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THE UNIVERSITY OF HONG KONG

**THE FEASIBILITY STUDY OF TRANSFER OF DEVELOPMENT
RIGHTS IN HONG KONG**

A DISSERTATION SUBMITTED TO THE FACULTY OF ARCHITECTURE IN
CANDIDACY FOR THE DEGREE OF BACHELOR OF SCIENCE IN
SURVEYING

DEPARTMENT OF REAL ESTATE AND CONSTRUCTION

BY
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HONG KONG

APRIL 2010

DECLARATION

I declare that this dissertation represents my own work, except where due acknowledgment is made, and that it has not been previously included in a thesis, dissertation or report submitted to this University or to any other institution for a degree, diploma or other qualification.

Signed: _____

Name: Sin Chak Fung

Date: 8/4/2010

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Ms. Margaret (Maggie) Brooke	CEO, Professional Property Services Group
Professor Roger Nissim	Land & Planning Consultant, Adjunct professor of Department of Real Estate and Construction, HKU
Professor Barnabas H.K. Chung	Chairman, Board of Professional Development, Hong Kong Institute of Surveyors
Mr. Tsang	An Estate Surveyor working in a Developer

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ABSTRACT

With urbanization in Hong Kong, many historical buildings are under the threat of demolition. According to the recent new direction of historic conservation in the Chief Executive Policy address of 2007¹, the government will put more emphasis on heritage conservation in a sustainable approach.² In order to strike the balance between development and heritage conservation, the research would study the feasibility of adopting Transfer of Development Rights (TDR) as an incentive to the private sector in Hong Kong.

Under the current heritage conservation framework in Hong Kong, government has promoted new initiatives³ including economic incentives to private sector and assessment of 14444 historic buildings for grading. Before studying potential TDR application, recent practice of heritage conservation would be reviewed.

The potential TDR application under the current heritage conservation framework would then be studied. One case study would be used to illustrate how TDR could be applied. Meanwhile, the problems and concerns of TDR application would also be discussed.

¹ Government heritage website – Conserve and Revitalise Hong Kong Heritage
<http://www.heritage.gov.hk/en/about/welcome.htm>

² Government heritage website – Conserve and Revitalise Hong Kong Heritage
<http://www.heritage.gov.hk/en/heritage/statement.htm>

³ Government heritage website – Conserve and Revitalise Hong Kong Heritage
<http://www.heritage.gov.hk/en/heritage/conservation.htm>

This dissertation concluded that TDR could only be applied to limited situation due to its complexity. Other economic incentives would be suggested in case TDR cannot be applied.

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LIST OF ABBREVIATIONS

AAB	Antiquities Advisory Board
AMO	Antiquities and Monuments Office
GFA	Gross Floor Area
OZP	Outline Zoning Plan
TDR	Transfer of Development Rights
URA	Urban Renewal Authority

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CHAPTER 1 INTRODUCTION

Background information

Heritage conservation has been highly concerned by the public in Hong Kong. Unfortunately, due to limited land supply and high development pressure, many historical buildings are under the threat of demolition. With more and more demolition of heritage such as Lee Theatre and Queen's Pier, the public has begun to fight against redevelopment projects or public projects which place the heritage at risk.

In view of the gradual disappearance of heritage, economic incentives have been discussed and applied to some of heritage buildings after the establishment of Development Bureau. One of the economic incentives is the Transfer of Development Rights (TDR). TDR in the United States has been applied to conserve historic buildings, landmarks, open space and agricultural lands for a long time.

In fact, TDR is common in United States of America due to the protection of private property rights in the constitution of the country.⁴ In the "bundle of rights" theory of property ownership⁵, TDR can divert development pressure away from sensitive areas

⁴ Michael Mantei (2004) The Illawarra escarpment: Transferable development rights and other economic planning tools

⁵ Jerome G. Rose (1975) Transfer of development rights

including those historical buildings, open space and agricultural land. It can be achieved by transferring “the rights to develop” from one area to another place which is the receiving area desirable for Growth.⁶ TDR was first implemented in New York in 1916 with zoning ordinance permitting lot owners to transfer the unused air rights to the adjacent lots so that the receiving site could exceed the height and setback requirement.⁷ In order to protect the landmark buildings with realization of the financial burden including maintenance cost and lost of potential income to heritage buildings owners⁸, the city allowed owners of heritage buildings to transfer useable floor space to adjacent properties with greater floor space than permitted without the TDR. Hence loss of development potential was compensated to the heritage owners. The scheme was then extended to other places such as Sydney, Adelaide and Brisbane.

In Hong Kong, government has proposed TDR application in historic conservation⁹. This aims to show respect for the development rights of heritage owners while preserving the heritage in Hong Kong. This can be achieved by transferring the development rights from the heritage buildings to other areas for further development.

Despite the advantages of TDR, the complex nature of this programme has drawn lots of concerns and problems during the implementation. In addition, the benefits of TDR

⁶ Teena Pennington, Transferable Development Rights – A Necessary Planning Tool in Sydney’s Future

⁷ Teena Pennington, Transferable Development Rights – A Necessary Planning Tool in Sydney’s Future

⁸ Pruetz, R., “Trends in TDR: Reinventing TDR”,
<http://www.asu.edu/caed/proceedings02/PRUETZ/pruetz.htm>

⁹ Refer to Appendix VI Speech on Transfer of Development Rights by Mr. John C. Tsang, the former Secretary for Planning and Lands in 2001

may not be fully revealed in Hong Kong. As a result, it is important to investigate whether TDR can be a possible tool for heritage conservation and its feasibility in Hong Kong.

Objectives of the study

It is noted that the recent heritage conservation policy has set new direction for conservation of historical and heritage sites. According to heritage conservation policy in 2008,

“To protect, conserve and revitalise as appropriate historical and heritage sites and buildings through relevant and sustainable approaches for the benefit and enjoyment of present and future generations. In implementing this policy, due regard should be given to development needs in the public interest, respect for private property rights, budgetary considerations, cross-sector collaboration and active engagement of stakeholders and the general public.”¹⁰

This reflects that government has promised the new direction of heritage conservation. Under the new direction, the government does not only have to take public interest into account, but also co-operate with the land developers or property owners. With recent change in conservation policy, new initiatives have arisen such as TDR.

¹⁰ Government heritage website – Conserve and Revitalise Hong Kong Heritage
<http://www.heritage.gov.hk/en/heritage/statement.htm>

TDR was a kind of economic incentive to the private sector for heritage conservation. However, it may be doubtful that TDR can really work in Hong Kong. In order to study the feasibility of adopting TDR in Hong Kong, this dissertation will focus on the following objectives:

- 1) To review the current heritage conservation policies
- 2) To identify factors affecting the feasibility of TDR
- 3) To examine the potential application of TDR under current heritage conservation framework and the problems and concerns of TDR application
- 4) To demonstrate how TDR can be applied in reality

Methodology

Background research

The source of the information in the background research will be from relevant books, journals, publications, newspaper and internet. The information will be divided into two main parts.

The first part will be the concept of heritage conservation and the development of current conservation practice and policy in Hong Kong. Due to the reorganization of

policy bureaux of the government secretariat in 2007¹¹, both the organization for heritage conservation and the policy have been reformed. Hence it is important to have a clear picture of current trend and practice of heritage conservation.

The second part will be the introduction of the TDR concept. TDR has been implemented in the United States with some successful cases. The details of TDR including the mechanism of TDR and the factors affecting the successfulness of TDR will be investigated so that it can act as a reference for possible consideration and implementation of TDR in Hong Kong.

Review of current heritage conservation framework

Review of relevant government department websites and publications

To study current heritage conservation framework, the role of government departments and the relevant conservation legislations and ordinances will be reviewed so as to provide the backbone for further discussion of TDR application.

Interview with Miss Lo Sau Lai, Curator (Historical Building), Antiquities and Monuments Office (AMO)

AMO is one of the major administrative parties of heritage conservation. In order to collect more information for the existing heritage conservation effort, Miss Lo was invited for the interview to explain how AMO conserve the existing heritage under the

¹¹ Government website - Re-organisation of Policy Bureaux of the Government Secretariat
<http://www.gov.hk/en/about/govdirectory/reorganisation.htm>

new trend of heritage conservation in Hong Kong. Economic incentives for historic conservation were also explained during the interview but she was not willing to comment on the details of TDR in Hong Kong during the interview.

Review of Transfer of Development Rights (TDR)

Local and Foreign literatures and website resources

In Hong Kong, there are several publications containing the potential application of TDR in Hong Kong. However, there are lack of literatures regarding the detailed mechanism and factors affecting the feasibility. Hence to supplement the concept of TDR, overseas literatures or publications will be discussed. With reference to literatures and publications of TDR programme in the United States, the components involved in TDR and factors affecting the success of TDR in Hong Kong will be discussed.

Analysis of potential TDR application under current heritage conservation framework in Hong Kong

Before studying the feasibility of applying TDR in Hong Kong, it is necessary to review the past relevant cases. To study potential TDR application in Hong Kong, it is important to collect information regarding the Government bodies' consideration of adopting TDR under current heritage conservation framework. There will also be invitation from professional bodies so as to collect their opinion towards TDR.

Lesson learnt from past relevant cases

Jeffrey Cody suggested that Letter B system can be a useful precedent for TDR¹². Hence Letter B system will be studied. It is commonly believed that Letter B system is similar to TDR. Hence the similarities between Letter B system and TDR will be studied. In addition to Letter B system, other past relevant cases will also be studied.

Information of TDR collected from relevant bureau and government departments

In addition to the interview with Antiquities and Monuments Office, information regarding TDR is also collected from the Planning Department. According to the Planning Department, some general consideration of using economic incentives such as TDR was suggested. The general principle of selection of receiving sites and sending sites will be discussed.

General Opinion of TDR from professional bodies

To facilitate the study of practical issues involved in TDR including detailed components and mechanism of using TDR, several professional bodies were invited for the interview.

¹² Cody, J. W. (1999) Transfer of Development Rights as an Incentive for Historic Preservation: the Hong Kong Case, P.4-11

- *Professor Roger Nissim, adjunct professor in the Department of Real Estate and Construction*

Professor Roger Nissim is land & planning consultant. Comments regarding TDR and consideration of using TDR will be invited from him.

- *Miss Margaret Brooke, CEO, Professional Property Services Group & Chair, Heritage Hong Kong Foundation*

According to the interview, she has recently proposed the monetization of “heritage plot ratio” which is similar to TDR in Hong Kong. The mechanism and some general consideration of monetization of unused development rights were discussed during the interview. Two recent articles written by her will also be used for reference.

- *Mr. Zhang, an Estate Surveyor working in a Developer*

From a developer’s point of view, though not representing the opinion of other developers, he has commented on the government attitude and effort towards heritage conservation including promotion of TDR as an economic incentive and suggested the possible barrier for using TDR. Though he supports TDR, his company has not applied for any economic incentives for historic conservation before.

Case Study

In order to demonstrate how TDR can be applied in reality, the case of Hong Kong Sheng Kung Hui Compound will be studied. Newspapers and other publications will be used in order to collect information regarding the proposed TDR at the time of writing.

Structure of the research

The research is divided into 6 parts. The first chapter will be the background information of the research with the research objectives and methodology.

The second chapter will be the overview of the current practice of heritage conservation in Hong Kong, including the machinery of heritage conservation, major legislations, initiatives for heritage conservation and problems of current heritage conservation framework.

