

**For information  
On 18 July 2008**

**LEGISLATIVE COUNCIL**

**PANEL ON DEVELOPMENT**

**“Comprehensive Development Area”,  
Lease Modification and Land Exchange Arrangements**

**Purpose**

At Members’ request, this paper sets out the “Comprehensive Development Area” (“CDA”), lease modification and land exchange arrangements and the interface between various development controls, and provides background information on the land exchange cases at Ma Wan Island, Kennedy Road in Wan Chai and Garden Road in Central, for Members’ reference.

**Existing Policy**

2. To maintain the stable development of Hong Kong, the Government needs to have clear policies and practicable measures on the planning and land fronts. In regard to planning, we spell out appropriate development parameters through the Outline Zoning Plans (OZPs) prepared under statute, as well as ensuring that land uses are in line with the planning intention. To move with times, the OZPs are reviewed and updated from time to time to keep pace with changes in circumstances. In regard to land administration, apart from Government or public facilities, we will generally allow the market to undertake appropriate development on the site concerned through means like land sale, land grant, lease modification and land exchange, in accordance with the planning intention; and we also receive appropriate land premium as an important source of government revenue. We must process each individual development project impartially, and with due regard to the policy intention and contractual spirit. We wish to mention in particular that

in various previous attempts to challenge the Lands Department (LandsD)'s decisions on lease modifications or land exchanges through the judicial route, the courts in Hong Kong have reaffirmed that such matters are within the private law domain. The Government is performing a role which is no different from that of a private landlord. The Government should respect the relevant contractual obligations.

### **“CDA”**

3. According to the Town Planning Ordinance (TPO), the Town Planning Board (the Board) may designate any sites as “CDA” on OZPs. The main purposes of designation of “CDA” are to facilitate appropriate planning control over the development mix, scale, design and layout of development, by taking account of various constraints such as environmental, traffic, and infrastructure support etc.; and to enable holistic and systematic development through comprehensive planning. The Board, through examination of the master layout plan (MLP) and relevant technical assessments submitted by the proponent of “CDA”, can ensure that the land uses, development scale, design and layout within the “CDA” could achieve the appropriate configuration, and through this to improve the environment and traffic, as well as to provide suitable open spaces and other ancillary facilities. At the same time, owing to comprehensive planning and development, “CDA” can help promote revitalization of older districts, phasing out incompatible and non-conforming land uses, and improving the district environment.

4. In zoning “CDA”, the Board has taken into consideration various factors, such as the planning intention for the area, land status, ownership and other development constraints, including the likely prospect of implementation. For development on “CDA”, an applicant is required to apply to the Board in the form of MLP, stating the proposed land use and other details such as the proposed gross floor areas (GFA) for each use, the Government, Institution or Community (“GIC”) facilities, and particulars and extent of open spaces within the zone. As at the end of March 2008, there are a total of 112 “CDA” sites<sup>1</sup> in Hong Kong. Amongst them,

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<sup>1</sup> This does not include the 14 “CDA” sites on the Development Scheme Plans of the Urban Renewal Authority or the then Land Development Corporation.

developments at 11 sites have been implemented in accordance with approved MLPs, developments at 51 sites have got approved MLPs but implementation is either on-going or have yet to commence; and 50 sites have yet to have any approved MLPs.

5. The Board will closely monitor the progress of developments at the “CDA” and will conduct frequent checks on the implementation of developments on various “CDA” sites. The criteria for designating “CDA” and for monitoring the progress of “CDA” developments are set out in the Board’s Guidelines No. 17 and which has been uploaded onto the Board’s website ([www.info.gov.hk/tpb](http://www.info.gov.hk/tpb)) for public inspection.

6. In summary, the Board will consider the following aspects in designating the development parameters of “CDA” sites -

- (a) in determining the boundary and development intensity of a “CDA” site, the existing land use pattern, the latest development requirements and the infrastructural capacity constraints in the area should be taken into account;
- (b) opportunities should be taken to incorporate, where appropriate, “G/IC” facilities, open space, public transport and parking facilities, road widening and the provision of pedestrian linkages in the development;
- (c) appropriate development mix and intensities would be specified in the Notes of the OZP if the site is subject to various constraints, such as traffic and infrastructure capacities and environmental constraints; and
- (d) a Planning Brief would usually be prepared by the Planning Department (PlanD) to guide the development of the “CDA” site.

7. To monitor the progress, the Board will review each “CDA” site at the end of the third year after its designation and subsequent reviews will be made on an annual basis thereafter. Details are as follows -

(a) *“CDA” with no Approved MLP or no Implementation Agency*

- At the end of the third year after the designation, priority would be given to review those “CDA” sites with no approved MLPs or for which no implementation agency can be identified. The following possible actions would be considered by the Board after the review to respond to changing circumstances -
  - to rezone to other uses those “CDA” sites which have significant implementation difficulties and slim chances of implementation;
  - to revise the planning and development parameters of the “CDA” sites, where appropriate, to improve the incentives for redevelopment and hence the chance for implementation;
  - to revise the zoning boundary in line with updated information on land status or ownership, or to subdivide the “CDA” into smaller “CDA” sites for development in phases to facilitate early implementation, where justified; and
  - to revise and update the planning briefs for “CDA” sites to reflect the changing requirements and circumstances.

(b) *“CDA” with Approved MLP*

- In order to keep track on the progress of implementation, the following monitoring mechanism is adopted by the Board -
  - should there be disagreement with the developer/agent on issues relating to compliance with approval conditions (such as the provision of designated size of public open space), the relevant Government departments will be requested to report the issues to the Board;
  - a proforma would be issued to and completed by the developer/agent on an annual basis to keep track on the progress of implementation;

(c) *Allowing Phased Development*

- For “CDA” sites which are not under single ownership, if the developer can demonstrate with evidence that best endeavours have been made to acquire the remaining portion of the site for development but no agreement can be reached with the landowner(s), the Board will consider allowing the development to proceed in phases.

8. As stated in paragraph 24 below, planning permission in general is subject to a time limit of 4 years. If the developer fails to commence the permitted project within the time limit, the planning permission granted by the Board (including the approved MLP referred to in point (b) above) will cease to have effect by the specified date, and this necessitates a re-submission to the Board by the developer.

Lease Modification and Land Exchange Arrangements

9. Our existing land policy is to optimise the use of land within the framework of land use zonings. Specific arrangements concerning applications by private developers to the Government for lease modification or land exchange are also in place. For leased lots intended for uses or development other than those prescribed in the lease, the lessee is required to apply to the Government for lease modification. In respect of land exchange, reasons include minor adjustments to lot boundaries to allowing partial implementation of a town planning layout without resorting to land resumption. There are two categories of land exchange, namely in-situ land exchange and non-in-situ land exchange:

- (a) in-situ land exchange involves the surrender of private land to the Government in return for the grant of a new lot, which partly overlaps with the surrendered site. Most of the land exchange cases fall under the category of in-situ land exchange; and
- (b) for non-in-situ land exchange, the land surrendered need not overlap with the land to be granted. Such non-in-situ land exchange cases

are comparatively speaking rare, and each case should be examined and approved by the Executive Council (ExCo) based on individual merits and justifications.

The use and configuration of the new lot to be granted will be processed in accordance with the parameters stipulated in the relevant plans under the planning regime, and having regard to the relevant land ownership. The Government will also charge a premium which reflects the enhancement in the land value before and after the lease modification or the land exchange.

10. In general, the Government will grant permission to developers' applications for lease modification and in-situ land exchange which are in line with the approved plans/schemes under the statutory planning framework, e.g. "CDA", in order to implement the planning intention under the OZP and to optimize land use. In respect of in-situ land exchange, an application has to meet with certain criteria, including where the Government land involved in in-situ exchange is incapable of reasonable separate alienation or development; where the Government land concerned has no 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 that which would be achieved by separate alienation. As regards non-insitu land exchange and other cases, these need to be submitted to ExCo for approval.

11. There are views that the Government should consider resuming the sites concerned for public auction, in place of granting permission to developers' applications for lease modification and in-situ land exchange. Having examined this, we find the means of resuming the private land concerned not feasible. Under section 3 of the Lands Resumption Ordinance, resumption of private land must be based on public purpose. As regards section 4(2) of the TPO, which provides for resumption of land which interferes with the layout of areas on draft or approved plans or MLPs, the Board and the Government also have to act prudently. This provision is rarely invoked, as resumption of private land for development by another private owner is highly controversial. In comparison, it would be more reasonable to exchange land with developers who own private land for an early implementation of the planning intention. Such a move could also provide incentive for developers to amalgamate ownerships and acquire land

to secure a lot suitable for redevelopment, thereby achieving the goal of revitalization of old areas.

12. The Government will consider non-in-situ land exchange only when there are sufficient policy justifications and under exceptional circumstances which merit consideration of the case. This is because such an application involves site identification issue for the new development, the applicant's intention for the new site identified, the land exchange ratio and other factors. A recent example is the proposed land exchange for the preservation of King Yin Lei at Stubbs Road, Wan Chai, with historical value, in accordance with heritage conservation policy. The Government plans to grant an adjacent site of man-made slope of roughly the same size as the existing site of King Yin Lei to the owner for new residential development, in exchange for the surrender of the whole historic building and the site of King Yin Lei by the owner to the Government for preservation. The principles for processing lease modification and in-situ land exchange are applicable to the formulation of lease conditions of and assessment of the premium payable at market value for non-in-situ land exchange cases.

13. Applications for lease modification and land exchange, if approved, will be subject to the payment of full market value premium by the applicant. Exceptions only apply to certain circumstances, such as where these involve non-profit-making education, welfare, medical and health uses, where the premium payable would be considered and processed in accordance with the relevant policies endorsed by ExCo.

14. On premium, we have a set of established mechanism and procedures to ensure that the outcome is reasonable and in the public interest.

15. In the negotiation process, the Director of Lands is acting in the role of landlord in a private law and is negotiating contracts in that capacity, with all the commercial sensitivity implications that go with that. It would compromise LandsD's position if the details of the negotiation process are disclosed. Nonetheless, LandsD will publicize information as far as practicable, including –

(a) holding media briefings on premium assessment mechanism;

- (b) issuing practice note on premium assessment procedure; and
- (c) LandsD has since May 2001 started to make available information on executed lease modifications and land exchanges on its website. The public information database has from March 2005 been expanded to include land granted by private treaty. The public can now have access to information on land transaction details such as site location, land use, land grant execution date and premium paid.

16. Premium for lease modification and land exchange is assessed by qualified professional valuers in LandsD. The approach adopted for assessing enhancement in land value conferred by the change in the lease conditions accords with the policy reaffirmed by ExCo in July 1997. The premium payable for a lease modification due to the enhancement in land value brought about by the lease modification is assessed on the difference between the land value under the existing lease conditions and the land value under the modified lease conditions. Stringent guidelines on the policy, procedures and justifications have also been issued by LandsD for its staff to ensure that each and every case will be handled in a fair, reasonable and consistent manner. After the concerned application is approved, premium will be assessed by a Valuation Conference / Valuation Committee. The procedures, which are open, and known and respected by the trade, are set out in a practice note issued by LandsD to the trade on 17 February 2006.

17. Under the current system, the Audit Commission will conduct audit on land sale revenue from time to time, and the Public Accounts Committee will also closely monitor. Furthermore, the ICAC has an important monitoring role to play.

18. Basically, for agricultural land in the New Territories, the processing of lease modification application for changing the agricultural land use to other uses is similar to that for changing the land use from commercial to residential use. That is to say, the proposed uses should be permitted in the OZP or the applicant has obtained the required planning approval; and the scale of development is in line with the planning intention and development restrictions. If an approval is granted to such application, the difference between the land value under the existing lease conditions (including the use therein) and the land value under the modified lease conditions (including the



permitted new use) will be reflected in the premium.

19. In processing lease modification or land exchange application, LandsD generally seeks advice from PlanD and relevant departments. PlanD advises LandsD having regard to parameters stipulated in the statutory town plans and the contents of the planning approval, to ensure that the development complies with the planning intention and requirements, i.e. the zonings and development parameters set out in the OZP; or where applicable, the planning permission granted by the Board. If such lease modification or land exchange application involves re-zoning or planning application, the Government will consider such application only after the zone concerned has been re-zoned or approval to the planning application has been granted. In the process, LandsD will also consult relevant departments including the concerned District Offices which will collect views from local communities. Where the executed conditions of exchange require the provision of facilities for public use, LandsD will oversee the timely provision of such facilities by the developer according to the lease conditions and will not issue a certificate of compliance until such facilities are completed.

20. For development involving lease modification or land exchange, LandsD, in general, includes a building covenant clause in the lease which requires the developer to complete the building as required within a specified period ranging from four years or more, depending on the scale of the development. If the developer is required to provide public facilities such as park or open space in his development, provisions concerning the size and the opening hours are specified in the lease, with a view to ensuring the enjoyment of such facilities by the public.

### **Interface amongst planning, building and land**

21. Under the current development control regime, all development proposals must be in line with the relevant planning, building and land policies and legislations.

