

Bills Committee on Town Planning (Amendment) Bill 2003
List of follow-up actions arising from meetings held on 31 May, 4 and 8 June 2004
The Administration's Response

A. Issues related to the provisions in the Amendment Bill

| Section [Clause] | Follow-up actions by the Administration | The Administration's Response |
|---------------------|--|---|
| s. 23 [Cl. 20] | To provide documents to show the legislative intent of the 1991 Town Planning Amendment Ordinance that it is not the burden of the prosecution to prove beyond reasonable doubt that the relevant matters in question constitute an unauthorized development (UD). (raised at meeting on 31 May 2004) | According to our records, there is no clear indication on the intent on burden of proof. However, as set out in a paper submitted to the Bills Committee (CB(1)1914/03-04(02)), experience tells us that the Prosecution has practical difficulties in some cases to prove beyond reasonable doubt that there is/was a UD. Examples are cases where the uses are underneath built structures or dense vegetation which cannot be shown on the aerial photos taken on the date of gazette of the relevant Interim Development Permission Area (IDPA) Plan/DPA Plan, or cases when the "existing use" surveys were carried out after the gazette of the relevant IDPA Plan/DPA Plan. In these cases, it is relatively easy for the Defendant, as compared to the Prosecution, to prove that the concerned UD is an "existing use", and it is considered reasonable to put the burden of proof on the Defendant rather than the Prosecution. |
| s. 23 [Cl. 20] | To confirm at the Second Reading debate on the Bill the existing practice of conducting freezing surveys before preparation of DPA plans/outline zoning plans (OZPs). (raised at meeting on 31 May 2004) | The Administration will mention this at the Second Reading Debate. |
| s. 23 | To propose Committee Stage Amendments (CSAs) to subsection (8A)(b) | The Administration will propose CSAs as suggested by |

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| [Cl. 20] | and new Regulation 6A(b) in Town Planning (Taking Possession and Disposal of Property) Regulation to replace "where" with "if". (raised at meeting on 4 June 2004) | Members. |
| s. 23 [Cl. 20] | To confirm in writing public access to information referred to in subsection (11). (raised at meeting on 4 June 2004) | The Administration confirms that members of the public will continue to have access to the information referred to in s.23(11). The information mentioned in (a) and (b), i.e. any photograph of land to which s.24A applies, and any draft or approved plan exhibited under the Town Planning Ordinance, is in fact available for public inspection at the Lands Department and/or Planning Department and can be purchased at the Map Publications Centre. For other information mentioned in (c), such as the land-use survey record, the public could have access to the information through the Planning Department. |
| s. 24 [Cl. 21] | To review the new provision. Members are concerned that the present drafting only includes images of the photographs but not information shown on the photographs. The Administration is also requested to consider whether the photographs should be signed or initialled by an officer at a specified rank or above. (raised at meeting on 4 June 2004) | To address Members' concern, the Administration will propose a CSA to make it clear that this provision covers any document incorporating an image of a photograph. Therefore, the information relating to the taking of the photograph, which is shown on the document will become admissible to court under s.24A. We further propose to specify that such document should be purporting to be signed or initialled by any public officer authorized by the Director of Lands. |
| Others | To reconsider whether it should expressly provide in law that meetings | We will propose a CSA to provide in law that meetings of |

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| | <p>of Town Planning Board (TPB) be open to the public. Members raise four options :</p> <ul style="list-style-type: none"> (i) to provide in law that all meetings of TPB be open to the public; (ii) to provide in law that the hearing part of TPB be open to the public; (iii) to provide in law that all meetings of TPB be open to the public, except where TPB considers it inappropriate to do so on grounds of sensitivity of information, premature release of information of others; and (iv) to use administrative means to adopt either one of the above three options. <p>(raised at meeting on 4 June 2004)</p> | <p>TPB be open to the public.</p> |
| Others | <p>To review the proposed CSAs to section 2 concerning opening of meetings of the TPB. Members raise the following concerns :</p> <ul style="list-style-type: none"> (i) it is unclear whether the present drafting would include meetings of committees of TPB; and (ii) the scope of proposed subsection (5B)(b)(v), in particular the phrase “any investigation carried out under the laws of Hong Kong” is too wide. <p>A member does not agree with the proposed CSAs. He is of the view that it should expressly provide in law that the deliberation part of TPB meetings should be held in camera.</p> <p>(raised at meeting on 8 June 2004)</p> | <p>Members’ concerns will be addressed in the revised draft CSA.</p> |