The third chapter will be the literature review of TDR. Both foreign and local literatures will be reviewed. The content of the literature review will include the concept and mechanisms of TDR, TDR as an incentive to private sector in Hong Kong, benefits and problems of implementation of TDR and factors affecting success of TDR.

The fourth chapter will be the feasibility study of TDR in Hong Kong. Past cases related to TDR will be examined. The factors affecting the feasibility of TDR will be

identified and discussed. Then potential TDR application under current heritage conservation framework will then be examined. Lastly, there will be implication of TDR application including problems and concerns of applying TDR.

The fifth chapter will be the case study of Hong Kong Sheng Kung Hui Compound. This case study will be used to illustrate how TDR can be applied in reality.

The last chapter will be the conclusion and the limitation of the study. Recommendation for future application of TDR will be suggested.

CHAPTER 2 OVERVIEW OF RECENT PRACTICE OF HERITAGE CONSERVATION IN HONG KONG

Machinery of heritage conservation

Development Bureau – Policy Making

The Development Bureau was newly established in 2007 and the conservation of heritage policy has transferred to Development Bureau. There are two branches and they are the Planning and Lands Branch and the Works Branch. The policy will take into account of development, environmental protection and heritage conservation. This can allow early attention to heritage conservation in the development projects.

The position of the Secretary for Development, created in 2007, will replace the previous position of Secretary for the Environment, Transport and Works and Secretary for Housing, Planning and Lands.¹³ She will be responsible for planning, land development and public works related development policy. Under section 3 of

¹³ http://en.wikipedia.org/wiki/Secretary_for_Development

the Antiquities and Monuments Ordinance, she may declare a building which she considers to be of public interest by reason of its historical significance to be a monument after consultation with the Antiquities Advisory Board (AAB) and with the approval of the Chief Executive.

The Commissioner for Heritage's Office (CHO) was established on 25 April 2008 under the Development Bureau. It aims to provide a focal point for public participation and the Government's heritage conservation work.¹⁴ The main duties¹⁵ of the office are to provide dedicated support to the Secretary for Development in implementing the policy on heritage conservation and keeping it under constant review. The office will also be responsible for a series of new initiatives¹⁶ and serve as a focal point of contact in terms of both local and overseas.

Antiquities and Monuments Office (AMO) – Executive Department

The Antiquities and Monuments Office established in 1976 is now serving the Leisure and Cultural Services Department (LCSD) and the Development Bureau. It aims to implement the Antiquities and Monuments Ordinance and serves as executive role for heritage conservation including research, identify, conserve, maintain and promote heritage items. It also provides administrative support to the Antiquities Advisory Board regarding matters relating to antiquities and monuments.

¹⁴ 2007-2008 Chief Executive's Policy Address

<http://www.policyaddress.gov.hk/07-08/eng/p54.html>

¹⁵ Commissioner for Heritage Office <http://www.heritage.gov.hk/en/about/commissioner.htm>

¹⁶ Commissioner for Heritage Office <http://www.heritage.gov.hk/en/about/commissioner.htm>

Antiquities Advisory Board (AAB)

The Antiquities Advisory Board was established to advise the Secretary for Development on matters relating antiquities, proposed monuments and monuments under Section 18 of the Antiquities and Monuments Ordinance. The Board comprises professionals appointed by the Chief Executive. The role of AAB under the new framework is to focus on “heritage significance” as the only relevant consideration of matters relating antiquities, proposed monuments and monuments.¹⁷

Major legislations relating to heritage conservation

Antiquities and Monuments Ordinance (Chapter 53)

This ordinance is the major conservation legislation for the protection of cultural heritage of Hong Kong. It empowers the Antiquities Authority which is the Secretary for Development to declare any place, building, site or structure as a monument for statutory protection.

However, there is no exact stated guideline for declaration of monuments. Instead, the

¹⁷ Heritage Conservation – An Update on Key Initiative, (2008) Legislative Council Panel on Development, 19 December
<http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev1219cb1-396-3-e.pdf>

declaration of monuments depends on the Secretary for Development's opinion associated with consultation with the Antiquities Advisory Board and approval of Chief Executive. This may come to the circumstances that the historical building has been demolished before declaration as monuments.

This ordinance also governs the application of licenses for searching for or excavating antiquities, the provision of government grants for preservation, maintenance or restoration of monuments, and the granting of compensations to owners of declared monuments.

Referring to this ordinance, its protection is only confined to the buildings over 50 years old and there is no formal statutory protection or status for other types of heritage. The graded historical building confers no statutory protection despite the System for Grading of Historical Buildings in Hong Kong in Table 1.

Grade 1	Buildings of outstanding merit, which every effort should be made to preserve if possible.
Grade 2	Buildings of special merit; efforts should be made to selectively preserve.
Grade 3	Buildings of some merit; preservation in some form would be desirable and alternative means could be considered if preservation is not practicable.

Table 1 Three-tier grading system in Hong Kong¹⁸

¹⁸ Antiquities and Monuments Office website

<http://www.lcsd.gov.hk/CE/Museum/Monument/en/built3.php>

However, a closer relationship between grading system and declaration as monument has established. Those Grade 1 buildings will be readily declared as proposed monuments by Antiquities Authority in case of the threat of demolition.¹⁹ This formal relationship can enhance the efficiency of the grading system.

Planning control

There is no zoning specified for conservation. However, there are conservation-related zones²⁰ which include 'Conservation Area', 'Site of Special Scientific Interests', 'Country Park', 'Coastal Protection Area', 'Other Specified Uses' annotated 'Comprehensive Development to include Wetland Restoration Area', and 'Comprehensive Development and Wetland Enhancement Area.

The zoning process is governed by Town Planning Ordinance and responsible by Town Planning Board (TPB). In the statutory Outline Zoning Plan, there is a list of uses which is always permitted in column 1 and may be permitted within the zone in column 2 upon application to the Town Planning Board (TPB). However, the lack of heritage category may lead to the wide use of the zone which may affect the heritage conservation.

Environmental Impact Assessment Ordinance (EIAO)

¹⁹ According to the Annex C of

<http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev1219cb1-396-3-e.pdf>

²⁰ The information is from Development Bureau 2007 Environmental Report - Full Environmental Report

EIAO is used to ensure certain projects to have Environmental Impact Assessment so that it can protect sites of cultural and heritage threatened by development. There is no quantitative standard in deciding relative importance of sites of cultural heritage.²¹ In general, sites of unique archaeological, historical and architectural value are considered as highly significant.

Urban Renewal Authority Ordinance (URAO)

It is used to empower the Urban Renewal Authority (URA) to facilitate the urban renewal process. Since “preservation” is one of the 4R strategies of the URA in urban regeneration, hence URA has strived to preserve buildings, sites and structures of historical, cultural or architectural interest²² and retention of the local colour of the community and the historical characteristics of different districts.²³ URA's Planning, Development and Conservation Committee (PDCC) is used to assess, review and recommend proposals for the conservation of buildings, sites and structures of historical, cultural or architectural interest. Adaptive reuse of the preserved heritages will be considered as long as it is practicable. There is evidence showing that preservation has been incorporated into urban redevelopment such as Nga Tsin Wai Village.²⁴ The scope of historical building protection is extended to pre-war buildings for adaptive reuse.

²¹ Cecilia Chu and Kylie Uebegang (2002) Saving Hong Kong's Cultural Heritage, February

²² This refers to the s5(e) URAO Cap. 563.

²³ This refers to the urban renewal strategy in the Urban Renewal and Buildings.

²⁴ Government press release in 2006 <http://www.devb-plb.gov.hk/eng/press/2006/200606070155.htm>

*Country Parks Ordinance*²⁵

This ordinance provides for the establishment of a Country and Marine Parks Board to give advice to Director of Agriculture, Fisheries and Conservation who is responsible for matters regarding designation, control and management of areas of countryside as Country Parks and Special Areas. To some extent, there is protection in Country Parks which are designated for the purpose of nature conservation. However, there may be risk of turning the area into commercial and practical use which may severely affect the land use such as the case of the proposed Clearwater Bay Country Park to be expanded to become the Tseung Kwan O landfill facility.

Initiatives of heritage conservation

In response to the heritage conservation policy, the government has introduced a range of initiatives.²⁶

²⁵ The information and the comments are extracted from Heritage Hong Kong - HERITAGE CONSERVATION POSITION PAPER in LC Paper No.CB(2)1646/06-07(01)
<http://www.legco.gov.hk/yr06-07/english/panels/ha/papers/ha0420cb2-1646-1-e.pdf>

²⁶ Website of Commissioner for Heritage's Office
<http://www.heritage.gov.hk/en/heritage/conservation.htm>

Heritage Impact Assessment (HIA)²⁷

The aim of HIA is to ensure heritage conservation starting from the project inception stage. The mechanism of HIA is that for new capital works projects, the project proponents and relevant departments will consider the effect of their projects on sites or buildings of historic or archaeological significance. HIA is required in case of the answer being in the affirmative. Public engagement will also be conducted such as consultation with District Councils.

Revitalizing Historic Buildings through Partnership Scheme²⁸

This initiative is in response to the balance between heritage conservation and sustainable development. With a view to give government-owned buildings a new lease of life for public to enjoy, the government will provide one-stop advisory service to applicants who propose to use buildings for services or business. When necessary, financial support will also be provided.

²⁷ Government heritage website – Conserve and Revitalise Hong Kong Heritage
<http://www.heritage.gov.hk/en/impact/index.htm>

²⁸ Government heritage website – Conserve and Revitalise Hong Kong Heritage
<http://www.heritage.gov.hk/en/rhbtp/about.htm>

Financial assistance to facilitate maintenance for privately-owned graded historic buildings²⁹

It aims to provide financial assistance in form of grants to the private owners of both private monuments and graded historic buildings for maintenance. The application for the maintenance scheme will be considered on case-by-case basis depending on factors including historic value or urgency of work with the requirement for financial assistance.

Provide economic incentives for conservation of privately-owned historic buildings

In fact, the existence of incentives is quite unique to Hong Kong. Compared with Hong Kong, there are no incentives in other places such as the United States of Kingdom since listed or registered heritage properties are regarded as part of the “public” heritage with protection by statute and can only be altered instead of redeveloped despite privately owned buildings.³⁰ Even with compensation for loss of development potential in the form of TDR in United States of America, this is not regarded as incentive since Landmark’s Commission³¹ is empowered to prevent redevelopment or major alteration if an owner refuses to cooperate.³²

²⁹ Government heritage website – Conserve and Revitalise Hong Kong Heritage

<http://www.heritage.gov.hk/en/maintenance/about.htm>

³⁰ According to the interview with Miss Margaret Brooke

³¹ It refers to the Landmark Preservation Commission in New York composed of architects, historians, realtors, city planners, and borough residents. The Commission was charged with identifying critical landmarks and designating them as such, subject to approval by the New York City Board of Estimate.

Please refer to http://www.nyc.gov/html/lpc/html/faqs/faq_about.shtml

³² According to the interview with Miss Margaret Brooke

The aim of the economic incentives in Hong Kong is to strike the balance between heritage conservation and economic development. Incentives include cash compensation, land exchange and transfer of development rights.

Land exchange

Among the economic incentives, land exchange can be one of the solutions. There can be in-situ land exchange which involves the government exchanging the original land with a new grant of the portion of the same land. Alternatively, there can be non-in-situ land exchange. Land exchange is adopted in the case of Tiger Balm Garden³³ and King Yin Lei³⁴.