## Planning Regime

22. On planning control front, the relevant person should check the OZP prepared under the TPO and make sure that the proposed uses or development comply with the OZP before initiating to proceed with such uses or development. If the proposed uses or development require the Board's approval, planning application should be made to the Board and approval needs to be obtained before the said uses or development could commence, including the submission of building plans to the Building Authority (BA) for approval and, where the proposed uses or development are not permitted under lease, application to LandsD for lease modification or land exchange. In considering the building plans submitted, PlanD will advise the BA on whether these plans comply with the current OZPs. In processing lease modification or land exchange applications, PlanD will advise LandsD to include the development parameters and approval conditions for the site in the lease.

### (a) OZP

23. If the use of any land or building exists before the relevant OZP came into effect, such existing use will not be affected by the current OZP. The scope of existing use is specified in the Notes of the OZP. In view of the likely inconsistency with the planning intention for some developments where the building plans have been approved before the current OZP comes into effect, the current practice is that such developments with building plans approved prior to the OZP coming into effect will not be affected by such new restrictions. However, any material change of use or any other development (except minor adjustment and / or changes which are always permitted) or redevelopment must comply with what is permitted in the OZP; or where prior planning permission is required, must comply with what is provided for in the planning permissions.

### (b) Planning Applications

24. Since the early 1990s, planning permissions granted by the Board pursuant to section 16 of the TPO is subject to a time limit condition (normally, four years for current planning applications). The planning permission should cease to have effect on a specified date unless prior to the

date either the permitted development has been commenced or the time limit has been extended.

25. According to the Board's Guidelines (guidelines), the facts and merits of individual cases are to be considered in determining whether an approved development has been commenced. If the building plans for the development have been approved, the development may be deemed to have commenced. In this context, even if the OZP are changed in future, as the development with approved building plans is deemed to have commenced, it will not be affected by the restrictions in the new OZP. Please see the ensuing paragraphs 27 to 29 for details about building plans.

26. Where an approved development fails to commence within the specified period, the grantee may apply to extend the time limit for commencement of the development. The Board may consider such application having regard to certain criteria, including whether there have been any material changes to the planning circumstances since the grant of the original approval (such as changes to the planning policies/ the zoning or the planning intention of the subject site).

### Building Plan Regime

27. Building plans of development projects are required to be submitted to the BA for approval before building works of such development can commence. The BA will examine the building plans in accordance with the provisions of the Buildings Ordinance (BO). The BA may refuse to approve any building plan which falls within the grounds set out in section 16(1) of the BO. Such grounds on which approval may be refused include contravention of the building works against any approved or draft plans prepared under the TPO; or contravention of the building works within a "CDA" site against the MLP approved under section 4A(2) of the TPO. In considering newly submitted building plans or amendment to approved building plans, and where such development has obtained planning permission or where amendments involve changes of use/ GFA/ site coverage/ height of the buildings, the BA will consult PlanD on ascertaining whether the building works would have any such contraventions and on its recommendation on the need to exercise his discretion under section 16(1)(d)

or (da) of the BO.

28. The BO does not specify any validity period for approved building plans but section 16(3)(d) provides that the BA may refuse to give his consent to the commencement of any building works where a period exceeding 2 years has elapsed since the approval of the building plans in respect of the works. This provision allows the BA, in considering application for commencement of works, to review those building plans where approval has been granted for over 2 years. The BA may refuse to give his consent by virtue of section 16(3)(d) of the BO where the building works as shown in the building plans do not comply with current standards under the building regulations. Nevertheless, should there be other new plans (OZP or draft OZP) made under the TPO after the approval of the building plans, the BA does not have the power under the BO to revoke any approved building plans or refuse to give his consent to the application for commencement of the building works on the ground that the approved building plans are inconsistent with the current plans (OZP or draft OZP).

29. In processing any subsequent amendments to approved building plans, the BA will consult PlanD where the development concerned has obtained the planning permission or the application involves change of use or amendment of GFA/ site coverage/ height of the buildings-

- (a) if PlanD opines that the application involves only minor amendment and there is no need to object to the BA's approval, PlanD will not recommend to the BA to exercise the discretion under section 16(1)(d) or (da) of the BO; and
- (b) nonetheless, for amendment involving change of use or a development intensity higher than that shown in the approved building plans, PlanD will assess such amendments having regard to the current plans (OZP or draft OZP). Should PlanD consider the proposed amendment as equivalent to a major revision or a new building plan submission; and deem that such an amendment is not in line with or contravene the current plans, PlanD will recommend to the BA to exercise the discretion under section 16(1)(d) or (da) of the BO to refuse to approve the building plans.

The BA will make a decision having regard to the above advice given by PlanD.

### Lease Regime

30. Developments on private land also need to be abide by the terms and restrictions contained in the relevant lease. In drawing up lease conditions, LandsD will consult PlanD and BD to avoid any conflict with the requirements or restrictions of these departments. Please refer to paragraphs 9 to 20 above for details.

### **Dissemination of Planning Information**

31. Since the Town Planning (Amendment) Ordinance 2004 (“Amendment Ordinance”) came into operation since June 2005, the Board has greatly enhanced the dissemination of planning information to the public. The public may inspect statutory planning information at any time through various channels such as the Board’s website and the statutory planning portal. The Board has also improved the website design in early 2008 to enable the public to retrieve information more efficiently, and to comment on planning applications as well as submit documents required during the plan-making process online.

32. Under the “Amendment Ordinance”, the Board is required to make public all planning applications and make available relevant details of these applications and related reports for public inspection and comment. The papers submitted by PlanD to the Board in respect of planning applications are available at the Planning Enquiry Counters of PlanD one day after their issue to members of the Board. These documents are also available at the public viewing room for public inspection on the day of the Board meeting. After the meeting, the public who wish to have access to the papers previously submitted to the Board may make such request to the Board Secretariat. The public may also enquire about the results of individual applications through the statutory planning portal or direct such enquiry to the Board Secretariat. Hence, the public will have sufficient opportunity to make access to information on any applications and to give their views to the

Board during the entire approval process.

33. Information submitted by applicants (including developers) to the Board to comply with the approval conditions usually relates to details on particular items (such as traffic, landscape, etc.), to ensure that their developments would be implemented in accordance with the requirements imposed by individual departments. The Amendment Ordinance therefore does not require the Board to conduct another round of public consultation on information submitted on compliance with the approval conditions.

### **Individual Cases**

34. At Member's request, information on the land exchange cases at Ma Wan Island, Kennedy Road in Wan Chai and Garden Road in Central are set out in Annexes I, II and III respectively.

### **For Information**

35. Members are invited to note the content of this paper.

**Development Bureau**  
**July 2008**

**The Development of Ma Wan Island**

The development of Ma Wan (MW) Island comprises the development currently known as Park Island, the Ma Wan Park (MWP), the relocation of affected villages to the new village type development area and the provision of infrastructure on the island. Park Island (Lot No. 392 in MW) and the MWP (lot number yet to be assigned) are at different locations (see plan attached).

2. Park Island is located in the “Comprehensive Development Area” (CDA) on the Outline Zoning Plan, and is intended for comprehensive development. Part of the site was owned by the developer and the developer acquired the whole site (i.e. Lot No. 392 in MW) in 1997 by way of land exchange. In processing the application, the Government solicited the views of residents, in particular the MW villagers, through the District Office, and considered the relevant views in detail. The market value premium of the site at that time was assessed as \$6,155.59 million. This had already reflected the value of the land involved in the exchange exercise, including 95,062 m<sup>2</sup> of the agricultural and building lots owned and surrendered by the developer, and 126,500m<sup>2</sup> of Park Island lot regranted by the Government. After deducting the costs of items of the MWP (\$803.63 million), the infrastructure and new village type development area (\$1,639.24 million) from the above market value premium payable, the developer paid a market value premium of \$3,712 million in 1997.

3. The gross floor area (GFA) of Park Island was determined on the basis of the development parameters of the lot where it was located (i.e. Lot No. 392 in MW), and had nothing to do with the MWP lot on which the MWP was located. Relevant terms and conditions of the development, including the total GFA, are clearly stated in the land grant documents together with land exchange plans, which are placed in the Land Registry for public inspection.

4. According to the Master Layout Plan (MLP) submitted to and approved by the Town Planning Board (TPB) in 1994, the MWP would be developed as an “international style” closed theme park with a large number of rides. It comprised five themes, namely, “South China Sea Village”, “Old

Hong Kong”, “New Hong Kong”, “Nature Park” and “Children’s Adventure World” with ancillary recreation and exhibition facilities. The whole park was envisaged to be fenced and visitors would be required to pay an entrance fee. The approved MLP did not distinguish the facilities to be provided in Phase 1 or Phase 2. The development of the MWP is part and parcel of the comprehensive development of Ma Wan. Negotiations about this project commenced in the 1990s and the Heads of Agreement (HoA) was signed in June 1997, earlier than the plan of developing the Hong Kong Disneyland.

5. Given the subsequent development of the Hong Kong Disneyland and the need to conserve vegetation and preserve the setting of the MW Old Village, the developer proposed the theme of "Naturally Hong Kong" for the MWP, with emphasis on retaining and refurbishing the existing structures in the Ma Wan town and conservation of the natural environment. Based on this new concept, a revised MLP for the MWP was submitted by the developer in 2003 and approval with conditions was granted by the TPB. The latest amendments to the MLP were approved by the TPB in 2006.

6. According to the MLPs approved by the TPB in 2003 and 2006, the area of MWP, which is to be developed in two phases, has finally been revised to about 19 hectares. There are three facilities in Phase 1, namely "Nature Garden", "Noah's Ark" and "Solar Tower". The refurbishment of the MW Old Village falls under the Phase 2 development. The "Nature Garden" is an ecological park with different themes, such as nature, education, art and love. The "Noah's Ark", a multiplex centre constructed in the exact size of the original vessel as described in the Bible, is equipped with such facilities as multi-purpose hall, exhibition venues, activity centres, function rooms and guesthouses. The "Solar Tower" is an education centre where exhibitions on the history of Chinese astronomy, solar energy and related information are held and where solar telescopes are available for visitors to view the solar system.

7. Since the MWP development had been revised from a theme of active recreational facilities to a park with a theme based on nature, amendments to the MLP concerned had to be made, and submissions to the TPB and the Government departments concerned for approval were required. Given the changes in the development plan, a revised road scheme has to be put in place.



This being the case, the completion date of Phase 1 was extended from June 2006 to end-December 2008 as approved by the Government.

8. The "Nature Garden" has been opened to the public free of charge since 1 July 2007 and the "Noah's Ark" is anticipated to be completed before the end of 2008. The "Solar Tower" project, which will depend on the progress of a revised road scheme, is expected to be completed within two years following the authorisation of the revised road scheme.

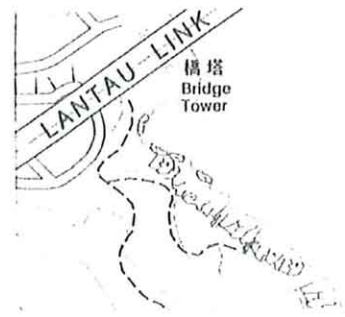
9. The key terms and conditions of the HoA for the development of MWP signed between the Government and the developer in 1997 (see the document attached as Annex) are as follows:

- (a) The construction and development of the MWP may be implemented by the developer in two phases. The developer will bring Phase 1 of the MWP into operation within five years from the date vacant possession of the land has been delivered to the developer. Given that the Phase 2 development can only commence after the villagers of the lots in question and the residents of the stilted structures have been vacated, no completion date has been set;
- (b) The MWP will be used and operated as a public recreational development which shall include features for entertainment, recreation, amusement, shopping, restaurants, kiosks, catering, advertising and other commercial facilities as may be approved by the Director of Lands (the Director);
- (c) The developer shall build the MWP in accordance with the approved MLP. Should amendments be made to the approved plan, approval should be sought from the Director;
- (d) The costs and expenses of the development of the MWP may be deducted in the calculation of the premium payable on the regrant of the Northeastern

"Comprehensive Development Area" (i.e. the Park Island lot) or the grant of the MWP land;

- (e) In the event of any changes to the MLP or for other reason, resulting in a decrease in costs and expenses for the development of the MWP, the developer shall pay to the Government the unexpended balance of the sum which has been previously deducted from the premium in question and interest. Nevertheless, any increase in the costs and expenses for the development of the MWP shall be borne by the developer;
- (f) The company managing the MWP shall have full rights and discretion to enter into agreement(s) for the management and/or day-to-day operation of the MWP and grant licences or tenancies of the MWP, provided that no estate or interest in land in the MWP shall be created or conveyed under the said agreement(s); and
- (g) The Government agrees that the MWP will be operated on a commercial basis and the company managing the MWP will set up a sinking fund. Net profit after deduction of reasonable operating costs shall be paid to such sinking fund for the purpose of maintenance, repair and improvement of the MWP.

10. The Government has been monitoring the progress of the works through liaison and meetings with the developer. It hopes that the remaining parts of Ma Wan Theme Park will be completed as soon as possible so that the public can enjoy these enrichment facilities which are jointly operated with social enterprises. Regarding the developer's responsibility for deferring the completion of the project, the Government is now negotiating with the developer in accordance with the relevant terms and conditions of the HoA. At the same time, the Government has commenced detailed negotiations with the developer on the operation and financial arrangements of Phase 1 of the MWP with a view to implementing the relevant arrangements by way of agreement.