B. Issues not directly related to the provisions in the Amendment Bill

| Follow-up actions by the Administration | The Administration's Response |
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| To provide a paper to explain the procedures adopted by the Planning Authority (PA) in determining the issue of a notice concerning discontinuance of unauthorized development (UD) under s.23(1). (raised at meeting on 31 May 2004) | A separate paper will be provided for Members' information. |
| To provide a sample of notice concerning UD. (raised at meeting on 4 June 2004) | A sample of a notice issued under s.23(1) of the Town Planning Ordinance is at Annex . |
| To review at the Stage Two amendment s.23(2)(c). The Chairman is of the view that impracticality or non-economy to reinstate the land should not be the reason for issue of a notice concerning discontinuance of UD. (raised at meeting on 31 May 2004) | The issue will be reviewed. |
| To advise the legislative intent of s.23(3) and (4). Members are of the view that the notice recipient should only be required to reinstate the land to the permissible uses under the DPA and not to the conditions specified by the PA. The present provisions confer the PA with excessive discretionary power to specify the conditions to which the land should be reinstated. (raised at meeting on 4 June 2004) | Our file records indicate that the legislative intention for s.23(3) is to grant powers to the PA to require reinstatement where permission has been refused. As the proposal raised at the meeting on 4 June 2004 has not been discussed with the stakeholders or interest groups before, we consider it not appropriate to propose any change to s.23(3) at this stage. We will review the matter in the subsequent stages of amendment. |
| To confirm whether there was a revision of fines under s.23(6) in 1995/96. (raised at meeting on 4 June 2004) | The fines under s.23(6) were revised in June 1995 : (i) one-off fine increased from \$100,000 to \$500,000 (first conviction) and to \$1,000,000 (second or subsequent conviction); and (ii) daily fine increased from \$10,000 to \$50,000 (first conviction) and to \$100,000 (second or subsequent conviction). |

| Follow-up actions by the Administration | The Administration's Response |
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| <p>To convey members' view to the Department of Justice that the fines imposed for contravention of offences under s.23 should be sufficient to have deterrent effect. (raised at meeting on 4 June 2004)</p> | <p>The Administration will convey members' view to the Department of Justice.</p> |
| <p>To consider the need to retain the word "gross" in s.23(7B). Members consider that the standard for gross negligence is too high. (raised at meeting on 4 June 2004)</p> | <p>As the use of "gross negligence" is also found in other ordinances, the Administration considers it inappropriate to delete the word "gross" without a detailed assessment of the implications and a study of the relevant case law. The issue can be reviewed in due course.</p> |
| <p>To provide further information concerning appointment and removal of managers of tsos/t'ongs under the first item of the paper (LC Paper No. CB(1)2064/03-04(02)). Members are concerned that in appointing or removing managers of tso/t'ong, whether the Secretary for Home Affairs (SHA) would take into consideration the conviction of managers in relation to unauthorized developments. (raised at meeting on 8 June 2004)</p> | <p>We will provide the information to Members after consulting the SHA.</p> |

**Housing, Planning and Lands Bureau
Planning Department
June 2004**

[Table for TP(A)Bill -Adm Respon.doc]



規 劃 署
Planning Department
Hong Kong

中央執行管制及檢控組
Central Enforcement &
Prosecution Section

來函編號 Your Reference
本署檔號 Our Reference (39) in CEP/E/YL-TT/98
圖文傳真 Fax No.: 2484 9997
電 話 Tel.: 2487 6187
電子郵址 E-Mail: ceppd@pland.gov.hk

**Town Planning Ordinance
(Chapter 131 of the Laws of Hong Kong)**

NOTICE UNDER SECTION 23(1)

To:

██████████
Sole proprietor of ██████████ Auto Service
(Registered owner of Lot No. 3581RP in DD 116
and Occupier of Lot No. 3581RP (part) in DD 116
and adjoining Government Land)

c/o 1/F., No. ██████ Leung Tin Village,
Tuen Mun
New Territories

██████████
(Registered owner of Lot No. 3581RP in DD 116)

c/o 1/F., No. ██████ Leung Tin Village,
Tuen Mun
New Territories

OR

G/F., No. ██████ N26 District,
Leung Tin Village,
Tuen Mun
New Territories

WHEREAS :