Cash compensation

In addition to land exchange, cash compensation has been also used. It involves a cash grant to the heritage owners who may seek for legitimate compensation or claim for damages. The consideration of 53 million to convert Kom Tong Hall into museum is an example.³⁵

Transfer of Development Rights (TDR)

³³ HKIS Newsletter <http://www.hkis.org.hk/hkis/cms/upload/Newsletter/v11i2/feature.html>

³⁴ Government Press Release in 2008
<http://www.info.gov.hk/gia/general/200812/02/P200812020120.htm>

³⁵ Government Press Release in 2004
http://www.lcsd.gov.hk/en/ppr_release_det.php?pd=20040221&ps=01

Besides the above, there is also an option of Transfer of Development Rights (TDR). The unused development right can be transferred from the historical buildings to other areas. The details of TDR will be discussed in Chapter 4.

Problems of existing heritage conservation framework

Even with the new direction for heritage conservation, some problems of heritage conservation remain unresolved. This reflects the loophole of the existing heritage protection framework.

1) Inflexible heritage protection framework

The scope of heritage conservation is only confined to individual buildings instead of conservation of the surrounding or the whole street. This will come to circumstances where some historical buildings are preserved while the surrounding environment may be affected such as in the case of declared Flag Staff Case³⁶. The intangible value of the heritage or the social collective memory has also been neglected in the case of Star Ferry Pier, Queen's Pier and Lee Tung Street³⁷, but it will be considered into heritage significance of a building under the new framework³⁸.

³⁶ HKIA journal Issue 46, 2nd Quarter, 2006

³⁷ Heritage Hong Kong in Heritage Conservation Position Paper 2007

³⁸ Joyce Ng (2008) More protection for grade-one buildings in South China Morning Post on 27 November

As for the declaration of monuments, despite the emergence of heritage impact assessment, significant number of “deemed monuments” which is recommended by Antiquities Advisory Board (AAB) and confirmed by Antiquities Authority which is the Secretary for Development has to wait for many years before decision is made while many of the “deemed monuments” turn down in spite of AAB support.³⁹

2) Lack of legal framework for enforcement

The most relevant ordinance governing heritage conservation is the Antiquities and Monuments Ordinance (Chapter 53). There is no statutory protection for the heritage. Even listed buildings may also lead to demolition⁴⁰. If the owner wishes to demolish the building even the building is graded, there is a lack of statutory support to protect the heritage.⁴¹ The ordinance has still not yet been reviewed in this respect.⁴²

3) Lack of independent Heritage Conservation Trust

There was low government funding priority with annual budget about HK\$ 8 million in looking after archaeological excavation and historical building

³⁹ Maggie Brooke (2008) Heritage Conservation in Hong Kong – where are we now

⁴⁰ Maggie Brook (2009) Heritage Conservation in Hong Kong – the current state of play
[http://www.ourhongkong.net/uploads/file/Heritage/Heritage%20-%20the%20current%20state%20of%20play%20\(March%202009\).pdf](http://www.ourhongkong.net/uploads/file/Heritage/Heritage%20-%20the%20current%20state%20of%20play%20(March%202009).pdf)

⁴¹ Legislative Council Brief (2007) Heritage Conservation Policy

⁴² Maggie Brooke (2008) Heritage Conservation in Hong Kong – where are we now

restoration projects with others relying on private donation.⁴³ Until now, there is in lack of independent heritage conservation trust available for ready funding.⁴⁴

4) Lack of Integration between planning and heritage conservation

There is a lack of integration between planning and heritage preservation⁴⁵. The Town Planning Ordinance does not have the provision for the protection of the declared monuments. The Town Planning Board having the right to grant planning approval cannot prevent owners from demolition of their buildings. The zonings on the OZP are also inadequate to protect the significant value of the area such as some ecologically sensitive area. Even though some monuments, historical buildings and archaeological sites are included in the Explanatory Statements on the relevant statutory town plans; Explanatory Statements do not form part of the plan and do not confer any statutory protection⁴⁶.

Despite the problems of current heritage conservation practice, in response to the current direction of heritage conservation and promotion of economic incentives to private sector, it is worth investigating the feasibility of TDR under the current heritage conservation practice.

⁴³ Lung David (1999) Notes for Central Policy Unit – Seminar on Conservation and Hong Kong Future Development on 28 October

⁴⁴ Maggie Brooke(2008) Heritage Conservation in Hong Kong – where are we now

⁴⁵ Lung David (1999) Notes for Central Policy Unit – Seminar on Conservation and Hong Kong Future Development on 28 October

⁴⁶ Ho Betty (2000) Achieving Heritage Conservation in Sustainable Development -- Transfer of Development Rights as a Sustainable Solution on 10 May

CHAPTER 3 LITERATURE REVIEW OF TRANSFER OF DEVELOPMENT RIGHTS

The concept of Transfer of Development Rights (TDR)

The legal concept underlying TDR can be compared to “bundle of individual rights”, which can be separated from the rest and transferred to others.⁴⁷

In Li (2009)⁴⁸, the following is a more detailed explanation of the ideas of the TDR

“In principle, providing the institutional arrangements allow, there is no reason why certain rights cannot be permanently severed from legal ownership rights and it is the notion of specifically separating development rights from ownership rights which underpins the ideas and practice of TDRs.”

In other words, TDR is based on the principle that development rights can be separated from original ownership rights and hence the development rights can be transferred to other places.

In addition, development right is defined as the difference between the existing use of

⁴⁷ Jerome G. Rose (1975) Transfer of development rights

⁴⁸ Li, L.H. (2009) Applicability of Partnership and Transfer of Development Rights (TDRs) in Urban Regeneration in HK, P. 75-85, Surveyors in Urban Regeneration. HKIS Annual Conference 2009-

the parcel and the potential use as permitted by existing law.⁴⁹ It is also elaborated in Hayes (1999)⁵⁰ which defined TDR as the recognition that:

- (1) Land had certain development rights attaching to it by virtue of relevant legislation.
- (2) That land was desired by the community to either remain undeveloped or be restricted in its form of development.
- (3) Those rights could be transferred from that land so that the development which they represented might occur on other land which did not suffer from the same restrictions.

From the above literatures, the definition of TDR is that the development rights which have not been used in a particular land subject to the development control can be transferred to other lands. However, the mechanism of TDR can be varied in each country.

The mechanism of TDR

In general, the TDR concept can be applied in the form of cluster zoning, lot merger and various permutations of transfers between adjacent and non-adjacent properties

⁴⁹ Pizor, Peter J. (1986) Making TDR work – a study of program implementation. Journal of American Planning Association. Spring 1986, pp. 203-211

⁵⁰ Hayes, B. (1999) Transfer of Development Rights as an Incentive for Historic Preservation : Case Study of Delhi (India) presented in the Economics of Heritage UNESCO Conference / Workshop on the Adaptive Re-use of Historic Properties in Asia and the Pacific , Penang and Melaka, Malaysia

and across and within jurisdictions.⁵¹ In order to establish a TDR scheme, there are five basic elements:⁵²

- Donor area;
- Receiving area;
- Method of calculating the entitlement;
- Transfer mechanism; and
- Recording in a register

In Hong Kong, the mechanism of government proposed TDR⁵³ is that the unused development rights from the sending sites can be transferred to other sites of the same land use category in statutory town plan such as Outline Zoning Plan. In practice, TDR from the declared buildings to the contiguous sites has taken place.⁵⁴

Under the government proposed mechanism, the basic elements of TDR will include:

⁵¹ Transfer of Development Rights for Balanced Development (1998) A Conference Sponsored by the Lincoln Institute of Land Policy

⁵² Michael Mantei (2004) The Illawarra escarpment: Transferable development rights and other economic planning tools

⁵³ Refer to Appendix VI Speech on Transfer of Development Rights by Mr. John C. Tsang, the former Secretary for Planning and Lands in 2001

⁵⁴ HKIA journal Issue 46, 2nd Quarter, 2006

Basic elements	Meanings
(1) Sending sites	They are the sites for historic conservation and free from development.
(2) Receiving sites	They are the sites that receive development rights and allow for additional density.
(3) GFA credits	They are the certificates of entitlement specifying the amount of transferable GFA. They can be used in receiving sites or sold to other owners or developers.

Table 2 Basic elements of government proposed TDR in Hong Kong

As for the means of transfer, since there is no set mechanism in Hong Kong, the mechanism in foreign countries can be a reference to Hong Kong. Basically it can be divided into two types⁵⁵:

- (1) Direct sale from landowner to developer or transfer within the developer-owned properties

Landowner can sell development rights to a developer. Under this circumstance, the developer can use the development rights to increase the development on a designated property in the receiving area. Alternatively the developer can transfer development rights from one property to another property within his ownership.

⁵⁵The Transferable Development Rights - A Necessary Planning Tool in Sydney's Future

(2) TDR Bank

It can be established in order to facilitate the market of the transaction from sending site to receiving site. This can allow the property owner to sell the development right to the bank and then a developer could purchase development rights from the TDRs bank when the demand is high at the later stage. The funds in the TDR bank can allow purchase of development rights in other sending areas which need protection. In some cases, it can not only help both developers and landowners to understand the concept and encourage participation, but also help stabilize the development right prices.⁵⁶

This shows that the development rights can be either transferred directly from sending sites to receiving sites or through TDR bank. In Hong Kong, TDR bank is not available. Hence the possible mechanism of TDR will be discussed.

TDR as an incentive to private sector in Hong Kong

In fact, before the government proposed TDR, Professor Lung has proposed TDR as the kind of incentives in response to the lack of incentive to private sectors for

⁵⁶ York, Marie L., et.al. (1987) Star Grant 88-053: Encouraging Compact Development in Florida. Fort Lauderdale, FL : Florida Atlantic University / Florida International University, Joint Centre for Environmental and Urban Problems, May 1987, pp.123-141

heritage conservation.⁵⁷ Professor Cody suggested the use of TDR with reference to five similar cases in Hong Kong.⁵⁸

In response the government proposed TDR, Roger Nissim supported this initiative and recognized the benefit of using TDR for conservation of historical buildings without forgoing the development right of the developers.⁵⁹ He suggested the use of TDR to apply to serious conservation area. Wong and Yip also regarded this new initiative as a major breakthrough in heritage preservation policy.⁶⁰

This reflects that TDR can be a potential initiative for historic conservation. However, there are some contrasting views and concerns regarding TDR.

David Lee did not advocate the use of transfer of development potential which may not be necessary for Hong Kong.⁶¹ He said that the rejection of proposal to transfer the development potential from Hong Kong Club building reflect the difficulty of use of TDR in reality.

There is recent concern and limitation of using TDR in Hong Kong including lack of receiving site with spare plot ratio, pursuit for low density by public and fluctuation of

⁵⁷ Lung David (1999) Notes for Central Policy Unit – Seminar on Conservation and Hong Kong Future Development on 28 October

⁵⁸ Cody, J. W. (1999) Transfer of Development Rights as an Incentive for Historic Preservation: the Hong Kong Case, P.4-11

⁵⁹ HKIS Newsletter <http://www.hkis.org.hk/hkis/cms/upload/Newsletter/v11i2/feature.html>

⁶⁰ HKIS Newsletter <http://www.hkis.org.hk/hkis/cms/upload/Newsletter/v11i2/feature.html>

⁶¹ Lee David C. (1991) Incentive Zoning and Transfer of Development Rights – Are They Desirable in The Hong Kong Environment?

hope value of development with high risk.⁶² It is suggested that Hong Kong might have missed the opportunity to implement TDR due to difference in community aspiration towards height and density.