**HEADS OF AGREEMENT** made 23<sup>rd</sup> day of June 1997  
**BETWEEN**

- (1) The Government of Hong Kong (hereinafter referred to as "the Government") acting in accordance with the terms of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong; and
- (2) Sun Hung Kai Properties Limited whose registered office is situate at 45th Floor, Sun Hung Kai Centre, 30 Harbour Road, Wanchai, Hong Kong (hereinafter referred to as "SHK")

**OBJECTS :-**

1. For the implementation of the Outline Zoning Plan of Ma Wan Island, New Territories, Hong Kong (hereinafter referred to as "the Island"), proposals have from time to time been submitted to and approved by the relevant government authorities. The implementation of the said proposals shall include the following :-
  - (a) The development of the Comprehensive Development Area (as hereinafter defined) at the northeastern part of the Island for commercial and residential purposes;
  - (b) The relocation of the Existing Villages (as hereinafter defined) of the Island to the Village Type Development Area (as hereinafter defined);
  - (c) The construction and development of the Ma Wan Park (as hereinafter defined) by the Ma Wan Park Company (as hereinafter defined); and
  - (d) The construction of the Infrastructure (as hereinafter defined) by SHK (hereinafter referred to individually as "Object" and collectively as "Objects").

2. It is acknowledged by the parties that each of said transactions is an integrated part of the proposed development of the Island. Nevertheless, in view of the complexity and the different aspects of the said proposals which will be implemented at different points in time, these Heads of Agreement are to record the parties' rights and obligations on the implementation and to make provision for the development of the Comprehensive Development Area, the relocation of the Existing Villages, the construction and development of the Ma Wan Park and the construction of the Infrastructure to proceed independent of each other.

#### **RECITALS**

1. **SHK** or its subsidiaries are the registered or beneficial owners or in control of **ALL THOSE** pieces or parcels of ground or land situate or lying on the Island more particularly described in Schedule 1 hereto.
2. **SHK** is desirous to develop the Island pursuant to the Objects above stated.
3. Proposals for the development of the Island have been submitted to and approved by the relevant government authorities.
4. In view of the complexity of the matter, the parties agree that separate land grants will be issued by the Director of Lands in respect of the Northeastern CDA Land, the Village Type Development Area and the Ma Wan Park Land which may be issued at different points in time and the parties hereto agree to enter into these Heads of Agreement to record their understanding of the principles or objects agreed.
5. Should the exchange in respect of the Northeastern CDA Land as mentioned in Clause 3 in this Agreement be proceeded, **SHK** shall be obliged to carry out the objects and other obligations in this Agreement including those contained in Clauses 6 and 8 of this Agreement and in accordance with the provisions in this Agreement.

**NOW IT IS HEREBY AGREED:-**

**1. DEFINITIONS**

1.01 In these Heads of Agreement, unless the context otherwise requires, the following expressions shall have the meanings stated opposite thereto :-

"Agreement"	These Heads of Agreement as may be amended or varied by the parties hereto in writing.
"Central Pier"	The proposed No.2 pier at Central, Hong Kong as shown on the plan annexed hereto and marked "Plan III".
"Comprehensive Development Area"	The development of the Comprehensive Development Area at the north-eastern part of the Island mainly for commercial and residential purposes.
"Director"	The Director of Lands.
"Exchange Agreements"	The agreements for exchange entered into between Golden Liner Limited and the owners of the land on the Island for the purposes of relocating the Existing Villages.
"Existing Villages"	All those villages located on the western part of the Island and are existing at the date hereof.
"Government Village Removal Exercise"	Village removal exercise in the New Territories undertaken by the Government in accordance with Government policies and practices governing such exercise including those in relation to compensation, allowance and house entitlements, such exercise will inter alia enable the Government to provide resite village houses to eligible indigenous villager whose village house is required for development purpose.

"Home Purchase  
Allowance"

Home Purchase Allowance as defined or mentioned in Government policies and practices prevailing as at 4th August 1995 in relation to Government Village Removal Exercise concerning compensation and allowance, which is payable to owner of private residential property resumed by the Government for the purpose of purchasing a replacement residence of a similar size in the same general locality.

"Infrastructure"

The public utilities and infrastructure as listed in Schedule 3 hereto to be built in support of the implementation of the proposed development of the Island.

"Master Layout Plan"

The Master Layout Plan for the Ma Wan Park as approved by the Director and includes any approved amendments or variations thereto.

"Ma Wan Park"

The recreational and commercial development to be located at the Ma Wan Park Land to be built in accordance with the Master Layout Plan approved by the Director.

"Ma Wan Park Company"

An entity/company to obtain the grant of the Ma Wan Park Land of which SHK shall maintain effective control.

"Ma Wan Park Land"

All those piece(s) or parcel(s) of ground or land situate or lying on the Island as shown and coloured green on the plan annexed hereto and marked "Plan I" and includes any other piece(s) or parcel(s) of ground or land situate or lying on the Island agreed by the parties to be granted by the Government from time to time in lieu of and/or in addition to the said land for the construction and development of the Ma Wan Park.

"Northeastern CDA  
Grantee"

Wholly owned subsidiaries of **SHK** namely Ever Fast Limited and Obvio Yip Company Limited to obtain the grant of the Northeastern CDA Land.

"Northeastern CDA  
Land"

All those piece(s) or parcel(s) of ground or land situate or lying on the Island as shown and coloured pink on the plan annexed hereto and marked "Plan I".

"Old Lots"

All those pieces or parcels of ground or land situate or lying on the Island and more particularly described in Schedule 1 hereto.

"Village Type  
Development Area"

All those piece(s) or parcel(s) of ground or land situate or lying on the Island as shown and coloured yellow on the plan annexed hereto and marked "Plan I".

1.02 Reference to clauses, sub-clauses and schedules are to clauses and sub-clauses of and schedules to this Agreement, clauses headings are inserted for convenience of reference only and shall not affect the interpretation of this Agreement and are not intended to define or limit the contents of the said clauses.

1.03 Words importing the singular number shall include the plural number and vice versa and words importing the masculine, feminine or neuter gender shall include the others of them.

2. **GAZETTING UNDER ROADS (WORKS, USE AND COMPENSATION)  
ORDINANCE (CAP.370)**

2.01 In order to proceed with the implementation of the proposed development expeditiously, road layouts serving the proposed development have been submitted to and approved by the relevant government authorities. The work has been authorized and published in the Gazette under G.N. No.5598 dated 6th December 1996.



- 2.02 The Government agrees to use its best endeavours to obtain possession of the land covered by the road scheme authorised under the preceding sub-clause for implementation therefor including the resumption of any private land other than that owned or controlled by SHK or its subsidiaries subject to the governing Ordinances.

3. **DEVELOPMENT OF THE COMPREHENSIVE DEVELOPMENT AREA AT THE NORTHEASTERN PART OF THE ISLAND**

- 3.01 SHK or its subsidiaries are the registered or beneficial owners or in control of the agricultural and building lots listed in Schedule 1 hereof and are desirous to surrender or procure the surrender of the said lots for the regrant of the Northeastern CDA Land.
- 3.02 In view of the complexity of the development of the Island in accordance with the Objects, the Government accepts that it will not be necessary for SHK to unify or procure the unification of the title of the Old Lots listed in Schedule 1 for surrender to the Government. The Government will accept the surrender of the Old Lots from Crandon Estates Limited and Ever Fast Limited for the regrant of the Northeastern CDA Land to the Northeastern CDA Grantee.
- 3.03 Notwithstanding Clause VI of Schedule 4 hereof, which the parties will take into account, SHK and the Government agree that a positive premium shall be payable for the surrender and regrant of the Northeastern CDA Land. However the costs and expenses for the development of the Ma Wan Park, the costs and expenses for the erection, construction and/or provision of the Infrastructure, the blocks of flats as mentioned in Clause 6.02 hereof and the costs and expenses for the relocation of the Existing Villages listed in Schedules 2, 3 and 4 hereto, if not separately reimbursed to SHK, will be accountable in the calculation of the premium payable on the regrant of the Northeastern CDA Land and/or the grant of the Ma Wan Park Land.

3.04 Notwithstanding anything herein contained, **SHK** agrees to construct and provide on the Island at its own costs and expenses a Fire Services Station (hereinafter referred to as "the Fire Services Station")(including fitting out, furniture and equipment) together with other related facilities (including emergency vehicular access) at such location(s) as shown or to be shown on the Master Layout Plan and in all respects to the satisfaction of the Government. The Fire Services Station and related facilities are to serve the Island as a whole and the costs or expenses of the construction and provision of the Fire Services Station and related facilities aforesaid shall not be reimbursed to **SHK** or to be accountable in the calculation of any premium payable on regrant of any land.

3.05 Notwithstanding anything herein contained, **SHK** agrees to construct and provide on the Island at its own costs and expenses a police command post (hereinafter referred to as "the Police Command Post") at such location(s) as shown or to be shown on the Master Layout Plan and in all respects to the satisfaction of the Government. The costs and expenses of the construction and provision of the Police Command Post shall not be reimbursed to **SHK** or be accountable in the calculation of any premium payable on regrant of any land.

3.06 Notwithstanding anything herein contained, **SHK** shall be responsible for the costs and expenses of the construction and provision of a refuse transfer station (including the costs in relation to design, testing and commissioning of the station)(hereinafter referred to as "the Refuse Transfer Station") to be constructed and provided on the Island at such location(s) as shown or to be shown on the Master Layout Plan or other plan(s) and in all respects to the satisfaction of the Government. Such costs and expenses shall be estimated or determined by the Director whose estimation or decision shall be final and binding on **SHK** and shall be payable to the Government upon its demand at any time within a period from the date of

this Agreement up to the date of expiry of one year from the date of completion of the Refuse Transfer Station to the satisfaction of the Government. Such costs and expenses of the construction and provision of the Refuse Transfer Station shall not be reimbursed to SHK or be accountable in the calculation of any premium payable on regrant of any land.

4. **RELOCATION OF THE EXISTING VILLAGES**

- 4.01 In order to implement the Ma Wan Park, the Existing Villages will be relocated to the Village Type Development Area in accordance with the layout as approved by the Government and the policy as set out in Schedule 4 hereto.
- 4.02 SHK shall carry out the relocation of the Existing Villages including the formation and servicing of the Village Type Development Area and the construction of village type house as hereinafter mentioned. The Government will, if the costs and expenses of the relocation of the Existing Villages aforesaid not being separately reimbursed to SHK, take them into account in the calculation of premium payable on the regrant of the Northeastern CDA Land and/or the Ma Wan Park Land the costs incurred in relocating the Existing Villages to the Village Type Development Area which shall also include the costs of formation and servicing the Village Type Development Area (within which 50 sites are designated for village expansion not being part of the relocation of the Existing Villages), construction and erection of 182 village type houses within the Village Type Development Area and any ex-gratia compensation or expenses incurred by SHK as listed in Schedule 4.
- 4.03 Notwithstanding anything contained in this Agreement, the amount to be reimbursed to SHK or to be taken into account in the calculation of premium referred to in Clause 4.02 hereof, shall not in any event be higher than the amount which the Government would have incurred were it to undertake the relocation of the Existing Villages in accordance with the

policies and practices under a Government Village Removal Exercise prevailing as at 4th August 1995.

- 4.04 The Government covenants that subject to Clause 4.05 hereof, 341 sites (inclusive of 50 sites which are designated for village expansion referred to under Clause 4.02 hereof and 291 sites for the relocation of the Existing Villages) will be made available for the relocation of the Existing Villages and for village expansion and each site to be assessed at an appropriate premium and in accordance with the policy as set out in Schedule 4 hereto. For the purposes of allocating the 291 sites, a nomination list must first be prepared by **SHK** for the approval of the Government and that indigenous villagers and landowners of pre-war New Grant building lots shall have priority over other villagers.
- 4.05 Some of the sites to be granted under the preceding sub-clause are situated within the Existing Villages and certain owners of lots or parcels of land therein have not entered into Exchange Agreements with Golden Liner Limited, a subsidiary of **SHK**, to date. **SHK** will use its best endeavours to acquire such lots or parcels of land. Should **SHK** or its subsidiary, despite its best endeavours, fail to acquire such lots or parcels of land, the Government acknowledges that **SHK** may request the Government to invoke its resumption powers subject to the relevant Ordinances governing but nothing herein shall oblige the Government to invoke or proceed with any resumption.
- 4.06 **SHK** will complete the construction of 182 village type houses referred to under Clause 4.02 hereof by three (3) phases. Each phase shall be completed within two (2) years from the date of permission to start building work has been given by the Government.

5. **DEVELOPMENT OF MA WAN PARK**

- 5.01 The Government will grant the Ma Wan Park Land, when available, to the Ma Wan Park Company subject to payment of a positive premium notwithstanding that it will also take

into account Clause VI of Schedule 4 hereof. The costs and expenses mentioned in Clause 3.03 hereof if not separately reimbursed, nor deducted on the regrant of the Northeastern CDA Land, will be accountable in the calculation of the premium payable on the grant of the Ma Wan Park Land.