- (1) It appears to the Director of Planning, being the Authority for the purposes of section 23 of the Town Planning Ordinance ("the Ordinance"), that there has been an unauthorized development on the land or premises ("the land") described in Schedule 1 below.
- (2) The unauthorized development which appears to have taken place consists of the carrying out of building operation and the carrying out of development by the making of a material change in the use of the land described in Schedule 2 below and it appears to the Authority that
 - (i) the development did not exist immediately before the Tai Tong Interim Development Permission Area Plan (No. IDPA/YL-TT/1) which was gazetted on 5.10.1990.

- (ii) the development is not permitted under the draft and the approved Tai Tong Development Permission Area Plans (Nos. DPA/YL-TT/1 and DPA/YL-TT/2) which were gazetted on 12.7.1991 and 17.6.1994 respectively.
- (iii) the development is not permitted under the draft and the approved Tai Tong Outline Zoning Plans (Nos. S/YL-TT/1, S/YL-TT/2, S/YL-TT/3, S/YL-TT/4, S/YL-TT/5, S/YL-TT/6 and S/YL-TT/7) which were gazetted on 8.7.1994, 27.6.1997, 30.10.1998, 11.6.1999, 6.8.1999, 3.3.2000 and 27.10.2000 respectively.
- (iv) permission to do so has not been granted under section 16 of the Ordinance nor by the Authority before the plan of the Development Permission Area was gazetted.

NOTICE IS HEREBY GIVEN that the Authority, pursuant to section 23(1) of the Ordinance, requires that by 6 February 2001,

- (i) the development shall be discontinued (if it has not been discontinued); or
- (ii) permission for the development shall be obtained under section 16 of the Ordinance.

In the event that this notice is not complied with, the person served commits an offence under section 23(6) of the Ordinance, and is liable:

- (i) in the case of a first conviction, to a fine of \$500,000; and in addition, to a fine of \$50,000 for each day during which the offence is proved to have continued; and
- (ii) in the case of a second or subsequent conviction, to a fine of \$1,000,000; and in addition, to a fine of \$100,000 for each day during which the offence is proved to have continued.