The above literatures can act as the basis of study of TDR in Hong Kong. The advantages and problems of TDR will be studied so as to reveal the feasibility of TDR in Hong Kong.

Benefits of using TDR

In the foreign literatures, some advantages of using TDR have been suggested.

1) Permanent protection of historic buildings⁶³

Since TDR uses deed restrictions or conservation easements to sever and extinguish development rights in the sending sites, public goods such as open space and historic buildings are permanently protected. This will be less complex compared with zoning rules which change over time with new administrations.

2) Controlled and Timed development is encouraged⁶⁴

TDR scheme with compensation features can allow community to control the development in a systematical manner and ensure natural orderly growth.

⁶² From Steering Committee on Review of the Urban Renewal Strategy in 2009

⁶³ Jason Hanly-Forde, George Homsy, Katherine Lieberknecht, Remington Stone, Transfer of Development Rights Programs Using the Market for Compensation and Preservation

⁶⁴ Jerome G. Rose, (1975) Transfer of development rights

3) Balance the interest between heritage owners and public ⁶⁵

It is the fundamental benefit of using TDR since the communities do not need to pay for the TDR in return for conservation of the public goods. Meanwhile, it can compensate the heritage owners of the unused development rights.

4) Provide private funding for protection⁶⁶

Since it is difficult to find public funds to protect open space and historic buildings, the local governments may create TDR programs for funding of historic buildings.

Based on the advantages of using TDR, TDR can be beneficial in terms of social, economic and financial aspect. Firstly, it can be beneficial to public in terms of heritage conservation without much payment. Secondly, development will not be affected under TDR scheme. Lastly, funding for historic conservation can also be generated from TDR scheme.

Problems and concerns of implementation of TDR

Despite the advantages of TDR, there are also problems and concerns of implementation of TDR.

⁶⁵ Jerome G. Rose (1975) Transfer of development rights

⁶⁶ Wolfram, G (1981) The Sale of Development Rights and Zoning in the Preservation of Open Space: Lindahl Equilibrium and a Case Study, *Land Economics*. 57:3, 398-412.

1) Increase in density

The largest problem of TDR is attributed to the residents and officials' opposition to increase in density. It is because TDR will cause overloading to the streets and walks.⁶⁷

2) Lack of participation

The hesitancy of first time users and the public's lack of knowledge about the complex TDR scheme will lead to lack of participation.⁶⁸ The developer will hesitate to participate to TDR in case of low value of added density or lack of receiving site.⁶⁹

3) Increase in administration cost⁷⁰

Since TDR programs are complicated in nature, this may increase the administration cost. In many cases, the government may regulate the market through TDR banks or other tools.

The above benefits and problems of implementation of TDR in other countries may not be the same in Hong Kong with difference in the nature of TDR and external

⁶⁷ Michael M. Bernard (1987) The problem of Selling Grand Central's Development Rights, *Zoning & Planning Review*, vol.3, no.1 Summer 1987

⁶⁸ York, Marie L., et.al. (1987) Star Grant 88-053 : Encouraging Compact Development in Florida. Fort Lauderdale, FL : Florida Atlantic University / Florida International University, Joint Centre for Environmental and Urban Problems, May 1987, pp.123-141

⁶⁹ Dana E. Heiberg, 1991, *The reality of TDR*

⁷⁰ Jason Hanly-Forde, George Homsy, Katherine Lieberknecht, Remington Stone, *Transfer of Development Rights Programs Using the Market for Compensation and Preservation*

environment affecting the feasibility of TDR. There should be further investigation into the problems of potential TDR application in Hong Kong.

Factors affecting success of TDR

There are lots of successful TDR programmes in the United States. A recent study of factors affecting the success of 20 TDR programmes in the United States has been carried out. The following are success factors for TDR

Essential Factors or important factors	1) Demand for bonus development
	2) Customized receiving area
	3) Strict sending-area regulation
	4) Few alternatives to TDR
	5) Market incentives
Helpful but not critical factors	6) Certainty of TDR uses
	7) Strong public preservation support
	8) Simplicity
	9) Promotion and facilitation
	10) TDR bank

Table 3 Factors affecting the success of TDR programmes in the United States⁷¹

Though the above ranking of the success factors of TDR may not be applied to Hong Kong, all relevant factors will be the essential consideration of applying TDR in Hong

⁷¹ Rick Pruetz and Noah Standridge (2009) What makes transfer of development rights work?

Kong. Some of the relevant factors will be discussed and applied to Hong Kong in Chapter 4.

CHAPTER 4 FEASIBILITY STUDY OF TRANSFER OF DEVELOPMENT RIGHTS IN HONG KONG

The introduction of TDR in Hong Kong

The concept of TDR which has been proposed by the Secretary of Planning and Lands in 2001 is used to preserve privately owned heritage against development. Before looking into detailed mechanism of TDR, it is important to understand the nature of development rights in Hong Kong.

Development rights in Hong Kong are bound to development control including Outline Zoning Plan, Lease and Building Ordinance. Hence the operation of transferring the unused development right will be subject to the development control. If development rights are not available on the land, TDR cannot be applied. Since the natural conservation areas under agricultural leases do not carry any development rights, TDR cannot be applied to natural conservation areas with high ecological value.⁷²

⁷² Terri Mottershead (2004) Sustainable development in Hong Kong

Precedents for TDR application in Hong Kong

Though TDR has not been applied on a widespread basis, there are some precedents which can serve as the backbone for future TDR application. The following are the precedents for the operation of TDR.

*London Mission Building*⁷³

The London Mission Building was preserved and converted to clubhouse while unused development potential of this preserved building was transferred to the adjoining development site with two residential towers called 80 Robinson Road.

*Ohel Leah Synagogue*⁷⁴

This historic landmark in 70 Robinson Road has been preserved after the Swire Properties negotiated with the Synagogue in early 90's with excess plot ratio absorbed by two high-rise residential buildings known as Robinson Place in the adjoining site.

⁷³ J. W. Cody (1999) Transfer of Development Rights as an Incentive for Historic Preservation : the Hong Kong Case in Hong Kong Surveyor, pp.4-11

⁷⁴ Li. P (2008) Striking the balance between Economic Development and Historic Preservation in Hong Kong

*Cheung Kong Centre development*⁷⁵

In 1994-1995, Cheung Kong intended to combine the adjoining site in Central for redevelopment of the commercial building. With both providing public park at ground level of the commercial building and paying maintenance cost for the historic buildings, a higher plot ratio for development of Cheung Kong Centre was granted by Town Planning Board.

*Tiger Balm Garden*⁷⁶

In 2001, Cheung Kong has agreed to retain Haw Par Mansion with the private garden which was surrendered to the government. The Gross Floor Area (GFA) was transferred to the rest of the site with development of four residential buildings called The Legend. Given the restriction of maximum GFA which is 47,300 square meters, the plot ratio of the regranted site could increase from 5 to 6.54 which was still below maximum plot ratio permitted under Building (Planning) Regulation.

*H16, Johnston Project*⁷⁷

In 2007, in Wan Chai, the linked site approach was used in which the receiving site was contiguous and the transfer was made within an enlarged redevelopment site. The redevelopment site includes development of one building with 381 residential units of

⁷⁵ J. W. Cody (1999) Transfer of Development Rights as an Incentive for Historic Preservation : the Hong Kong Case in Hong Kong Surveyor, pp.4-11

⁷⁶ HKIS Newsletter

<http://www.hkis.org.hk/hkis/cms/upload/Newsletter/v11i2/feature.html>

⁷⁷ Steering Committee on Review of the Urban Renewal Strategy in 2009, Notes of the Sixth Meeting

and preservation of 5 historic buildings including four adjoining old Canton-style shop-houses and one in Ship Street.⁷⁸

In above cases, development potential has only been transferred to adjacent site or remaining part in the same site. For the future application of TDR, the detailed mechanism of TDR will be studied.

Letter B System

Apart from the above cases similar to TDR, the concept of TDR can also be traced back to Letter B system. Since Letter B system is related to the concept of TDR⁷⁹, it will be compared with TDR so that it can provide a useful precedent for TDR

Background information of Letter B System⁸⁰

Letter B system was an alternative to compensation for land resumption in the New Territories from 1960 to 1983. The Letter B was an entitlement for future grant of

⁷⁸ The website of Urban Renewal Authority

http://www.ura.org.hk/usrAtt/222000/20032004_10_11.pdf

⁷⁹ J. W. Cody (1999) Transfer of Development Rights as an Incentive for Historic Preservation : the Hong Kong Case in Hong Kong Surveyor, pp.4-11

⁸⁰ The information of Letter B system is extracted from Roger Nissim (2008) Land Administration and Practice in Hong Kong and Li. P (2008) Striking the balance between Economic Development and Historic Preservation in Hong Kong

land in any urban development area in the New Territories at an unspecified future date.

Since lots of landowners are indigenous villagers in traditional ancestral land, many of them opted for land instead of cash. With most agricultural land being resumed, the exchange ratio for every 5 square feet of agricultural land resumed was in return for 2 square feet of building land. As for resumption of building land, the exchange ratio was 1 to 1. To take time into the consideration of Letter B System, a “vintage” basis was used with older Letter B having the greatest value. With competitive tendering process introduced in 1973⁸¹, the site will be granted to applicant with oldest Letter A/B.

The trading of Letter B system was active since they can be freely assigned without stamp duty, incurring speculation which caused increase in land price. In view of insufficient land available for redemption, issuance of Letter B ended in 1980. In order to redeem the commitment of the remaining holders of Letter B system, the value of Letter B was monetized so that the cash in return from the Letter B certificate could be used for payment of rents, rate and land premium. The calculation of the monetized value was based on the concept of revenue forgone.⁸²

Lesson Learnt from Letter B System

1) The ways of redemption of Letter B system

⁸¹ R.D Pope, (1985) A History of Letter A/B Land Exchange Policy, Hong Kong Surveyors, P.7-9

⁸² Thomas H.K. Ho, Letter B Currency Value, Hong Kong Surveyors, P.7-8

There are two ways of redemption of Letter B system. The first type is the land exchange with fixed exchange ratio on foot for foot basis. This will be similar to actual transfer of plot ratio. The second way is the monetization of Letter B system for land-related payment.⁸³ This can also be introduced into TDR scheme for greater flexibility.

2) Value of Letter B system

The major factor affecting the value of Letter B system will be the age of Letter B. In addition, the area of the entitlement will also affect the value of Letter B system.⁸⁴ Valuation of TDR will share similar principle.

3) Defined receiving and sending sites

It was similar to TDR in the respect that the sending sites in the agricultural land in Yuen Long or Tuen Mun can be transferred to receiving sites for urban development in Tuen Wan or Shatin. In this way, the well-defined receiving sites and sending sites can maintain the flow of Letter B system, which is an essential criterion for TDR

4) Regulation

There are terms inside Letter B which impose restriction on the exchange in respect of the receiving site. For example, only agricultural land can be granted for some Letter

⁸³ Pope, R.D.(1985) A History of Letter A/B Land Exchange Policy, Hong Kong Surveyors, P.7-9

⁸⁴ Refer to the Appendix I - Letter A/B Tender in the Explanatory Statement of New Grant No. 12350 in the Conditions of Grant

B System in Yuen Long.⁸⁵ Hence regulation in the TDR certificate plays vital role in governing the operation of TDR.

Factors affecting the feasibility of TDR application in Hong Kong

Economic aspect

Active market

Active market is essential for TDR application since it can enhance the transaction of TDR certificate. As a result, there should be active market in Hong Kong for the transaction of TDR certificate.