5.02 Subject to Clause 5.07 and Clause 5.08 hereof the costs and expenses of the development of the Ma Wan Park will be calculated in accordance with Annexure A referred to in Schedule 2 hereof, such costs and expenses are agreed to be deducted in the calculation of the premium payable on the regrant of the Northeastern CDA Land and/or the grant of Ma Wan Park Land. Notwithstanding anything contained herein to the contrary, such costs and expenses for the purpose of the deduction in the calculation of premium aforesaid or reimbursement to **SHK** (if any) shall not in any event exceed the sum of HK\$1,031.48 million in total.

5.03 The Government agrees with **SHK** that the construction and development of the Ma Wan Park may be implemented in phases in the following manner :-

(a) The construction and development of phase 1 of the Ma Wan Park, the nature and scale of facilities and boundary of which will be agreed between **SHK** and the Government, will involve lots or parcels of land owned by the Government.

Within one year from the date hereof, the Government will grant licence(s) and deliver vacant possession of such part(s) of the Ma Wan Park Land belonging to the Government to **SHK** and **SHK** or the Ma Wan Park Company shall take vacant possession thereof from the Government.

(b) **SHK** will use its best endeavours to acquire the remaining part of the Ma Wan Park Land not owned by the Government. In the event of the owner(s) of the said land agreeing to be relocated to the Village Type Development Area, such

owner(s) will be relocated in accordance with the policy as set out in Schedule 4 hereto.

- (c) The Government acknowledges that **SHK** may not be able to acquire all the remaining private land in the Ma Wan Park Land and that **SHK** may apply to the Town Planning Board for recommendation of resumption of such land but nothing herein shall imply that resumption of the said remaining private land will be or may be successfully implemented by the Government.

- 5.04 Subject to Clause 5.03(a) hereof, **SHK** undertake and will procure the Ma Wan Park Company to bring Phase 1 of the Ma Wan Park into operation within five (5) years from the date vacant possession of such part or parts of land referred to in Clause 5.03(a) has been delivered to the Ma Wan Park Company.
- 5.05 The Ma Wan Park Land will be granted to the Ma Wan Park Company for the use and operation of a public recreational development which shall include features for entertainment, recreation, amusement, shopping, restaurants, kiosks, catering, advertising and other commercial facilities as may be approved by the Director.
- 5.06 In the event of any changes to the Master Layout Plan made by the Ma Wan Park Company and approved by the relevant Government authorities causing any variation in costs and expenses for the development of the Ma Wan Park, or for other reason, (and when the costs and expenses for the development of the Ma Wan Park shall have been deducted from the premium payable to the Government upon the surrender and regrant of the Northeastern CDA Land pursuant to Clause 5.02 hereof), resulting in a decrease in costs and expenses for the development of the Ma Wan Park. **SHK** shall pay to the Government interest on the unexpended balance of the sum as specified in Clause 5.02 hereof calculated at the rate of three (3) percent below the Best Lending Rate for Hong Kong Dollars from time to time quoted by the note issuing bank(s) from the date of the

deduction as aforesaid until actual repayment of the unexpended balance to the Government. Nevertheless, any increase in the costs and expenses for the development of the Ma Wan Park caused by any changes to the Master Layout Plan or otherwise, shall be borne by **SHK**.

5.07 (a) Within six (6) months from the date hereof, **SHK** shall submit a program together with plan(s) showing the proposed make of expenditure in respect of the costs and expenses of the development of the Ma Wan Park and the phasing of the Ma Wan Park development and the completion of the development for the approval of the Director.

(b) After the approval by the Director of the program referred to in sub-clause (a) of this clause ("the Approved Program") shall have been granted, **SHK** shall submit accounts verifying the expenditure referred to in sub-clause (a) of this clause on such date(s) and at such frequency as specified by the Director. The accounts shall be certified by appropriate professionals to be approved by the Director to verify, inter alia, that the expenditure is incurred in accordance with the Approved Program. Any amendment to the Approved Program shall be subject to the approval of the Director. **SHK** shall procure the Ma Wan Park Company to develop the Ma Wan Park in accordance with the Approved Program.

5.08 In the event that the said sum of HK\$1,031.48 million has been deducted in the calculation of premium as referred to in Clause 5.02 hereof and that for any reason there is an unexpended balance of the said sum (after deducting all amounts paid or payable in accordance with the Approved Program and accounts referred to in Clause 5.07 (b) hereof), at the expiry of the fifth (5th) year as stated in Clause 5.04 hereof (or when Phase 1 of the Ma Wan Park is brought into operation, whichever is the earlier), the Government may require **SHK** to repay such unexpended balance together with interest as specified in Clause 5.06 to the Government. Such unexpended balance together with the interest aforesaid shall be forthwith paid by **SHK** to Government upon the Government's demand,

failing payment, shall be forthwith recoverable by the Government as a debt Provided that the Government may at its absolute discretion defer the exercise of its rights under this clause for such period as it deems fit but without prejudice to the Government's right to exercise such similar rights after the expiry of the period.

5.09 The Ma Wan Park Company shall have full rights and discretion to deal with the Ma Wan Park Land including the following :-

- (a) assign, part with the possession of or otherwise dispose of the Ma Wan Park Land together with the messuages, erections and buildings thereon as a whole to such assignee or tenant as may be approved by the Director;
- (b) enter into agreement(s) for the management and/or day-to-day operation of the Ma Wan Park or part(s) thereof including any shopping, restaurants, kiosks, catering, advertising and other commercial facilities provided that no estate or interest in land in the Ma Wan Park Land or any part thereof shall be created or conveyed under the said agreement(s); and
- (c) grant licences or tenancies of the Ma Wan Park or part(s) thereof including any shopping, restaurants, kiosks, catering, advertising and other facilities.

5.10 The Government agrees that the Ma Wan Park will be operated on a commercial basis and as advised by its auditors the Ma Wan Park Company will independently set up a sinking fund for maintenance, repair and improvement of the Ma Wan Park, it being intended that net profit after deduction of reasonable operating costs shall be paid to such sinking fund, unless otherwise agreed by the Government, solely for the purpose of maintenance, repair and improvement of the Ma Wan Park and reimbursement of the costs overrun borne by **SHK** under Clause 5.06 hereof (if any). Should the Ma Wan Park Company find that the commissioned features are inappropriate or the operation of the Ma Wan Park not commercially viable, the Ma Wan Park Company shall be entitled to negotiate with the



Government for approval either to vary, alter or modify any of the Conditions of Grant of the Ma Wan Park Land or take any necessary steps to maintain the Ma Wan Park as a viable operation.

6. **RELOCATION OF FISHERMEN**

- 6.01 In order to relocate the fishermen and squatters of the Island, **SHK** shall within 36 months of being given vacant possession of the site or site(s) for such relocation build blocks of flats comprising a total of 120 units each of net area of 400 sq. ft. for their accommodation. Such units will be of a standard comparable to public rental housing erected by the Government and will, upon completion of construction to the satisfaction of the Government, be handed back to the Government or to be dealt with in accordance with such other arrangement acceptable to the parties.
- 6.02 The Government will grant **SHK** a licence at nominal fee for the construction of the aforesaid blocks and the cost of the construction, if not reimbursed to **SHK**, will be accountable in the calculation of premium payable on the regrant of Northeastern CDA Land and/or the Ma Wan Park Land.

7. **INFRASTRUCTURE**

- 7.01 **SHK** shall or shall procure the erection and construction of the Infrastructure as referred to in Schedule 3 hereof but the costs and expenses therefor, if not reimbursed to **SHK**, will be accountable in the calculation of the premium payable on the regrant of the Northeastern CDA Land and/or the Ma Wan Park Land.
- 7.02 The Infrastructure will, upon completion of the construction thereof to the satisfaction of the Government, be handed over to the Government. Certain areas and the facilities

outside individual lots in the Village Type Development Area as may be agreed between the parties and completed to the satisfaction of the Government will also be handed over to the Government for maintenance.

8. **PROVISION OF TRANSPORTATION SERVICES AND FACILITIES**

- 8.01 **SHK** shall construct a road connection to the Island from the Lantau Fixed Crossing which road connection has been conditionally endorsed by the Government.
- 8.02 Under the Government's decision of adopting a 75% : 25% ratio between sea and road patronage to and from the Island, **SHK** shall ensure a viable ferry service to avoid overburdening the Lantau Fixed Crossing.
- 8.03 Use of the road connection shall be restricted to emergency vehicles, buses/coaches, service vehicles and any other vehicles authorized by the Government. **SHK** has an obligation to provide bus services to, from and within the Island. The operation of the bus services shall be in compliance with the Road Traffic Ordinance (Cap.374) and its subsidiary legislation and in accordance with the terms and conditions imposed under a passenger service licence issued by the Commissioner of Transport under the Ordinance.
- 8.04 **SHK** shall construct the Central Pier and hand it back to the Government after completion. The pier will be let to **SHK** for its exclusive use for as long as the Government considers that the whole pier is required by **SHK** to maintain a proper and efficient ferry service between the Island and Central District, **SHK** will be charged a rent for the use of the Central Pier and will be responsible for the management and maintenance of the pier during the period when **SHK** has exclusive use. For the avoidance of doubt, a ferry pier in Tung Wan, which is included as part of the land grant condition of the Northeastern CDA Land, will not be an item under Schedule 3 hereto as the ownership of that pier rests with **SHK**.

The future management and maintenance responsibility for the ferry pier in Tung Wan will also rest with **SHK**. In the event that the completion of the Central Pier or the pier in Tung Wan is deferred after the first population intake, temporary ferry service will have to be provided by **SHK** at its own cost.

- 8.05 **SHK** shall have full rights to engage and/or contract with any corporations, firms and/or persons for the provision of the aforesaid bus and/or ferry services on such terms and conditions as **SHK** shall in its absolute discretion decide.
- 8.06 **SHK** shall ensure that the provision of bus and/or ferry services by itself and/or by the corporations, firms and/or persons stated in the preceding sub-clause shall be to the satisfaction of the Commissioner for Transport.
- 8.07 In view of the Ma Wan Park Company operating the Ma Wan Park and the need to provide bus and ferry to and from the Island therefor, the Ma Wa Park Company shall, subject to the approval of the Government, be given a right of first refusal to provide the same should the obligations of **SHK** under this Clause cease.
- 8.08 The road connection to the Island as referred to in Clause 8.01 hereof, along with any public roads, are to be constructed by **SHK**.

9. **WAIVER AND AMENDMENT**

Any of the terms or conditions of this Agreement may be waived at any time by the party which is entitled to the benefit thereof, but no such waiver, which may be conditional or restricted in any manner, shall affect or impair the right of the waiving party to require observance, performance or satisfaction of any other term or condition hereof. No waiver of any breach of default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver, failure or delay on the part of any party to exercise any rights, power or privilege under this Agreement shall be deemed a waiver

of any subsequent breach or default of the same or similar nature nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or of the exercise of any other right, power or privilege.

10. **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and it shall ensure to the benefit of the parties hereto and their respective successors and permitted assigns (if permitted by the Government) provided always the burden and obligations of the parties to this Agreement shall not be assigned by any of the parties hereto without the prior written consent of the other party.

11. **CHANGES/AMENDMENTS**

Changes of and supplements to this Agreement shall be made in writing and expressly referred to as such and signed by the party or parties to be affected, bound or burdened by such amendment.

12. **PARTIAL NULLITY**

In case any of the stipulations of this Agreement should be or become fully or in part invalid, the other stipulations of this Agreement shall remain in force. Stipulations which are invalid shall be implemented according to the spirit of this Agreement.

13. **ARBITRATION**

If at any time any dispute, difference or question shall arise between the parties touching or concerning the validity, construction, interpretation, meaning, effect performance or enforcement of this Agreement, or anything herein contained, or the rights, powers, duties, liabilities or obligations of the parties under or by virtue of any of the terms, conditions or

stipulations of this Agreement, or otherwise in relation to the premises, then every such dispute, difference or question shall be referred to arbitration, with one (1) arbitrator to be nominated by each party and the third to be agreed upon between the parties, or in default of agreement to be nominated by the President for the time being of the Institute of Arbitrators, pursuant to the provisions of the Arbitration Ordinance, Chapter 341 of the laws of Hong Kong.

14. **PROPER LAW AND SUBSERVICE OF THIS AGREEMENT'S PROVISIONS**

14.01 This Agreement shall be governed and interpreted in accordance with the laws of Hong Kong.

14.02 It is the intention of the parties that subsequent agreements and/or land grants to be entered into pursuant to this Agreement shall adhere to the spirit herein.

14.03 In the event of any conflict between any provisions of this Agreement and of the land grants referred to respectively in Recital 4 of this Agreement, the provisions of such land grants respectively shall prevail.

15. **NOTICES**

15.01 All notices, requests, demands and other communications under this Agreement or in connection herewith shall be given or made to or upon the parties hereto in writing by personal delivery, registered mail, or by telex, cable or facsimile transmission (confirmed in writing by registered mail despatched within twenty-four (24) hours thereof) and shall be addressed to the appropriate party at the following address :-

The Government : District Land Office/Tsuen Wan  
10/F., Tsuen Wan Station Multi-storey Carpark Building,  
174-208 Castle Peak Road,  
Tsuen Wan,  
New Territories.

Fax No. : 2415 0703 or 2412 0505

Attention : District Lands Officer, Tsuen Wan

SHK : Sun Hung Kai Properties Limited  
45th Floor, Sun Hung Kai Centre,  
30 Harbour Road,  
Wanchai,  
Hong Kong

Fax No. : 2827 1630

Attention : The Manager, Project Planning Department

or at such other address or place as such party may designate to the other party.

