bill

**Responses to matters in relation to the Kai Tak Cruise Terminal Bill
raised in the letter from Hon James TO dated 15 December 2015**

Samples of signages concerning the boundaries and entrances of restricted areas



Note: such sign would be exhibited in the conspicuous spaces of the restricted areas within the Terminal Area (e.g. doors of the plant rooms, entrances to the security check areas, entrances to the baggage handling areas, entrances to the apron as well as inside the immigration hall.)