In Hong Kong, there was active purchase of Letter B by the developers which incurs price speculation. Though TDR may be different from the Letter B system, the developers may actively participate in purchasing the certificate as long as the value of the certificates will increase. According to the recent property market in Hong Kong, both current average price level and rent level are increasing in 2009. (Refer to Chart 1 and Chart 2) This reflects that recent market transaction is optimistic and hence it is economic feasible for operation of TDR as long as market for TDR is healthy.

⁸⁵ Roger Nissim (2008) Land Administration and Practice in Hong Kong



Chart 1 Trend of Average Price Level in Hong Kong⁸⁶

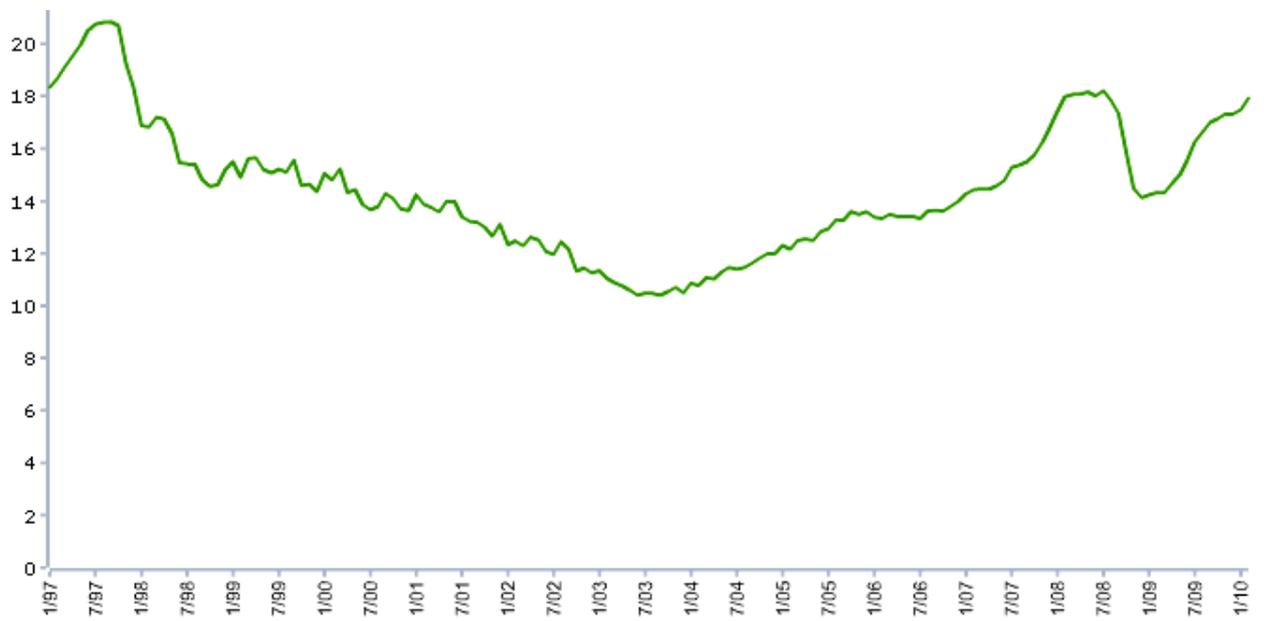


Chart 2 Trend of Average Rent Level in Hong Kong⁸⁷

⁸⁶ Website from Midland Reality http://www.midland.com.hk/chi/midland_trend/

⁸⁷ Website from Midland Reality http://www.midland.com.hk/chi/midland_trend/

Political aspect

Government commitment towards TDR

Government should take the initiative in implementing and promoting TDR to both heritage owners and developers. In fact, after establishment of the Development Bureau in 2007, the need for economic incentives such as TDR and land exchange has been recognized. The aim of the economic incentives is to strike the balance between the respect for private property rights and heritage conservation of privately-owned historical buildings.

However, there is insufficient effort made by government to promote economic incentive since the government may only consider suitable economic incentives to protect the declared monuments and Grade I buildings while economic incentives may not be applied to Grade II or III buildings or other historic buildings unless there is public discussion of conservation of the particular building.⁸⁸ Besides, there is also a doubt for government commitment in setting up relevant ordinance and policy for TDR.⁸⁹ Hence government may not be willing to take the lead in implementing TDR.

Government attitude towards density

Since TDR in terms of unused GFA involves the bonus development in the receiving area, government attitude towards development density will be essential. However,

⁸⁸ According to the interview with Mr. Tsang

⁸⁹ According to the interview with both Professor Roger Nissim and Margaret Brooke

the government may be reluctant to raise height limit in the potential receiving areas. This is due to the recent concern of walled buildings. In addition, the Development Bureau has recently expressed that there will be decrease in plot ratio in 14 sites on the application list.⁹⁰ This reflects that the government will be more concerned about the high rise buildings and development density of the buildings. Hence the government may be reluctant to increase the development potential in receiving areas.

Public support

It is noted that TDR has to be attractive to heritage owners. In addition, it should also be financially feasible to the developers with sufficient incentives for using TDRs.⁹¹

However, since the government has not promoted TDR sufficiently to the community and there is not set policy and regulation for the developer and heritage owners to follow, this will discourage the community from engaging in TDR voluntarily. Unless the policy and regulation of TDR is clear, simple and fair, it will be hard to gain support from the community.

Legal aspect

It is noted that all lands are leasehold and hence the development rights of the land are not unfettered. To run the government proposed TDR, existing ordinance should be flexible enough to allow transfer of unused GFA to the receiving areas.

⁹⁰ The website of SINA <http://www2.news.sina.com.hk/cgi-bin/nw/show.cgi/19/1/1/1438935/1.html>

⁹¹ According to the interview with Professor Roger Nissim

Flexibility of the statutory plan and ordinances

The operation of TDR will be subject to the following factors including zoning, detailed and specific development conditions and flexibility of Building Ordinance.

Zoning

The land use category has been specified in the areas covered by Outline Zoning Plan (OZP). However, there is lack of heritage zoning which clearly designates the sending sites. In addition, the specified land use category may discourage the zoning for receiving sites. Hence lack of zoning for sending sites and difficulties in zoning for receiving sites may hinder the use of TDR.

Detailed and specific development conditions

The development condition including maximum permissible GFA, plot ratio, height limit have been governed by OZP, lease, Building Ordinance and Building (Planning) Regulation. Since the development restriction is site-specific, it may be difficult for using transfer TDR in terms of GFA.

With GFA as a kind of measurement unit, a direct transfer of unused GFA may be difficult due to unfixed plot ratio in each site. The plot ratio is neither fixed nor rigid relative to the site in light of anticipated development within all restrictions. The fact that plot ratio varies from sites to sites is because plot ratio is determined by three factors, including the use of the site which is either domestic or non-domestic, the class of the site and height of the buildings, according to the Building (Planning)

Regulation. Both the use of the site and class of the site are to the certain extent affected by the subjective factor which is the developers' intention of development. Hence a direct transfer of fixed volume to different site may not be feasible under current regulation.

Flexibility of Building Ordinance

The existing building ordinance does not expressly allow the transfer of GFA to non-contiguous site.⁹² As there is no set mechanism for operation of TDR to non-contiguous site, this may discourage heritage owners or developers from engaging in TDR scheme.

From the above aspects in terms of economic, political and legal, TDR can be feasible on a widespread basis if

- (1) There is active market for TDR
- (2) The government is willing to promote TDR and set up relevant policy
- (3) There is high demand for bonus development
- (4) The current development control can be relaxed and revised

However, apart from the first condition in economic aspect, the remaining conditions can hardly be achieved which implies that TDR may not be politically and legally feasible.

⁹² HKIS Newsletter <http://www.hkis.org.hk/hkis/cms/upload/Newsletter/v11i2/feature.html>

Review of government proposed TDR mechanism in Hong Kong

Government proposed TDR mechanism⁹³

The following is the government proposed TDR mechanism:

- 1) The sending site will be the historic buildings declared as monuments.
- 2) The heritage owners will obtain a right or entitlement to the unused development rights in exchange for the deed restriction or lease modification of the historic buildings in sending site.
- 3) The entitlement will be calculated by deducting the existing GFA of a historic building from the maximum GFA permitted under the land lease, the Outline Zoning Plan or the Buildings Ordinance.
- 4) The heritage owners with a certificate of entitlement specifying the amount of transferable GFA can use such rights to build higher density than permitted development controls in the permitted receiving area with total GFA of development not exceeding 20% of the maximum permitted GFA. They can also sell to the developers.

In the following, the potential application of TDR under current conservation framework will be discussed with the essential components including sending sites, receiving sites, TDR certificate or GFA certificate and non-contiguous site transfer.

⁹³ The information is extracted from the Speech on Transfer of Development Rights by Mr. John C. Tsang, the former Secretary for Planning and Lands in 2001 in Appendix VI.

Potential TDR application under current heritage conservation framework

Designation of sending sites

Under current heritage conservation policy, the Development Bureau is now considering economic incentives on case-by-case basis. The consideration of economic incentives such as TDR will depend on the negotiation between the government and heritage owners. The government has issued formal letter to inform the owners within assessed 1444 historic buildings of the possible economic incentives.⁹⁴ However, there is no general rule for application of TDR since the consideration of different economic incentives depends on each case.⁹⁵ The actual conservation arrangement of the graded buildings will depend on structure, condition, features of individual buildings and technical feasibility.⁹⁶

Possible sending sites

Referring to the government proposed TDR mechanism, the sending sites will be the historic buildings declared as monuments. Under the current heritage conservation policy, Grade I buildings may be linked to declared monuments⁹⁷, hence Grade I buildings and proposed monuments can act as potential sending sites. All heritage

⁹⁴ According to the interview with Miss Lo

⁹⁵ According to the interview with Miss Lo

⁹⁶ According to the interview with Miss Lo

⁹⁷ Linkage established between monument declaration and historic buildings grading system,

Government Press Release <http://www.devb.gov.hk/en/secretary/press/press20081126b.htm>

owners can voluntarily participate in TDR scheme after the negotiation with the Commissioner of Heritage Office.

In the existing inventory of 1444 assessed buildings⁹⁸ announced by the Antiquities and Monuments Office, there are 212 historic buildings⁹⁹ which are in proposed Grade I status and these buildings can be the potential sending sites for TDR if possible.

As for Grade II and III buildings, government may not be willing to operate TDR for those buildings. Hence instead of TDR, other economic incentives may be considered for Grade II and III buildings.¹⁰⁰

Regulation in the sending sites

In order to achieve the goal of heritage conservation in sending area, strict sending area regulation is one of the important factors affecting success of TDR¹⁰¹ as discussed in Chapter 3. Hence there should be sufficient control to restrain development in sending sites. The following are the legal means which can help conservation in sending area during the implementation of TDR.

⁹⁸ Refer to AMO website <http://www.amo.gov.hk/en/aab.php>

⁹⁹ List of Historic Buildings in Building Assessment (as of 2 March 2010)
<http://www.amo.gov.hk/form/AAB-SM-chi.pdf>

¹⁰⁰ According to the interview with Professor Roger Nissim

¹⁰¹ Rick Pruetz and Noah Standridge (2009) What makes transfer of development rights work?

Statutory control of monuments declared by the Secretary for Development

The Secretary for Development will declare the buildings as monuments under Antiquities and Monuments Ordinance as discussed in Chapter 2.1. This provides statutory protection of the monuments in sending sites which can prevent buildings from demolition for development. Hence the statutory control can achieve the goal of heritage conservation during the implementation of TDR.