- 15.02 Any notice, request, demand or other communications so given or made shall be deemed (unless the contrary is proved) to have been received in the case of a communication in writing on the date of personal delivery or, as the case may be, on the date which is two (2) days after the date of mailing thereof (in the case of mail posted in Hong Kong to an address in Hong Kong), and in the case of a cable, telex, or facsimile transmission one (1) day after the date of despatch.

16. **ENGLISH LANGUAGE**

All notices or communication under or in connection with this Agreement shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

AS WITNESS whereof the parties hereto have caused their seal or common seal to be hereunto affixed the day and year first above written.

# SCHEDULE 1

Lot No.	Owner(s)	"Old Lots"	House Lot Y(es) N(o)	Area
57RP	EVER FAST LIMITED		N	1765.80sf
58A	EVER FAST LIMITED		N	2791.00sf
61	EVER FAST LIMITED		N	0.03a
82A	EVER FAST LIMITED		N	2759.00sf
84	EVER FAST LIMITED		N	0.09a
152	CRANDON ESTATES LTD.		N	0.03a
153	CRANDON ESTATES LTD.		N	0.01a
154	CRANDON ESTATES LTD.		N	0.02a
155	CRANDON ESTATES LTD.		N	0.02a
156	CRANDON ESTATES LTD.		N	0.02a
157	CRANDON ESTATES LTD.		N	0.02a
158	CRANDON ESTATES LTD.		N	0.02a
188	CRANDON ESTATES LTD.		N	4.11a
189	CRANDON ESTATES LTD.		N	0.01a
190	CRANDON ESTATES LTD.		N	0.01a
191	CRANDON ESTATES LTD.		N	3.36a
192	CRANDON ESTATES LTD.		N	0.28a
193	CRANDON ESTATES LTD.		N	0.06a
194	CRANDON ESTATES LTD.		N	0.06a
195	CRANDON ESTATES LTD.		N	5.15a
196	CRANDON ESTATES LTD.		N	0.09a
197	CRANDON ESTATES LTD.		N	0.37a
198	CRANDON ESTATES LTD.		N	0.07a
199	CRANDON ESTATES LTD.		N	0.08a
200RP	CRANDON ESTATES LTD.		N	3814.80sf
201	CRANDON ESTATES LTD.		N	0.12a
202	CRANDON ESTATES LTD.		N	0.11a
203	CRANDON ESTATES LTD.		N	0.01a
204	EVER FAST LIMITED		N	1.49a
206RP	EVER FAST LIMITED		N	11088.80sf
207RP	EVER FAST LIMITED		N	58267.00sf
228	CRANDON ESTATES LTD.		Y	2450.00sf
248RP	EVER FAST LIMITED		N	1580.00sf
250	EVER FAST LIMITED		N	6850.00sf
256	EVER FAST LIMITED		Y	4900.00sf
258RP	EVER FAST LIMITED		N	13244.20sf
262SASS1	EVER FAST LIMITED		N	113000.00sf
262ARP	EVER FAST LIMITED		N	3196sf
262C	EVER FAST LIMITED		N	4000.00sf
262D-G+RP	EVER FAST LIMITED		N	46800.00sf
262H	EVER FAST LIMITED		N	4684sf

Lot No.	Owner(s)	House Lot Y(es) N(o)	Area
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262J	EVER FAST LIMITED	N	17920.00sf
265	CRANDON ESTATES LTD.	N	33375.00sf
266	EVER FAST LIMITED	N	3600.00sf
350	EVER FAST LIMITED	Y	820.00sf
353	EVER FAST LIMITED	Y	65.0400sm
90	EVER FAST LIMITED	Y	0.02a
96	EVER FAST LIMITED	Y	0.02a
103	EVER FAST LIMITED	Y	0.01a
108	EVER FAST LIMITED	Y	0.01a
109	EVER FAST LIMITED	Y	0.01a
135	EVER FAST LIMITED	Y	0.03a



## SCHEDULE 2

### "Ma Wan Park Initial Costs and Expenses (solely attributed to Ma Wan Park)"

- Site clearance costs
- Ex-gratia payments in relation to the clearance of both private and government land and structures on such land within the Ma Wan Park Land as defined by Plan II including items such as crops, trees, wells, pipelines, shrines, Ancestral Halls, Tse Tongs, Temples, the costs of "Tun Fu " ceremony etc.
- Costs of clearance of graves and kam taps within the Ma Wan Park Land.
- Costs incurred in clearing licenses within the Ma Wan Park Land.
- Itemised breakdown prepared in accordance with the layout as approved by the Town Planning Board and listed in the annexure hereto and marked "Annexure A".

The above items (except Annexure A) are for indication only and not being exhaustive, nevertheless, all items (including Annexure A) may be varied at the request of Ma Wan Park Company in accordance with the Master Layout Plan.

## SCHEDULE 3

### "Infrastructure"

- (a) Public Road Network
  - (i) Widening of Ma Wan Viaduct
  - (ii) Road link from Lantau Fixed Crossing onto Ma Wan
  - (iii) Toll plaza, toll collection system, traffic control and surveillance system and the associated administration facilities on Ma Wan
  - (iv) Public road network on Ma Wan
- (b) Fresh Water Supply System
  - (i) Pipelines from Sham Tseng to Ma Wan

- (ii) Fresh Water Service reservoir
- (iii) Water pipeline network along public roads and within Village Type Development Area
- (iv) Diversion of existing water mains
- (c) Street Fire Hydrant System along public roads and within Village Type Development Area
- (d) Sewage System
  - (i) Sewage drain network along public roads and within Village Type Development Area
  - (ii) Sewage treatment plant
  - (iii) Sewage pumping stations
- (e) Storm Water Drainage System
  - (i) Storm water drainage network along public roads and within Village Type Development Area
  - (ii) Drainage outfalls
- (f) Formation of Pak Wan Service Area
- (g) Site Formation for the Village Type Development Area
- (h) Site Formation for the Police Command Post
- (i) Site Formation for Primary School
- (j) Formation and construction of Central Ferry Pier
- (k) Site Formation for the Fire Station
- (l) Site Formation for the Refuse Transfer Station

#### SCHEDULE 4

##### "Village Relocation"

- (I) The intention of this Schedule 4 is to provide a framework for the calculation of costs and expenses of relocating the Existing Villages to be reflected in the eventual premium calculation of the Northeastern CDA Land and/or the Ma Wan Park Land. It is not intended to be part of and it shall not in any way affect the valuation for the grant of the Northeastern CDA Land and/or the Ma Wan Park Land and so individual assessment of the 'entitlement' of each lot to be surrendered as referred to under paragraph (VII) hereof will not be included.
- (II) Notwithstanding anything contained in this Agreement, the amount of reimbursement in respect of the costs and expenses of relocating the Existing Villages to **SHK** or the amount to be taken into account for the calculation of the premium payable on the regrant of the Northeastern CDA Land and/or the grant of Ma Wan Park Land as referred to in Clause 3.03 hereof, shall not in any event be higher than that which the Government would have incurred were it to undertake the relocation of the Existing Villages in accordance with the policies and practices under a Government Village Removal Exercise prevailing as at 4th August 1995.
- (III) For the avoidance of doubt, the policy, cost and compensation packages referred to below will only be applied to the area edged black on Plan No. TWM 2526 annexed herewith and marked "Plan II".
- (IV) Implementation Policy referred to under Clause 4.01

- (a) Areas of government land covered by the approved village layout and any areas of adjoining government land to implement the layout will be granted to **SHK** in phases by way of licenses at a nominal fee. **SHK** will be required to carry out all the necessary site formation and engineering works to provide a formed and serviced site to the satisfaction of the Government as well as to construct the village houses in accordance with the approved village layout plan. Upon completion, the houses and the formed sites will be returned to the Government in phases who will grant the new lots at the request of **SHK** to the nominees approved by the Government, subject to a maximum number of 182 houses contemporaneously with the surrender of the house lots owned by the nominees.
- (b) **SHK** will deliver possession of the houses to the Government upon demand which demand shall be made not later than two (2) years commencing from the date of the Government certifying that these houses are completed to its satisfaction. **SHK** will also be held responsible for the usual defects liability of contractor for the period of one (1) year commencing from the date(s) of possession when the relevant house(s) shall have been delivered to the Government.

(V) Costs and expenses referred to under Clause 4.02

The costs and expenses which the Government agrees to reimburse to **SHK** or take into account in the calculation of premium shall be restricted to the area edged black on Plan No.TWM 2526 annexed hereto and marked "Plan II" and shall include :-

- (a) Ex-gratia payments in relation to the clearance of both private and government land and structures on such land within the Village Type Development Area including items such as crops, trees, wells, pipelines, shrines, Ancestral Halls, Tse Tongs, Temples, the costs of "Tun Fu" ceremony etc.
- (b) Costs of clearance of graves and kam taps within the Village Type Development Area.

- (c) Costs incurred in clearing licenses within the Village Type Development Area.
- (d) Costs of site formation work, slope retention, sea walls construction and provision of engineering infrastructure including roads and footpaths, water supply, stormwater sewers, foul sewers, electricity, gas and telephone within the Village Type Development Area.
- (e) Costs of construction of village houses for the indigenous villagers and landowners of pre-war New Grant building lots in accordance with the approved layout.
- (f) Cost of formation of an additional 50 village houses sites (without houses), to be granted to indigenous villagers of Ma Wan not being part of the relocation exercise of the Existing Villages.
- (g) The cost of constructing any buildings or structures of a communal nature such as a Community Centre, Ancestral Halls, Tse Tong, Temple, Church, Pai Lau etc. provided that such buildings or structures have the prior approval of Government and the cost is limited to the equivalent of costs expended in the context of a Government Village Removal Exercise.
- (h) Costs of constructing fisherman blocks as per Clause 6.01 of this Agreement.
- (i) Demolition costs of existing buildings and structures and utilities diversion within the Village Type Development Area.
- (j) Administrative costs and professional fees related to the carrying out of the activities listed under this heading except those related to negotiations between SHK and the villagers.
- (k) Professional fees related to the verification of land title and property interest of the villagers.
- (l) Professional fees related to the acquisition of land and such fees are limited to the equivalent of fees expended in the context of a Government Village Removal Exercise.

(VI) **Policy governing assessment of premium for the grant of the Ma Wan Park Land referred to under Clause 5.01**

Subject to there being a positive premium :-

- (a) The Government will allow the equivalent of its standard ex-gratia rates as at 1st January 1992 for both building and agricultural lots within the edged black area as defined in Plan II. However, if it can be demonstrated to the Government's satisfaction that a figure in excess of the 1st January 1992 rate has been paid then the Government will allow a figure not exceeding Government's ex-gratia rate as at the date of registration of the relevant sale and purchase agreement for individual lots. Notwithstanding the above the maximum figure to be allowed will not exceed the ex-gratia rates current as at the valuation date for the respective land exchanges.
- (b) Similar principles will apply to the ex-gratia rate for clearance of government land within the edged black area as defined in Plan II.
- (c) The Government is prepared to allow the equivalent of Home Purchase Allowance as a credit in the before value for lots with structures existing as at 4th August 1995 acquired from other villagers.

(VII) **Policy referred to under Clause 4.04**

- (a) For the purposes of calculation of premium payable on the grant of the 291 sites (i.e. 341 sites minus 50 sites which are designated for village expansion) within the Village Type Development Area of which 182 sites are with village type houses, SHK shall establish the status of indigenous villagers, landowners of pre-war New Grant building lots and other villagers in the nomination list prepared under Clause 4.04 in accordance with a set of criteria agreed by Government. In addition, SHK shall agree with each of the indigenous

villagers, landowners of pre-war New Grant building lots and other villagers which of the house lots will be granted to him according to provisions set out under Clause 4.04. Any building lots acquired by the indigenous villagers after 4th August 1995 shall not be entitled to any grants of any resite village house under a Government Village Removal Exercise. In determining the 'entitlement' of each lot to be surrendered under paragraph (I) of this Schedule,

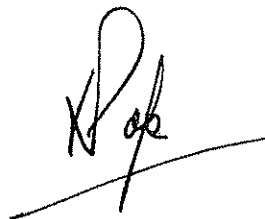
- (i) Lots owned by indigenous villagers and pre-war New Grant building lots (the status of the owners thereof and the status of the indigenous villagers shall have been checked in accordance with the set of criteria agreed by the Government) will be surrendered to the Government in exchange for the new lots and houses erected thereon at nominal premia.
  - (ii) Lots owned by owners other than that those specified in the preceding subparagraph will have a credit up to the equivalent of Home Purchase Allowance. They will be treated in the same manner as for indigenous villagers, i.e., surrender their old lots to the Government in exchange for the grant of the new lots and the houses erected thereon at nominal premia provided at the time of valuation, it can be established that cost of building the new house plus the value of the new lot is less than the equivalent of Home Purchase Allowance and the surrender value of the house lots owned by them.
- (b) In allocating the 291 sites reserved for village relocation, all lots granted over and above those necessary to implement a Government Village Removal Exercise will be granted at the request of SHK to nominees approved by the Government at premium on the basis of full market value. Such premium shall be payable upon the grant of the relevant lot(s).