Issued on : 6 November 2000


for Director of Planning

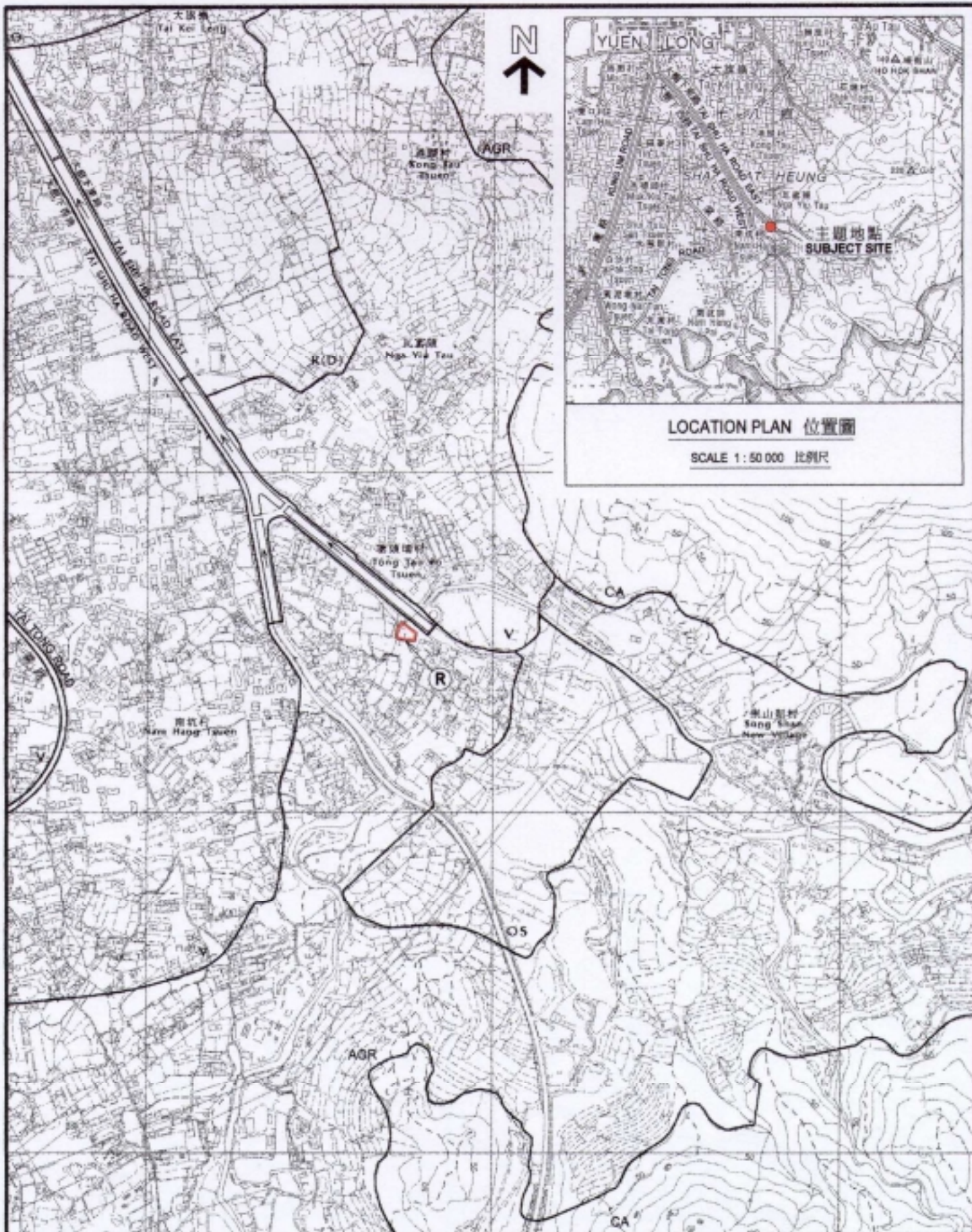
SCHEDULE 1

Lot No. 3581RP(part) in DD 116 and
adjoining Government Land, Yuen Long, New Territories

(As shown edged [red] on the attached plan)


SCHEDULE 2

1. Setting Up of Shelter and Converted Containers
2. Vehicle Workshop
3. Storage Use

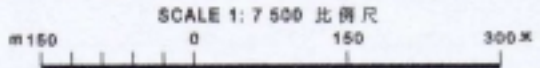


LOCATION PLAN 位置圖

SCALE 1: 50 000 比例尺

 進行建例發展的地點(紅邊線)
 SUBJECT SITE (EDGED RED)
 二零零零年十月三十日根據分區計劃大綱圖
 編號S/TL-TT/T製備的摘要圖
 EXTRACT PLAN PREPARED ON 30.10.2000
 BASED ON OUTLINE ZONING PLAN
 No. S/YL-TT/7