Lease modification in sending sites

Lands Department will be responsible for the lease modification for the land lease in sending site so that redevelopment of the sites is prohibited.

Rezoning of sending sites

To reflect the historical nature of heritage sites, Town Planning Board may consider rezoning of the sending site to “Other Specified Uses” annotated “Historical Building Preserved” in the sending sites.

TDR certificate (GFA certificate)

Under current heritage conservation policy, there are no TDR certificates available. However, since TDR certificate is one of key components for operation of TDR, it can be introduced to facilitate the operation of TDR.

The certificate is one of the means to invite developers to participate into TDR scheme given that it can be freely tradable and sufficient incentives for using the certificate should be provided to the developers.

The incentives for developers to use the certificate can include less premium for land sales and faster track of lease modification in the receiving sites.¹⁰² However, if the developers or TDR certificate holders are unable to find or have other suitable receiving sites, the certificate can be monetized as a kind of compensation.

Monetization of the GFA certificate¹⁰³

The following are the procedures of monetization of GFA certificate:

- 1) The “air rights” of the sending site which are the amount of unused GFA in the historic site will be assessed and certified.
- 2) The value of certified GFA will be assessed based on market comparables in the vicinity of the historic buildings
- 3) The certificate will be registered for government and development parties to keep track of the record and will be used for three purposes:
 - a) Payment of land-related charges including short-term tenancy and waiver fees, rates, property tax, etc
 - b) Generating funds for renovation and maintenance of heritage buildings
 - c) Freely traded and sale to the third parties
- 4) The monetary value of the certified GFA will be kept current in accordance with the index system in the Rating and Valuation Department

¹⁰² According to the interview with Professor Roger Nissim

¹⁰³ According to the interview with Miss Margaret Brooke

Value of unused development rights in the certificate

The value of unused development rights in sending sites depends on the several factors including:¹⁰⁴

- (1) Size and location of the heritage in sending site
- (2) Amount of unused GFA in sending site under development controls
- (3) Accommodation values on other comparables in the neighborhood of the heritage

It is noted that the value of the certificate should be assessed on a fair and neutral basis. Since the certificate holders may not be satisfied with the valuation, they should have the chance to object the value. In order to ensure neutral assessment of value of certified GFA, Lands Tribunal can be empowered to handle the compensation.¹⁰⁵ To facilitate the operation of assessment, new legislation should be set up to confer the authority to Lands Tribunal.¹⁰⁶

Registration of the certificate

In order to record the transaction of the certificate, an independent register¹⁰⁷ can be established with coordination between different government departments¹⁰⁸. The independent register can serve as centre to record and retain the inventory of excess

¹⁰⁴ According to the interview with Miss Margaret Brooke

¹⁰⁵ According to the interview with Professor Roger Nissim

¹⁰⁶ According to the interview with Professor Roger Nissim

¹⁰⁷ It is similar to the concept of TDR Bank.

¹⁰⁸ They include Development Bureau, Antiquities and Monuments Office, Lands Department, Buildings Department.

development rights in sending sites. It can facilitate market transactions and stabilize the prices.¹⁰⁹

Designation of receiving sites

Under current heritage conservation framework, the designation of receiving sites will be considered on case-by-case basis. There is no general rule for designation of receiving sites.¹¹⁰

With reference to the government proposed TDR mechanism, the land use category in receiving sites should be the same with that in sending sites. Hence if the owners of the proposed Grade I buildings would like to apply for TDR, they need to have other site which have the same land use category with the sending site. After discussion between the Development Bureau and the heritage owners, suitable receiving sites for TDR application can be determined.

Possible receiving sites

In Hong Kong, the possible receiving sites for TDR will be large sites with low density which are most commonly found in rural area in the New Territories.¹¹¹

It is noted that the possible receiving sites in urban area can be hardly found. Firstly, it is due to space constraints in urban area. Secondly, large pieces of undeveloped land

¹⁰⁹ It shares the same benefit with TDR Bank which have discussed in Chapter 3.

¹¹⁰ According to the interview with Miss Lo

¹¹¹ According to the interview with Professor Roger Nissim

are not available. Thirdly, the public's concern of walled buildings may prevent transfer of the unused development potential to the urban area.

Assessment of proposed development in receiving areas

Since the proposed development in the receiving areas may affect the surrounding, the impact of proposed development in receiving area should be assessed. The owners should submit the detailed development proposals. Then there will be assessment of the proposed development in receiving areas. This will be jointly carried out by Buildings Department and Town Planning Board. In general, the criteria for evaluation of proposed development in receiving area is that proposed development has to comply with relevant town planning, environmental and infrastructural requirement.

Non-contiguous site transfer

In the existing stage, there is neither set policy nor mechanism for the non-contiguous site transfer.¹¹² Government may not rule out the possibility of non-contiguous site transfer depending on individual cases.¹¹³

In practice, the government may only consider historic buildings in Grade I status given that there is set policy for non-contiguous site transfer.¹¹⁴ There will be

¹¹² According to interview with Professor Roger Nissim

¹¹³ According to interview with Miss Lo

¹¹⁴ According to interview with Professor Roger Nissim

complex issues in setting up the policy which is fair to the communities and difficulty in administration process.

One of the important issues involved in the administration process is the difference in value between sending area and receiving area. Lands department can help assist the operation of TDR in terms of the valuation and premium assessment.

Implications of potential TDR application under current heritage conservation framework in Hong Kong

Opportunities of TDR application in Hong Kong

It is noted that TDR will be applied on case-by-case basis. There is one case of Hong Kong Sheng Kung Hui Compound in which TDR has been proposed between government and the owners. In Chapter 5, how TDR can be applied in reality will be demonstrated.

Financial Implication

TDR will not incur excessive expenditure on the government. In case of direct transfer of unused development potential from sending site to receiving site, there will not be much additional expenditure on the government.

In addition, the restoration cost of historic buildings can be compensated by monetization of the certificate; the owners may not need to pay extra cost for restoration cost.

Sustainability implication

TDR is sustainable in the respect that it can strike the balance between conservation and development in Hong Kong. TDR can meet social aspiration towards conservation of historic assets and entrench the value of historic buildings through monetization of the certificate for restoration and maintenance of the buildings. TDR can also allow development in receiving area so that it will not hinder the economic growth in Hong Kong.

Problems and Concerns of potential application of TDR under current heritage conservation framework

1) Problems relating to the components and mechanism of TDR

Sending sites

Limited potential sending sites

The potential sending areas may be limited to Grade I buildings and proposed monuments under current heritage conservation policy. It will be less likely for

application of TDR in those ungraded buildings or Grade II and III buildings since there is no expressed linkage between other historic buildings and monuments. The government may not be willing to implement TDR for these buildings and hence limit the scope of sending area. In addition, there is little community participation in defining the sending sites due to the present top down approach of heritage conservation including assessment of the historic buildings for grading with case by case basis¹¹⁵ and declaration of the monuments¹¹⁶. This may lead to limited heritage buildings to be graded and linked to monuments for potential TDR application. Hence TDR cannot be applied on a widespread basis under the current heritage conservation policy.

Lack of clear designation of sending sites

Since the application of TDR will be based on the case-by-case studies, the possible sending sites will only be defined after the negotiation between heritage owners and the government for TDR application. Without a standard guideline for defining the scope of sending sites, other historic building owners may not be aware of the option of TDR and hence this will limit the use of TDR on a wide-spread basis.

¹¹⁵ The historic buildings are assessed by Antiquities Advisory Board with the advice from Antiquities and Monuments Office.

¹¹⁶ The monument is declared by the Secretary for Development after consultation with Antiquities Advisory Board and approval by Chief Executive.

Receiving sites

Limited potential receiving sites

Since the receiving sites are limited to same land use category, this will limit the application of TDR. In addition, the available land without statutory town plan will be very limited for potential receiving sites; hence the only existing approach of designating the receiving sites is the availability of receiving sites by the heritage owners. This will lead to limited potential receiving sites.

Lack of clear designation of receiving sites

Since there is no specified zoning for receiving sites at the existing stage, it will be difficult to match the receiving sites with sending sites.

Transfer mechanism

Difficulty in finding comparables for valuation

The valuation of development potential involves finding market comparables in sending sites. It may be difficult to find comparables in the historic buildings in rural area since similar size, age and development potential of the comparable buildings can be hardly found in the vicinity to the historic buildings. However, finding comparables in urban area will not be a great problem for valuation.

Difference in value and development potential between receiving sites and sending sites

Due to the site-specific development control between receiving sites and sending sites, direct transfer of unused development potential from sending sites and receiving sites may not be possible since it involves the issues of variation in plot ratio for each site which has been discussed above.¹¹⁷ In addition, the difference in value in between receiving sites and sending sites may be significant if it is a non-contiguous site transfer. This will lead to difficulties in determination of both value and development potential of the transfer.

Lack of policy for transfer mechanism

Since there is no set policy and mechanism for non-contiguous site transfer and the government may not be willing to set up policy, this may discourage the developers or heritage owners to participate in TDR and they may resort to other economic incentives.

Time

Since there is lack of receiving site and lack of policy for operation of TDR, the procedures involved will be lengthy. It is because there are many procedures involved including the exploration of suitable economic incentives. The heritage owners may not be fully aware of the details of TDR including how TDR works, the government

¹¹⁷ Please refer to the part of legal aspect under heading of **factors affecting the feasibility of TDR application in Hong Kong** in this chapter.

need to facilitate historic owners during the process of negotiation. The administration process for handling the certificate will also be a more complex issue. After receiving sites have been matched, approval of development plan from different government departments is required. This may discourage both heritage owners and developers from participating in the scheme of TDR.

2) Availability of other alternatives

To run a successful TDR scheme, few or no alternatives to TDR are one of the essential criteria for TDR application.¹¹⁸ In Hong Kong, there are other economic incentives available for historic conservation which may hinder the TDR application.

The existing economic incentives include land exchange¹¹⁹ and clustering of GFA. In the following cases of Jessville and King Yin Lei, other economic incentives in Hong Kong may be considered as a better option compared with TDR.

a) Preservation-cum-development in the case of Jessville

In the case of Jessville at 128 Pokfulam Road which is a grade III historic building, “preservation-cum-development” has been implemented.¹²⁰ Under this economic incentive, there will be new residential buildings adjacent to the historic building,

¹¹⁸ Rick Pruetz and Noah Standridge (2009) What makes transfer of development rights work?

¹¹⁹ This is different from transfer of unused development potential as the mechanism of TDR.

¹²⁰ Partial uplifting of Pokfulam Moratorium facilitates preservation of Jessville

<http://www.devb.gov.hk/en/secretary/press/press20090930.htm>

which will be preserved as a clubhouse for residents and open to the public at certain time.¹²¹ TDR is not considered as a suitable economic incentive since¹²²

(i) *Grading of historic buildings in “sending site”*

The building is in Grade III status which has relatively low heritage value for application of TDR.

(ii) *Lack of receiving site*

The owners do not have other sites for TDR.

Advantages of “preservation-cum-development” over TDR

1) *Receiving site*

Since “preservation-cum-development” is a form of clustering of GFA, both “receiving site” and “sending site” are just different parts within the same sites. Compared with TDR, there is no need for the historic building owners to find another receiving site under the same ownership with him.