**SIGNED SEALED and DELIVERED**

on behalf of the Hong Kong Government

by *R. D. Pope, Director of Lands,*

in the presence of :-



  
**Y.P. YUEN**  
District Lands Officer, Tuen Wan

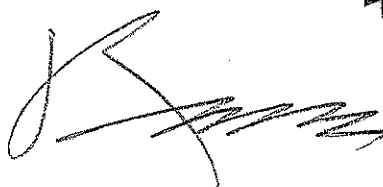
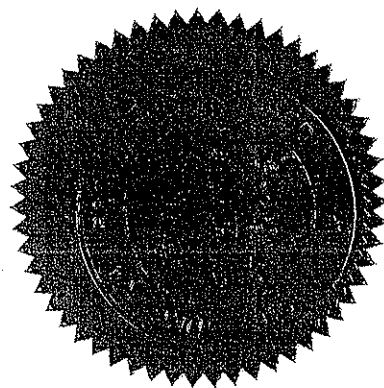
**SEALED with the Common Seal of**

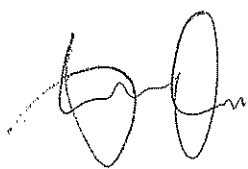
**SUN HUNG KAI PROPERTIES**

**LIMITED and SIGNED by**

**Chan Kui Yuen, Thomas** *Director*

in the presence of :-



  
**HO SHAN SHAN**  
Solicitor, Hong Kong.



**PROPOSED ITEMS FOR MA WAN PARK DEVELOPMENT**

<b>A.    <u>Infrastructure/Utilities</u></b>	
1.	Site Formation
2.	Fresh water supply system
3.	Sewage System
4.	Storm water drainage system
5.	Flushing water system
6.	Street fire hydrant system
7.	Electricity supply system
8.	Road works
9.	Sea wall
<b>B.    <u>Building Works</u></b>	
1.	Functional buildings
2.	High-tech functional building
3.	Ancillary facilities
3.a.	Office and facilities building
3.b.	Staff facilities buildings
<b>C.    <u>External Works</u></b>	
1.	Hard landscape (about 64,000m <sup>2</sup> on plan)
2.	Soft landscape (about 120,000m <sup>2</sup> on plan)
3.	Vault covered walkway and trellis along the footpath
4.	External signage
5.	Public announcement, public emergency phone and security systems
6.	Public connection facilities

D. Rides and Attractions

A. Main themes

A1. South China sea village

1. Village Complex
2. Story of the New Territories
3. Pirate ship
4. Entertainment centre
5. Dai pai dong
6. Tin Hau Temple
7. Restaurants

A2. Old Hong Kong

1. Hong Kong Hotel
2. Star Ferry boat tour
3. China sea clipper
4. Tea House
5. Department Store
6. Food Centre

A3. New Hong Kong

1. Airport 2010
2. Modern Hong Kong
3. Restaurant
4. Sky tower
5. Rapid ride

A4. Nature park

1. Parrot garden
2. Children's farm

A5. Children's adventure world

1. Merry-go-round
2. Children's roller coaster
3. Children's parachute tower

**B. Recreation and exhibition facilities**

**B1. Story of Hong Kong exhibition**

1. Animation show theatre
2. Souvenir shop
3. Food outlet

**B2. The story of K.C.R.C.**

1. Train station
2. Souvenir shop
3. Food outlet

**B3. Hong Kong Government exhibition centre**

**B4. Hong Kong Industrial exhibition centre**

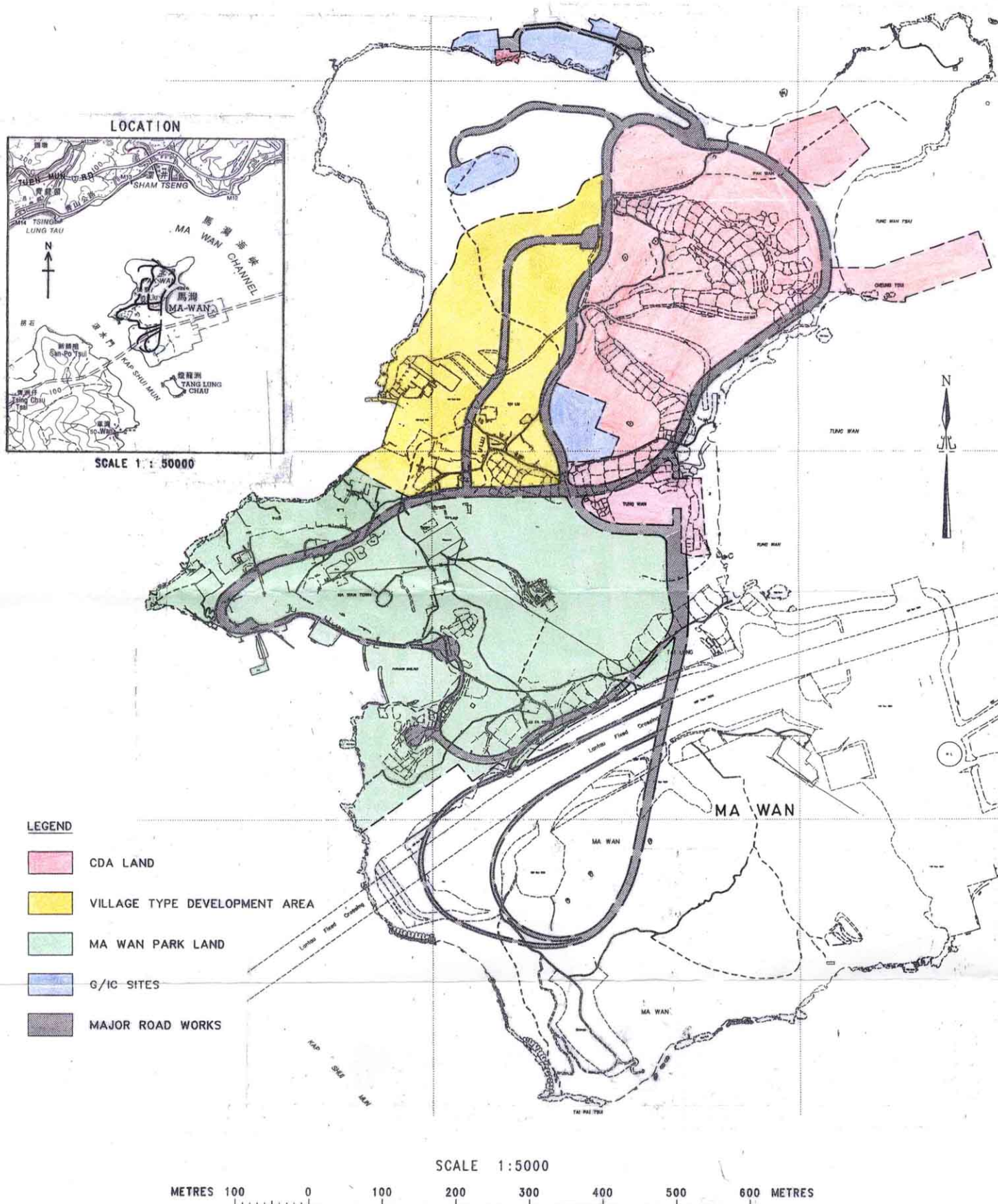
**B5. Multi-purpose theatre**

**B6. Seafood centre**

# PROPOSED DEVELOPMENT ON MA WAN ISLAND

PLAN I

圖則 I



FOR IDENTIFICATION PURPOSES ONLY



District Lands Office, Tsuen Wan  
Lands Department

Plan Prepared by District Survey Office, Tsuen Wan

File Ref. No. (4) in L/M2 in DLO/TW 8/155/91II

Connected File Ref. -----

Survey Sheet No. 10-NE-A

Layout/Engineering Plan No. Consultant Drg.

PLAN No. TWM 2543A

Date : 17/03/1997



Plan II

圖則 II



FOR IDENTIFICATION PURPOSES ONLY  
 District Lands Office, Tuen Mun  
 Lands Department  
 Map prepared by District Survey Office, Tuen Mun

DEVELOPMENT ON MA WAN

File No. 143 in LMS in DLO/TW 8/155/812  
 Connected File No.  
 Survey Sheet No. 66-110330610-NE-10-10 7A, 3C  
 Layout/Engineering Plan No. 1155/155/812  
 PLAN No. TWM 2526

Scale: 1:2,000



# LOCATION

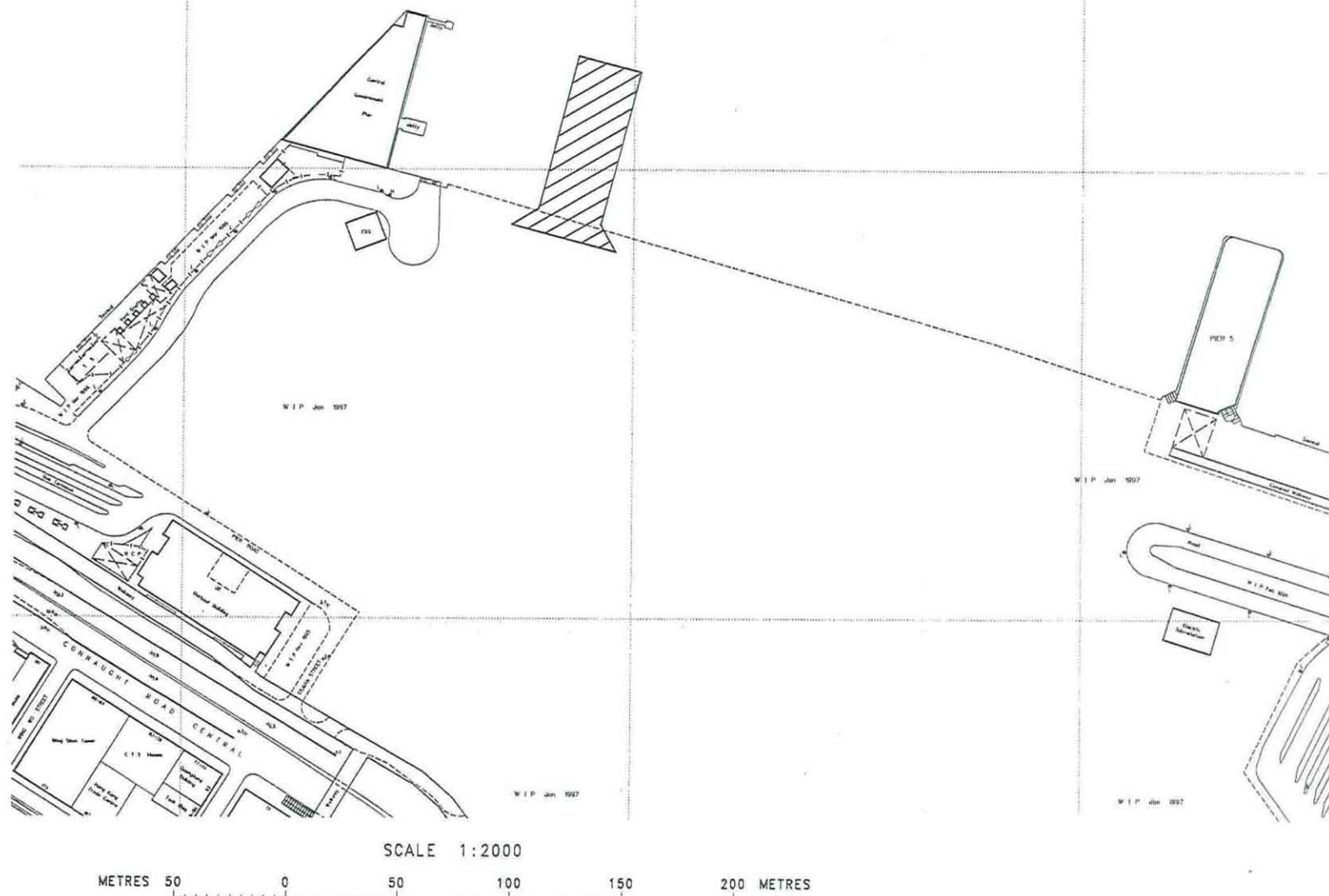


SCALE 1 : 20000

## LEGEND



CENTRAL PIER No.2



III

Plan III

FOR IDENTIFICATION PURPOSES ONLY



District Lands Office, Tsuen Wan  
Lands Department

Plan Prepared by District Survey Office, Tsuen Wan

## CENTRAL PIER No.2 AT CENTRAL RECLAMATION

File Ref. No. (6) in LM2 in DLO/TW 8/155/91II

Connected File Ref. -----

Survey Sheet No. 11-SW-8B

Layout/Engineering Plan No. Central Pier No.2  
(Mannell Cons. Asia Ltd.)

PLAN No. TWM2574A

This AGREEMENT is made as a Deed on the

- 5 FEB 2007  
day of

2006

## PARTIES

- (1) The Government of the Hong Kong Special Administrative Region ("the Government"); and
- (2) Sun Hung Kai Properties Limited, whose registered office is situated at 45th Floor, Sun Hung Kai Centre, 30 Harbour Road, Wanchai, Hong Kong ("SHK").