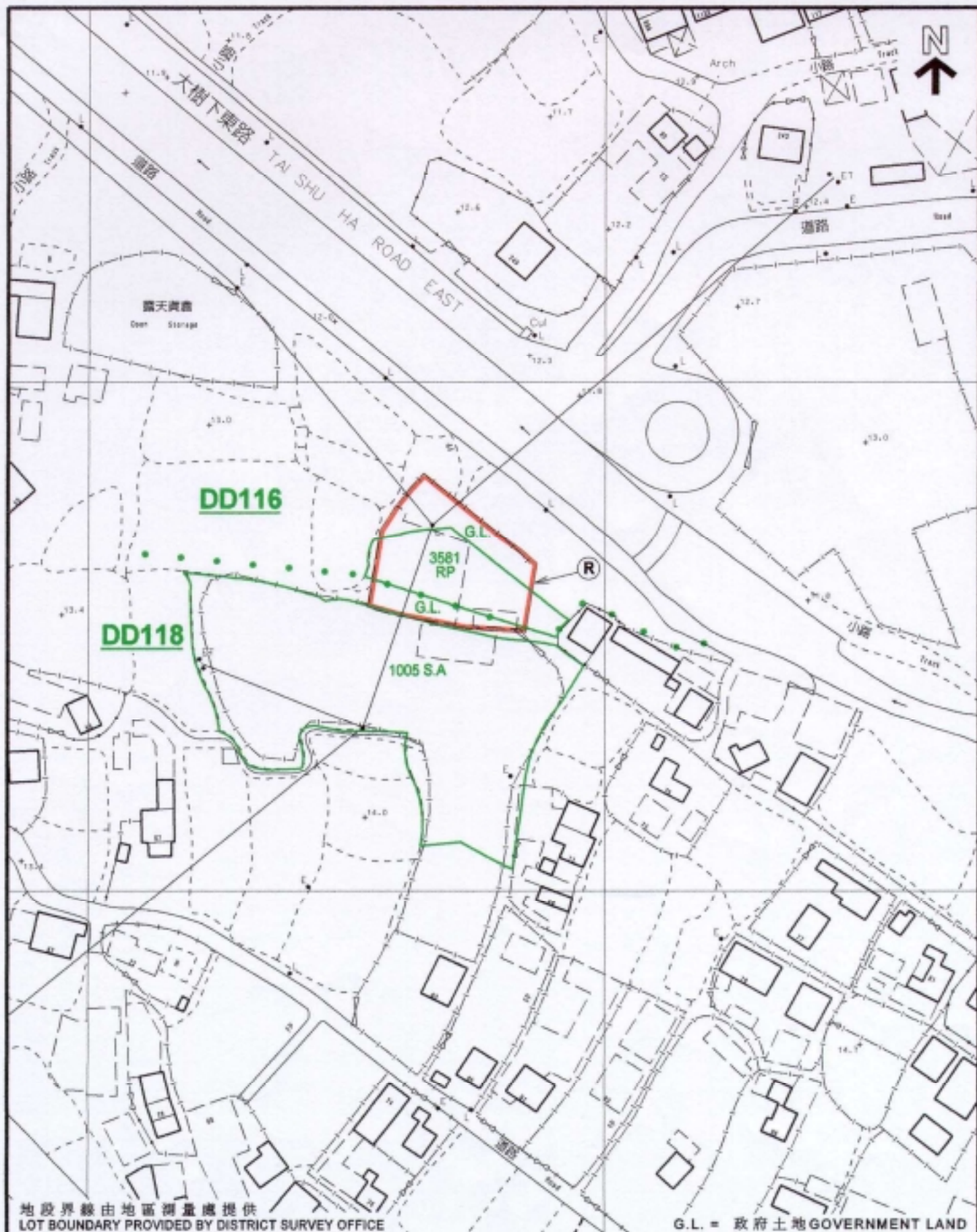
圖則2所示E/YL-TT/98的
 第116約和第118約的地段及毗鄰政府土地
 LOT(S) AS SHOWN ON PLAN 2 OF E/YL-TT/98
 IN DD116 & DD118 AND ADJOINING GOVERNMENT LAND



規劃署
 中央執行管制及檢控組
 PLANNING DEPARTMENT
 CENTRAL ENFORCEMENT & PROSECUTION SECTION



檔案編號 CASE No. 圖則 PLAN
 E/YL-TT/98 1

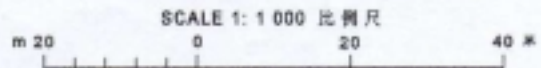


地段界線由地區測量處提供
 LOT BOUNDARY PROVIDED BY DISTRICT SURVEY OFFICE

G.L. = 政府土地 GOVERNMENT LAND

(R) 進行邊例發展的地點(紅邊線)
 SUBJECT SITE (EDGED RED)
 二零零零年十月三十日根據測量圖編號
 6-NW-20B/D製備的摘要圖
 EXTRACT PLAN PREPARED ON 30.10.2000
 BASED ON SURVEY SHEET No(s).
 6-NW-20B/D

圖則所示第116約和第118約
 的地段及毗鄰政府土地
 LOT(S) AS SHOWN ON THIS PLAN IN DD116 & DD118
 AND ADJOINING GOVERNMENT LAND



規劃署
 中央執行管制及檢控組
 PLANNING DEPARTMENT
 CENTRAL ENFORCEMENT &
 PROSECUTION SECTION



檔案編號 CASE No. 圖則 PLAN
 E/YL-TT/98 2