¹²¹ Initiatives under "Quality City and Quality Life"

http://www.devb.gov.hk/en/aboutus/0910_quality_life.htm

¹²² Partial uplifting of the Pokfulam Moratorium to facilitate the “preservation-cum-development”

proposal for the preservation of Jessville at 128 Pokfulam Road, Hong Kong

<http://www.heritage.gov.hk/en/doc/LegCoBriefPartialupliftingofthePokfulamMoratoriumJessville.pdf>

2) *Valuation and development potential*

In “preservation-cum-development”, since it doesn’t involve another site, it will be less complex to determine the development potential of the proposed development and land premium within the same site compared with TDR.

In this case, it shows that the problems of applying TDR can be solved by in-situ development given that the site of heritage can accommodate development and the proposed buildings will not adversely affect the heritage value of the buildings.

b) Non-in-situ land exchange in the case of King Yin Lei

In the case of King Yin Lei located at 45 Stubbs Road which is a declared monument, possible economic incentives are considered during the declaration of the building as proposed monument. The approved economic incentive is non-in-situ land exchange. TDR may not be the suitable option because:

(1) Availability of adjacent government site

Although there can be several receiving sites for TDR application, the safest solution for the government to apply for economic incentives will be to find the site in the vicinity of King Yin Lei for land exchange.¹²³

¹²³ According to interview with Miss Margaret Brooke

(2) Determination of development potential

The problems of determination of value and development potential in the receiving site are left unresolved for TDR application. Compared with TDR, since land exchange is adopted and a new lot with similar size and development potential¹²⁴ is granted, the issue of determination of development potential and value will be less complex.

From two cases, TDR has not been implemented after the practical consideration of economic incentives on case-by-case studies. Though the usefulness of TDR cannot be eliminated, it reflects that TDR can only be limited to certain situation.

c) Proposed monetization of the certificate¹²⁵ as an alternative of TDR

Apart from the existing economic incentives, the proposed monetization of the certificate can also be one of the alternatives to TDR though the concept of monetization of the certificate is incorporated into the TDR as a kind of cash compensation.

The proposed monetization of the certificate alone will be less complex compared with TDR. It is because the components of TDR including receiving sites and transfer

¹²⁴ Please refer to the Proposed Non-in-situ Land Exchange for the Preservation of King Yin Lei at 45 Stubbs Road, Hong Kong, 2008

http://www.devb-wb.gov.hk/FileManager/EN/legco_matters/legco_papers_on_heritage_matters/LegCo_BriefKYL.pdf

¹²⁵ It is proposed by Miss Margaret Brooke.

mechanism are not required during the operation of monetization of the certificate. This may be a more feasible option compared with TDR due to lack of receiving sites in Hong Kong and difficulties in terms of valuation and calculation of development potential during the operation of TDR.

In addition, the monetization of the certificate is not limited to Grade I buildings, but can also be applied to other historic buildings including Grade II or Grade III buildings since the nature of operation is less complex and receiving site is not required for operation. Hence the government may be more willing to implement this incentive compared with TDR.

In summary, both the existing and other possible economic incentives for heritage conservation may hinder the application of TDR due to the complexity of TDR and its problems arising from the mechanism and operation.

CHAPTER 5

CASE STUDY OF HONG KONG SHENG KUNG HUI COMPOUND

Even the concept of TDR has been realized, this economic incentive has been rarely used in practice. In fact, with other economic incentives available in heritage preservation, whether to use TDR have to be investigated on the basis of case-by-case studies.

In order to study the feasibility of TDR, there is one recent case of Hong Kong Sheng Kung Hui Compound in which TDR has been proposed after the negotiation between private owner and the government. In the following, the application of TDR will be illustrated in this case including the background information, the essential elements of TDR and the concern of TDR application

Background information

Hong Kong Sheng Kung Hui Compound, located in Central, (Refer to Figure 1) is an important religious landmark comprising four historic buildings including Bishop's House, St Paul's Church, the Former Church Guest House and Old Kei Yan Primary School. The compound is owned by Hong Kong Sheng Kung Hui which is known as Hong Kong Anglican Church. The church has proposed to redevelop the compound.¹²⁶



Figure 1: The photos of Hong Kong Sheng Hui Compound¹²⁷

¹²⁶ Redevelopment Of Hong Kong Sheng Kung Hui Compound in the website of Development Bureau
<http://www.devb.gov.hk/en/secretary/heritage/project5.htm>

¹²⁷ Refer to ON.CC Website http://orientaldaily.on.cc/cnt/news/20091023/00176_040.html

Conservation of Sheng Kung Hui Compound

In order to strike the balance between development and conservation, four historic buildings will be preserved within the Compound. The following will be the background information of four historic buildings. (Refer to Table 4)

Four historic buildings	Year of establishment	Proposed Grading
The Bishop's House	1848	Grade I
St. Paul's Church	1911	Grade I
The Church Guest House	1919	Grade I
Old Kei Yan Primary School	1851	Grade III

Table 4 Background information of four historic buildings¹²⁸

Each building has its own significance in terms of historic, architectural and contextual aspect.¹²⁹ Since all four buildings are located within the Hong Kong Sheng Kung Hui Compound, they form a cluster of local and religious landmarks to the community. (Refer to Figure 2) These historic buildings have group value and play vital role to the community. It is because the buildings can not only serve as religious landmark which is of local and historical interest, but also play a crucial role in the field of education. Hence four historic buildings will be conserved under the redevelopment.

¹²⁸ The information is extracted from Appendix VII –X : Historic Building Appraisal

¹²⁹ For individual historic appraisal, please refer to Appendix VII – X : Historic Building Appraisal

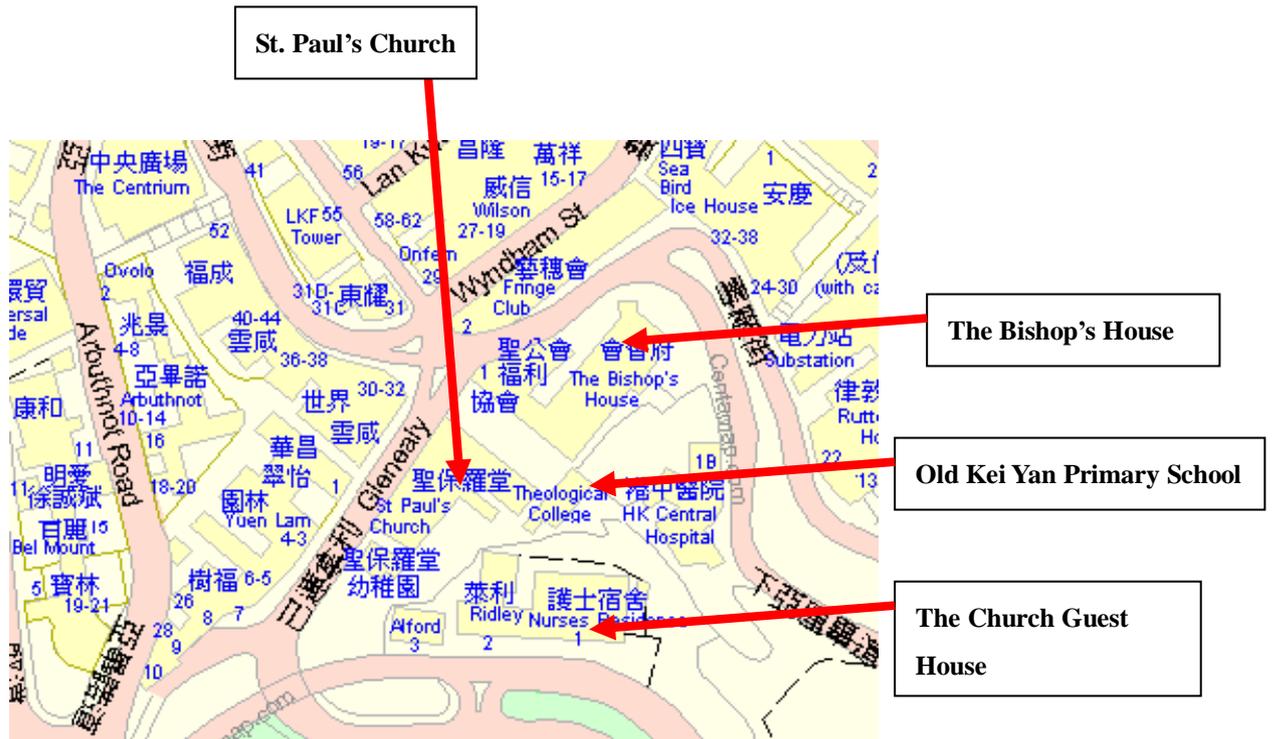


Figure 2 Location of four historic buildings¹³⁰

In-situ redevelopment of Sheng Kung Hui Compound

Hong Kong Sheng Kung Hui proposed to redevelop the whole compound with conservation of four historic buildings¹³¹. (Refer to Figure 1) The redevelopment projects will include a new community complex for non-profit making community service including health care and social service. In addition to the health care centre, there will also be quarters for clergy.¹³² The cost of redevelopment will be around \$700 million to \$800 million.¹³³

¹³⁰ The source is from the website of Centamap

¹³¹ Redevelopment Of Hong Kong Sheng Kung Hui Compound
<http://www.devb.gov.hk/en/secretary/heritage/project5.htm>

¹³² Olga Wong (2009) HK\$800m facelift for Anglican Church's HQ, South China Morning Post, 23 October

¹³³ Mary Ann Benitez (2009) Bishop's House as 'civic space', The Standard, 23 October

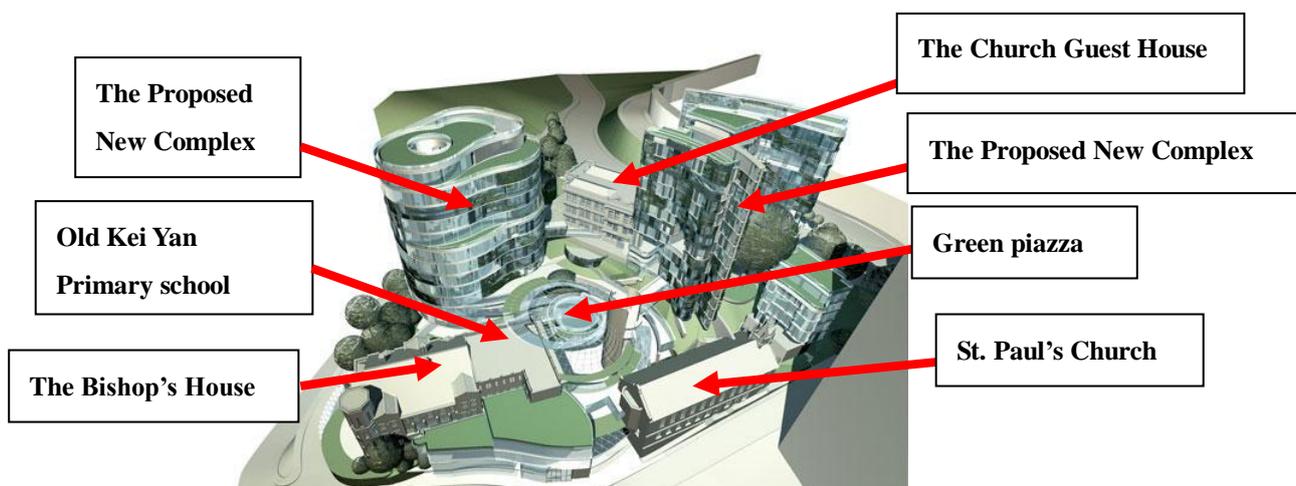


Figure 3 Proposed redevelopment of complex from artist impressions¹³⁴

Height of the proposed new complex in redevelopment¹³⁵

The original proposed redevelopment of the new complex is 17-18 storeys. After negotiation with the government, the height of the proposed building complex will decrease by 5 storeys to 11-13 storeys. The gross floor area of the entire proposed development project will be around 32,000 square meters, which is around 10,000 square meters less than maximum permitted. After the negotiation between the government and the owner, the excess development potential of around 10,000 square meters is proposed to transfer to the site in Mount Butler possessed by the church.