## RECITALS

- (A) The Government of Hong Kong and SHK entered into the Heads of Agreement dated 23 June 1997 ("the Heads of Agreement"). The Heads of Agreement provided for certain stated objectives in respect of the implementation of the Outline Zoning Plan of Ma Wan Island, New Territories. By virtue of section 30(2) of the Hong Kong Reunification Ordinance (Cap. 2601), the Heads of Agreement are deemed on and from 1 July 1997 to have been entered into between the Government and SHK.
- (B) Clause 6.01 of the Heads of Agreement provides that in order to relocate the fishermen and squatters of the Ma Wan Island, SHK shall within 36 months of being given vacant possession of the site or site(s) for such relocation build blocks of flats comprising a total of 120 units each of net area of 400 sq. ft. for their accommodation, which units shall be of a standard comparable to public rental housing erected by the Government, and shall upon completion of construction to the satisfaction of the Government, be handed back to the Government or to be dealt with in accordance with such other arrangement acceptable to the parties.
- (C) Clause 6.02 of the Heads of Agreement further provides that the Government will grant SHK a licence at nominal fee for the construction of the said blocks of flats and the cost of the construction, if not reimbursed to SHK, will be accountable in the calculation of premium payable on the regrant of Northeastern CDA Land and/or the Ma Wan Park Land.
- (D) The Northeastern CDA Land was regranted to SHK upon the issue of the land grant for Lot No. 392 in Ma Wan to SHK in June 1997.
- (E) The total cost for the construction of the original 120 units under the said Clause 6.01 of the Heads of Agreement had been estimated to be HK\$28,240,000.00 and the said amount had been deducted from the premium payable by SHK for the regrant of the Northeastern CDA Land i.e. Lot No. 392 in Ma Wan pursuant to Clause 6.02 of the Heads of Agreement.
- (F) Based on a recent survey, the Government has found that 62 units each of net area of 400 square feet will be sufficient for relocating and accommodating the fishermen and squatters of the Ma Wan Island.



- (G) The total cost for the construction of the said 62 units is estimated to be HK\$14,590,000.00 calculated on a pro rata basis of the estimated construction cost for the original 120 units as stated in paragraph (E) above.
- (H) SHK is willing to accept the reduction of the number of units from the original 120 units to 62 units ("Reduction") and is willing to repay to the Government the sum of HK\$13,650,000.00 (i.e. HK\$28,240,000.00 – HK\$14,590,000.00) being the excess amount of construction cost deducted from the premium payable for the land grant of Lot No. 392 in Ma Wan.
- (I) The parties wish to enter into this Agreement to give effect to the Reduction and to alter the terms of the Heads of Agreement in manner hereinafter appearing.

NOW IT IS AGREED as follows :


1. Terms defined and expressions used in the Heads of Agreement shall have the same meaning when used in this Agreement.
2. SHK shall on the date of this Agreement repay to the Government the sum of HK\$13,650,000.00 (receipt of which is hereby acknowledged by the Government). The parties agree that the repayment of the sum of HK\$13,650,000.00 is in full and final settlement of the parties' entitlements with respect to the Reduction. Each party acknowledges and agrees that it has no further claims whatsoever against the other party with respect to the Reduction.
3. The Heads of Agreement shall be amended as follows:
  - (a) Clause 6.01 of the Heads of Agreement is amended by deleting the phrase "a total of 120 units each of net area of 400 sq. ft." and substituting therefor, "a total of 62 units each of net area of 400 sq. ft."
  - (b) The following provisions are added as Clauses 6.03, 6.04 and 6.05 of the Heads of Agreement respectively :
    - "6.03 The Government shall have the unilateral right to further adjust the number of units each of 400 sq. ft. to be constructed by SHK under Clause 6.01 of this Agreement based on the actual number of fishermen and squatters of the Ma Wan Island eligible to be relocated as finally ascertained by the Government. The Government shall exercise such right of adjustment by giving to SHK notice in writing to vary the number of such units to be built not later than **nine months** after the date of the issue by the District Lands Officer/Tsuen Wan & Kwai Tsing to SHK of his approval of the Building Plans and Drainage Plans in respect of the 62 units to be constructed pursuant to Clause 6.01 hereof."



- "6.04 In the event that the number of units to be built by SHK under Clause 6.01 hereof is reduced to less than 62 by the Government pursuant to Clause 6.03 hereof, SHK shall on demand repay to the Government the amount of the estimated construction cost without interest in respect of the number of units reduced, calculated on the basis of HK\$14,590,000.00 ÷ 62 per unit."
- "6.05 In the event that the Government exercises the right of adjustment pursuant to Clause 6.03 hereof, the Government shall not in any way be held liable to SHK for any direct or indirect loss or damages whether financial or otherwise and no claim for compensation, reimbursement for costs and expenses whatsoever may be brought by SHK in respect thereof."
4. The Heads of Agreement shall from the date hereof be read and construed in conjunction with and as amended, modified and supplemented by this Agreement, and subject as aforesaid, shall continue in full force and effect.

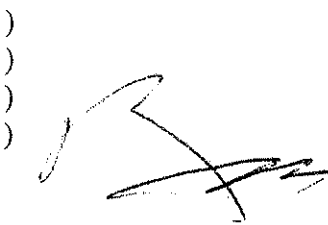
IN WITNESS WHEREOF this Agreement has been executed as a deed by the parties on the date first above mentioned in duplicate.

Signed Sealed and Delivered for and on behalf of )  
the Government of the Hong Kong Special )  
Administrative Region by Mr Patrick LC Lau, )  
the Director of Lands )  
in the presence of:

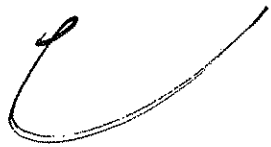
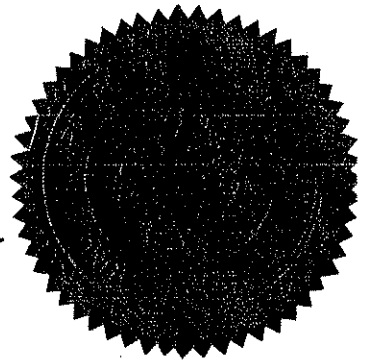


Mr. J. Merritt  
Assistant Director/Kowloon

Sealed with the Common Seal of the )  
Sun Hung Kai Properties Limited )  
and signed by )



Chan Kui Yuen, Thomas *Director*  
in the presence of:



LI WAI KWONG  
Solicitor, Hong Kong SAR  
Woo, Kwan, Lee & Lo

Dated this 15 FEB 2006 day of 2006

\*\*\*\*\*

The Government of the Hong Kong Special

Administrative Region

AND

Sun Hung Kai Properties Limited

\*\*\*\*\*

AGREEMENT SUPPLEMENTARY

to Heads of Agreement dated 23<sup>rd</sup> June 1997

\*\*\*\*\*

Lands Department

**Proposed Hotel Development**  
**Located at Kennedy Road and Queen's Road East, Wan Chai**

The proposed hotel development located at Kennedy Road and Queen's Road East, Wan Chai, being referred to should be the proposed Mega Tower Hotel Development (the proposed Development) (see plan attached). The site in question was originally zoned "Open Space", "Government, Institution or Community", "Residential (Group A)" and "Residential (Group B)" on the then Wan Chai Outline Zoning Plan (OZP) No. S/H5/2.

2. The developer submitted to the Town Planning Board (TPB) a planning application (No. A/H5/110) for a hotel/commercial development at the above site in 1985. The TPB was of the view that the proposed Development would improve the environment of the area and therefore did not object to the planning application. However, as hotel use was not permitted on "Open Space" zone, the TPB agreed to rezone the site to "Other Specified Uses" annotated "Comprehensive Redevelopment Area" ("OU(CRA)") to facilitate the submission of a comprehensive development for proposed hotel/commercial use to the TPB for consideration. The draft Wan Chai OZP No. S/H5/3 incorporating the above amendment was gazetted on 21 June 1985 for public inspection. The land use zoning of the above site has not changed since then.

3. The planning intention of zoning the above site as "OU(CRA)" was mainly to encourage the redevelopment of the area for commercial uses with the provision of public open space and other supporting facilities. According to the Wan Chai OZP, for any proposed development in "OU(CRA)" zone, a planning application in the form of a master layout plan should be submitted to the TPB for approval.

4. The planning application (No. A/H5/217) for the proposed Development, including the Master Layout Plan, was approved with conditions by the TPB in January 1994 (the 1994 approved scheme). A set of building plans was approved in May 1994 subsequent to TPB's approval of the said application. According to the TPB practice, the proposed Development under

the said planning application was deemed to have commenced upon approval of the building plans. An application (No. A/H5/341) for minor amendments to the 1994 approved scheme was approved with the same approval conditions by the Planning Department official on 23 June 2004 under the delegated authority under section 2(5)(b) of the Town Planning Ordinance. Subsequently, a set of slightly amended building plans submitted by the developer was approved in July 2004. Therefore, according to the TPB Guidelines, the proposed development incorporating the minor amendments was deemed to have commenced.

5. The developer submitted another planning application (No. A/H5/339) which involved the construction of two hotel blocks on an extended site in February 2004. The TPB rejected the planning application and the application for review in April 2004 and February 2005 respectively for reasons on various concerns, including the excessive building bulk, their visual and landscaping impacts, impacts on trees and the feasibility of the road improvement works. The developer lodged an appeal to the Town Planning Appeal Board against the decision of the TPB in May 2005. The hearing of the appeal was adjourned.

6. The site comprises partly private lot and partly Government land. After acquisition of all private lots, the developer submitted to the Lands Department an application for land exchange in respect of the site in May 2004. Implementation of the 1994 approved scheme through the proposed land exchange complies with the existing land policy of in-situ land exchange.

7. To implement the TPB approved scheme, the developer was required to conduct road improvement works. As the works might affect the site boundary, the land exchange would only be finalized subject to the approval of the road improvement works by the Government.

8. After submitting the application for land exchange in 2004, the developer submitted a Traffic Impact Assessment Report in 2005 (2005 Report) as requested by the Transport Department. The 2005 Report addressed the vehicular and pedestrian traffic, and included all major approved and committed developments within the affected area and all planned sites of the

Urban Renewal Authority along Queen's Road East, known at the time of assessment. To address the traffic impacts that might be brought about by the proposed Development, the developer has proposed a package of road improvement works, including:

- (a) widening of a section of Kennedy Road to facilitate construction of vehicle flyover (with pedestrian footbridge) and tunnel; and rearrangement of pedestrian facilities which include the provision of a new lift and new staircases;
- (b) construction of a pedestrian footbridge at the junction of Queen's Road East and Kennedy Road; and
- (c) widening of a section of Queen's Road East at the junction of Spring Garden Lane.

9. In accordance with the Roads (Works, Use and Compensation) Ordinance (the Ordinance) (Cap. 370), the Government should publish in the gazette the proposed road improvement works. The Ordinance provides for a statutory process for members of the public to express views and such views have to be taken into account before the road improvement works are authorized. The public may lodge their objections to the Secretary for Transport and Housing no later than 60 days after the first publication of the notice under section 8(2) of the Ordinance. After gazettal, the Wan Chai District Office will help inform owners' corporations, mutual aid committees and property management companies of the buildings in the vicinity to facilitate residents' understanding of the proposed road improvement works. If residents wish to raise any objection, they may address their objections to the Secretary for Transport and Housing within the specified 60 days. In the event that any objections remain unresolved, the relevant plan, the scheme and the objections lodged will be submitted to the Chief Executive in Council for consideration not later than nine months after the expiration of the period for lodging objections.

10. The Government briefed the Development, Planning and Transport Committee of the Wan Chai District Council (WCDC) on the proposed road

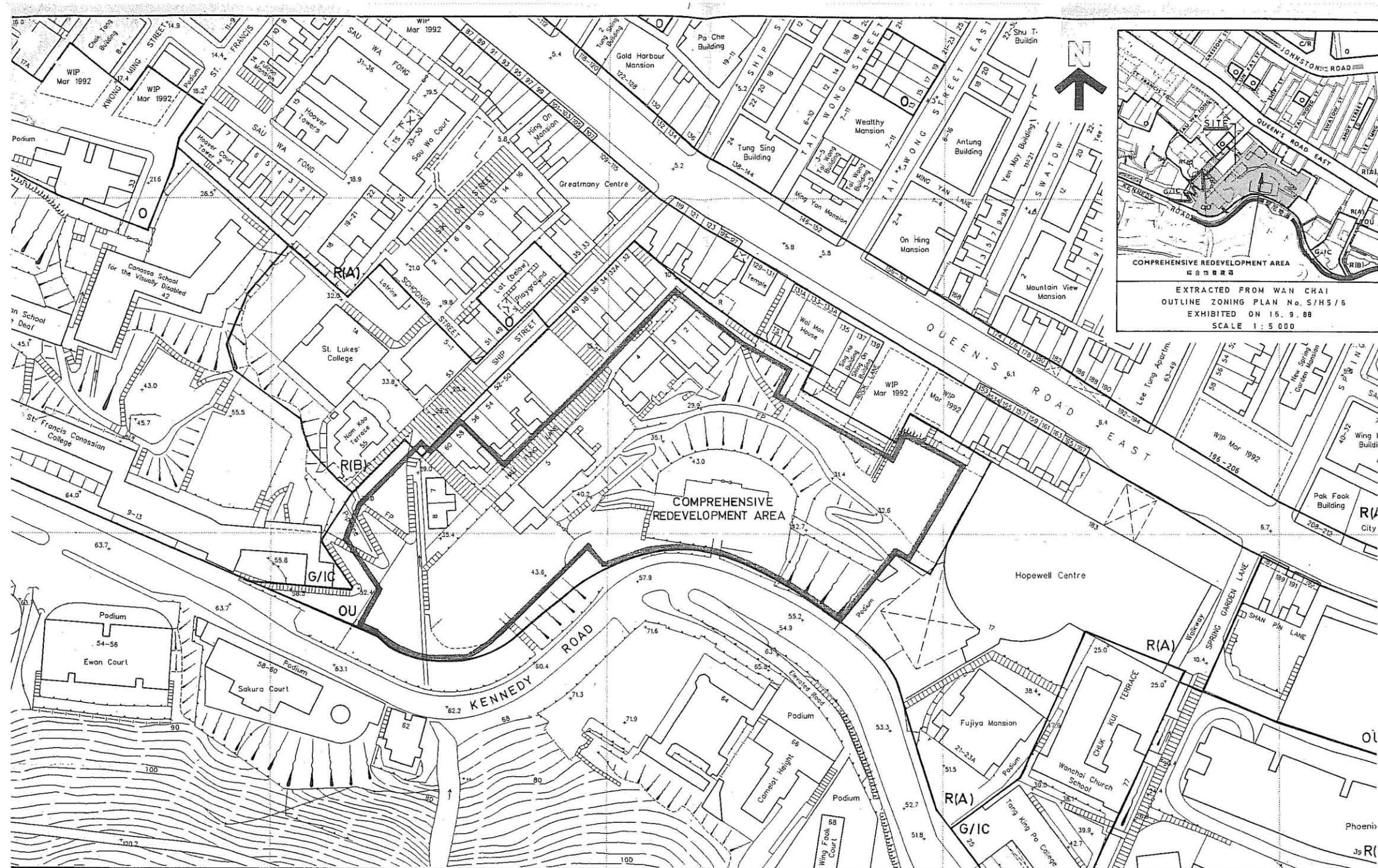
improvement works on 1 April 2008. Notwithstanding the position taken at that meeting, the WCDC passed the following motion on its meeting of 20 May 2008:

“As the Government has not clearly explained the information concerning the road improvement works to the WCDC, the Council worries that the road improvement works will have adverse impact on traffic. Hence, at the present stage, the Council does not support the road improvement works at Kennedy Road/Queen’s Road East. It also urges the Government to withdraw the concerned proposal and reassess the situation having regard to the worries of both the residents and the Council in detail. In future, any information and assessment report(s) on the road improvement works relating to the proposed Mega Tower Hotel Development should be submitted to the WCDC for thorough consultation.”

In response to the above motion and further information sought by the WCDC, we have reviewed the original intention of gazetting the road improvement works in June 2008 and decided not to gazette the works in June as originally contemplated.

11. As the anticipated date of completion of the proposed Development has been deferred from 2009 to 2014, the Transport Department has requested the Developer’s consultant to update the traffic projections up to 2016 (2016 being a more typical design year as compared with 2014) and would examine the said information.

12. The proposed Development has aroused much concern with the district in recent months, and different views have been received by relevant departments. In essence, owners or owners’ corporations of properties at Kennedy Road expressed concern over the impact of the proposed Development to traffic and scenery; but there are also Wan Chai residents, groups and businesses who indicated support to the project on the belief that the proposed Development would revitalize the economy and tourism development of the district, and would improve the traffic at Kennedy Road and Queen Road’s East.



APPLICATION SITE

EXTRACT PLAN PREPARED ON 23.11.93  
BASED ON SURVEY SHEET No. 11-SW-14B  
OF JUNE, 1992

# PROPOSED COMPREHENSIVE DEVELOPMENT AT I.L. 8715, KENNEDY ROAD, WAN CHAI, HONG KONG

SCALE 1:1000  
METRES 20 40 60 80

PLANNING DEPARTMENT

A/H5/217

PLAN 1



**Cheung Kong Center Development**

According to the Central District Outline Zoning Plan, the site of Cheung Kong Center is partly zoned “Commercial” (for the former Hilton Hotel) and partly zoned “Government, Institution or Community” (for the former Beaconsfield House and the former Garden Road Multi-storey Car Park Building).

2. The site of the former Hilton Hotel was owned by a subsidiary of Cheung Kong Holdings Limited (“Cheung Kong”). It was held under a lease which permitted development for commercial use including hotels and offices without lease modification or payment of premium.

3. Cheung Kong intended to redevelop the former Hilton Hotel site for office use and submitted building plans to the Government. At the same time, Cheung Kong intended to merge two pieces of adjoining government land, namely the former Beaconsfield House site and the former Garden Road Multi-storey Car Park Building site, with the former Hilton Hotel site for comprehensive redevelopment. In early 1994, Cheung Kong started liaising with the Government and exploring the feasibility of the joint redevelopment proposal.

4. In May 1995, Cheung Kong submitted a formal land exchange application to the Lands Department under which it proposed to surrender the former Hilton Hotel site in exchange for the granting of a new lot (i.e. the current site of Cheung Kong Center) by including the afore-mentioned two pieces of adjoining government land (see plan attached).

5. In July 1995, Cheung Kong submitted a planning application to the Town Planning Board under section 16 of the Town Planning Ordinance, which proposed to jointly redevelop the former Hilton Hotel site and the two pieces of adjoining government land into an office tower, a public car park with 800 parking spaces, a public open space and other public facilities (post office and public toilet). The planning application was approved by the Town Planning Board on 15 September 1995.

6. In processing the afore-mentioned land exchange application, the Government had considered the following planning gains arising from the proposed joint redevelopment of the former Hilton Hotel site and the two pieces of adjoining government land:

- (a) enabling the provision of a large public open space;
- (b) enabling the improvements to the traffic and pedestrian arrangements (such as improvement to the junction of Garden Road and Queen's Road Central; and widening and improvement of pavement at the junction of Garden Road and Queen's Road Central);
- (c) allowing open views of the St. John's Cathedral and the former French Mission Building (two declared monuments) from Queen's Road Central;
- (d) enabling the improvements to the overall site utilization and townscape through re-provisioning part of the multi-storey car park underground;
- (e) ensuring the continued provision of public car parking spaces during the redevelopment process; and
- (f) enabling the re-provisioning of public facilities including post office and public toilet.

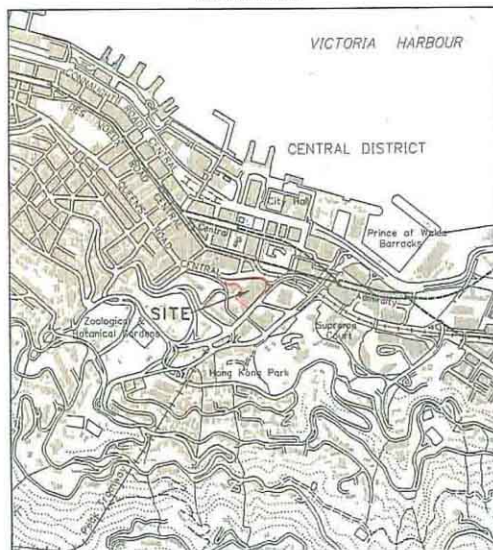
7. At the meeting of the Executive Council on 28 May 1996, the land exchange application of Cheung Kong was approved by the then Governor in Council. The major terms of the land exchange and concrete information were contained in the Legislative Council Brief issued on 31 May 1996.

8. On 4 November 1996, the land exchange document for the proposed joint redevelopment was executed between Cheung Kong and the Lands Department. According to the conditions of exchange, Cheung Kong would be permitted to develop a maximum gross floor area of 144,840m<sup>2</sup>. In addition, Cheung Kong is required to provide in the completed development a public carpark with 800 spaces to replace the former Garden Road Multi-storey

Car Park, and that at least 80% of the parking spaces shall be made available on an hourly basis. During the construction period, Cheung Kong is also required to provide a temporary covered public carpark with 500 spaces to ensure the continuity of service. The conditions of exchange also stipulate that Cheung Kong shall provide a public open space of not less than 5,200m<sup>2</sup> and shall also be responsible for all costs for the re-provisioning of the post office and public toilet within the redevelopment. The total premium paid by Cheung Kong for the land exchange was HK\$3,027.4 million. This figure represented the full market value premium payable by Cheung Kong for the additional development right (including the public car park and the extra gross floor area for office use) as a result of the land exchange. Subsequently, Cheung Kong had fulfilled all the above requirements.

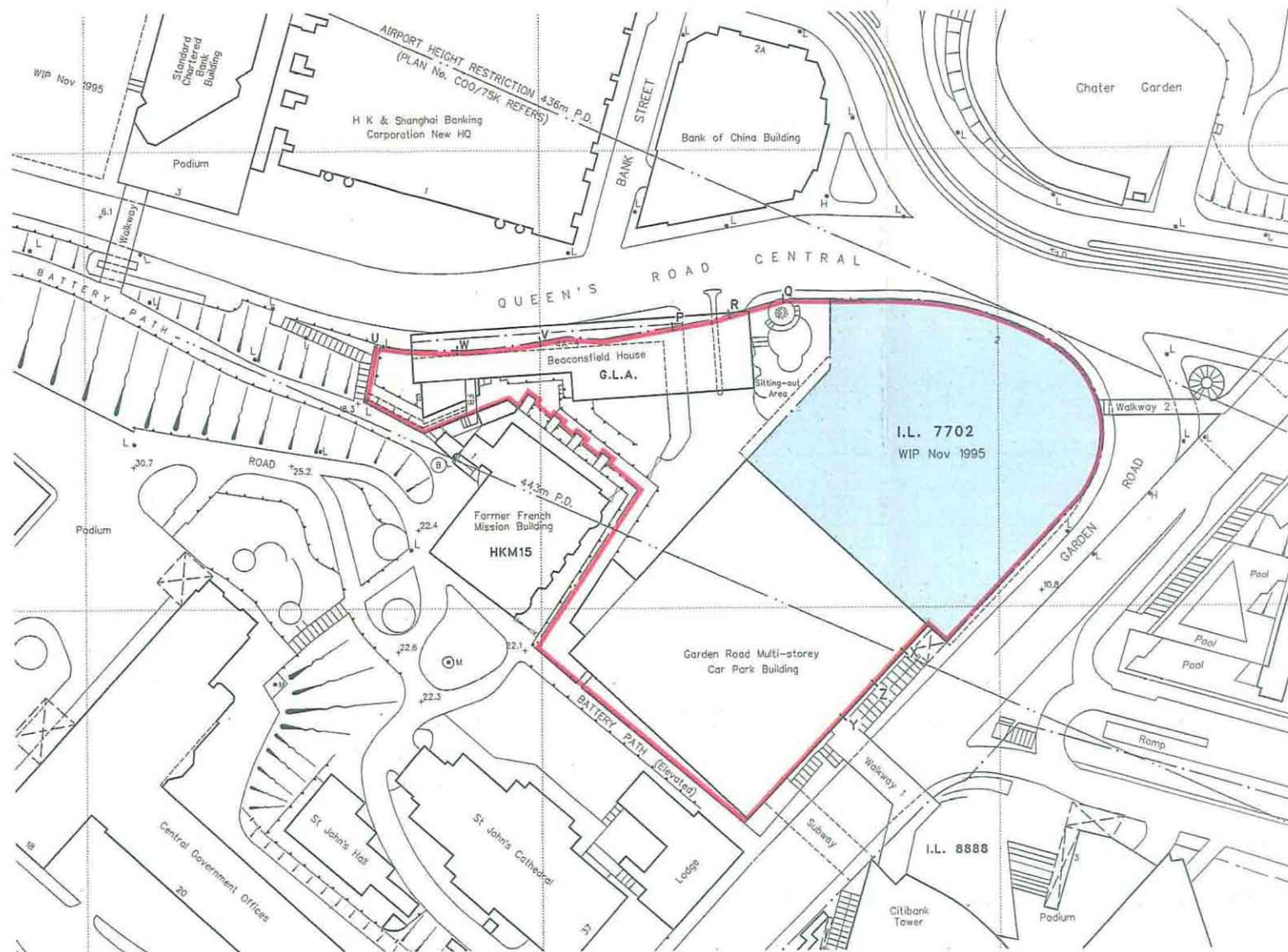


# LOCATION



SCALE 1 : 20000

P Q R }  
U V W } DEVELOPMENT CONDITIONS REFER  
X Y Z }



NEW LOT EDGED RED AREA 9 656 SQUARE METRES (ABOUT)  
OLD LOT COLOURED BLUE AREA 3 623 SQUARE METRES (ABOUT)

SCALE 1:1000

METRES 20 0 20 40 60 80 100 METRES

PROVISIONAL PLAN - SUBJECT TO SURVEY



District Lands Office, Hong Kong West  
Lands Department

Plan Prepared by District Survey Office, Hong Kong West

## PROPOSED LAND EXCHANGE

File Ref. No. (21) in DLO/HW L/M 5179/57

Survey Sheet Nos. 11-SW-80 9C  
138 14A

Layout Plan No. D/H4/2

Engineering Drg. No. HT5809A

PLAN No. HK5135-X2