¹³⁴ Extracted from
[http://www.devb.gov.hk/tc/secretary/heritage/doc/Conserving%20Central%20Pamphlet%20\(Chi\).pdf](http://www.devb.gov.hk/tc/secretary/heritage/doc/Conserving%20Central%20Pamphlet%20(Chi).pdf)

¹³⁵ Extracted from the website of ON.CC
http://orientaldaily.on.cc/cnt/news/20091023/00176_040.html and the website of Mingpao
<http://specials.mingpao.com/cfm/News.cfm?SpecialsID=207&News=7defcaa3a670002bdffd202cb752002bf7cc183a3c23003bf7d42b3f2e440037>

Essential elements for TDR application

Sending sites

Permission of redevelopment

In this case, since redevelopment of Hong Kong Sheng Kung Hui Compound has been allowed, this reflects that the development rights exist within this compound. Hence the forgone rights which are around 10,000 square meters are available for application of TDR.

Historical significance of the sending site

According to Chapter 4, transfer of unused development potential can only be applied to those Grade I buildings or proposed monuments. In this case, since there are a cluster of historic buildings in the sending site with three proposed grade I buildings and one proposed grade III building, transfer of unused development potential can be applied in this case.

Height limitation in sending area

The sending area is located in a prime area in Central. Adjacent to sending area is the Central Business District. Since the owner has taken the environmental and social issues during redevelopment project, the height of the redevelopment project has decreased. Under this circumstance, there will be unused development potential which can be transferred to receiving sites.

In-situ development in sending sites

In-situ development is only feasible given that there is sufficient space to accommodate for new development. In this case, apart from four historic buildings, there are space for redevelopment and addition of new complex within the compound; hence in-situ revitalization of the compound is feasible.

Non-contiguous site transfer

*Facilitation by the government*¹³⁶

The implementation of TDR is attributed to the government effort since the government has facilitated the church owners to adopt TDR during the negotiation between heritage owners and the government. This reflects that the government is now more open to consider TDR as an economic incentive for historic conservation.

Receiving site

Availability of the receiving site

It is noted that the owner has to possess another site for TDR to operate under the current conservation policy. If the owner in the sending site does not have another receiving site, then TDR cannot work and non-in-situ land exchange may need to be considered.¹³⁷ Since the church has another site in Mount Butler so that transfer of

¹³⁶ <http://www.devb.gov.hk/tc/secretary/press/press20091016.htm>

¹³⁷ Roger Nissim (2008) Land Administration and Practice in Hong Kong

unused GFA can be applied.¹³⁸ With reference to government (Mr. Tsang) proposed TDR, the requirement for transfer of unused development potential is that both sending site and receiving site should be in the same land use category. Since the sending site is "Government, Institution or Community" (G/IC) site¹³⁹, the receiving area should be G/IC site. In the Mount Butler, the possible site of receiving area possessed by the church can be the site where there is Sheng Kung Hui Kindergarten Hong Kong (Mt Butler)¹⁴⁰. The zoning of possible receiving site will be in also G/IC site¹⁴¹; hence it is consistent with the same land use category. The following is the possible receiving site information: (Table 5)

Location	Mount Butler Inland Lot No. 7883
Site area	4289 sq. m. or 46,200 sq. ft (about)
Owner under conditions of grant	The Church Body of The Chinese Anglican Church in Hong Kong
Zoning	G/IC zone under the Jardine's Lookout & Wong Lai Chung Gap Outline Zoning Plan S/H13/12

Table 5 Possible receiving site information¹⁴²

¹³⁸ <http://news.sina.com.hk/cgi-bin/nw/show.cgi/381/3/2/1303814/1.html>

¹³⁹ Refer to Appendix XI - Zoning of sending site in Hong Kong Sheng Kung Hui Compound in Central

¹⁴⁰ http://kkp.catholic.org.hk/Special_News/lo_2009_10_20c.htm

¹⁴¹ Refer to Appendix XII - Zoning, location and size of the possible receiving site in Mount Butler Inland Lot No. 7883

¹⁴² Refer to I.L. No 7883, Conditions of Grant and Appendix XII - Zoning, location and size of the possible receiving site in Mount Butler Inland Lot No. 7883

Nature of G/IC zone as possible receiving site

As discussed in Chapter 4, site-specific development control is one of the obstacles of transfer of unused development rights to other receiving sites. However, in the possible GIC receiving site, given that there is no maximum plot ratio stated in the OZP and no maximum plot ratio indicated in the lease which is Conditions of Grant for Inland Lot. 7883, the owner may negotiate with the government regarding the development intensity. Hence there can be room for negotiation of development intensity and hence it is possible for TDR application.

Concerns of using TDR

Since transfer of unused development potential is a controversial issue, there are some concerns of applying TDR in this case.

1) Transfer of unused development potential to non-contiguous site

As discussed before in Chapter 4, there is no set policy or case for the operation of transfer of unused development potential to non-contiguous site. However, in this case, since transfer of unused development potential to non-contiguous site can be firstly applied in this case, non-contiguous site transfer can only be operated after negotiation with the government. This may give rise to the concern that the consideration for operating non-contiguous site transfer is also not transparent to the communities and private organization. In order to ease this concern, the mechanism must be clearly stated after the details of TDR have finalized so that it can be more transparent to the public.

2) Community concern

It is noted that community support is an essential criteria for success of TDR. If government proposed transfer of unused development potential has to be applied on a widespread basis, the mechanism should be fair to different parties. In this case, since both sending site and receiving site involve schools¹⁴³, the application of TDR will affect the students and the staff in both schools. Factors regarding the location of the school in the sending site and school space planning in the receiving site should be considered comprehensively so as to ensure smooth running of TDR.

Analysis and Implication of TDR application

Redistribution of development potential

From the case of Hong Kong Sheng Kung Hui Compound, non-contiguous site transfer is proposed after the negotiation between the owner and the government. Though the mechanism of TDR in this case has not been confirmed at the time of writing, the significance of non-contiguous site transfer can be derived from this case. In this case, since height of new development in Central is a great concern, non-contiguous site transfer cannot only preserve the historic buildings, but also the unused development potential can be redistributed from high dense location in Central to low dense location which is Mount Butler. Under this circumstance, any excess development can be prevented in the sending sites while historical buildings can be preserved.

¹⁴³ The schools include Sheng Kung Hui Kindergarten (MOUNT BUTLER) and Sheng Kung Hui Kindergarten Hong Kong (Central).

This method can be applicable to Hong Kong in the respect that height is the growing concern in urban area and non-contiguous site transfer from high dense location to low dense location will be feasible given that the heritage owners has another site in rural location.

Limitation of TDR application

Non-contiguous site transfer can only be operated when the sending site can match with receiving site under the same land use category. In this case, this approach is possible since the possible receiving site is available to absorb excess development potential. In addition, the historical significance of the sending site may also be the criteria for TDR application. With a cluster of historic buildings in this case, three of which are in Grade I status, the government will be more willing to consider TDR application.

This approach will only be limited to a certain situation due to the lack of receiving sites in Hong Kong and difficulties in designating receiving sites. Hence application of TDR has to be studied on case-by-case basis.

Recommendation on TDR application

In order to resolve the difficulties in finding receiving sites, TDR certificates as discussed in Chapter 4 can be introduced so that the unused development rights in the sending sites can be monetized for other related payments. In the case of Hong Kong Sheng Kung Hui Compound, if there are any excess development rights which have

been realized but not absorbed by receiving sites, the TDR certificates can be used for compensating part of the revitalization cost of the historic buildings. This will allow more flexibility in terms of operation of TDR so that TDR can be applied on a widespread basis.

CHAPTER 6 CONCLUSION

Heritage conservation has drawn more attention to both government and public in Hong Kong. After taking lesson from the demolition of the historic buildings in the past, the government has taken step by establishing Development Bureau with set of initiatives in protecting heritages as discussed in Chapter 2. Incentives to the private sector are introduced in the current heritage conservation framework. This can encourage the private owners to protect historic buildings. Since TDR is one of the economic incentives, its feasibility has been studied.

Under the current heritage conservation framework, the economic incentives will be considered on case-by-case basis. However, there may be concern that government is not dedicated to promote economic incentives for historic conservation which may hinder the TDR application on a wide-spread basis. In addition, the availability of other economic incentives may also limit the use of TDR which has been illustrated in Chapter 4.

Due to the nature of case-by-case studies of TDR application, TDR can only be applied to a certain situation. In the possible sending sites, the historic buildings should be of great significance and usually in existing or proposed Grade I status. In the case of Sheng Kung Hui Compound, there is a cluster of historic buildings, 3 of

which is in proposed Grade I status and hence it can be a possible sending site. To match the receiving sites with sending sites, the heritage owners should have another site for TDR application. This has been illustrated in the case of Sheng Kung Hui Compound.

However, the match between receiving sites and sending sites is difficult in practice. It is because there are lack of receiving sites in urban area and the concern of height limit in the urban area. Hence the potential receiving sites will be in rural area and limited in urban area.

The greatest obstacles of TDR application will be the political and legal aspect. The government may not be willing to set up TDR policy and regulation or relax existing development control for TDR application.

Due to the complexity of TDR and above concern of TDR, TDR should be more flexible. TDR certificate is suggested. The concept of monetization of “heritage plot ratio”¹⁴⁴ is also incorporated into the certificate. This can ensure more flexible uses of the certificate including land-related payments and compensation for restoration cost.

However, monetization of the certificate alone will be less complex compared with TDR since it does not require receiving sites and problems of determination of value and development potential can also be avoided. Hence its potential application can be

¹⁴⁴ It is proposed by Miss Margaret Brooke

used on a widespread basis and can extend to other historic buildings including Grade II and III buildings.

Future application of TDR in Hong Kong

The Hong Kong Sheng Kung Hui Compound can be the first possible case for application for TDR. It is hoped that this case can help step up the progress in setting up policy of TDR and relevant legislations of TDR in Hong Kong. A more flexible approach of TDR is necessary so that more historic buildings can be conserved without violating the development rights of the heritage owners

In the future of Hong Kong, redevelopment will still be prevalent which will put the heritage at risk. One of the most recent cases is the request for downgrading the heritage status at 6 and 8 Kennedy Road from grade II to grade III to enable redevelopment.¹⁴⁵ However, the request for downgrading has been rejected. Instead of downgrading the historic buildings, economic incentives can be considered in this case. TDR may not be the suitable option since the government may only consider operation of TDR for Grade I buildings. In addition, in-situ development may not be feasible due to site constraints of the buildings. As for monetization of “heritage plot ratio”, it will be more feasible in this case since monetization can be used on a more widespread basis and more flexible in nature. Hence it can act as a kind of compensation to the owner.

¹⁴⁵ SCMP: Joyce Ng, Attempt to downgrade heritage status fail, Mar 04, 2010

Limitations of the study

There are several limitations in the study. Firstly, since there is lack of response from the developers to participate in the interview, the developers' opinion towards TDR cannot be revealed. Besides, due to lack of cases for implementation of TDR, it is difficult to study the detailed mechanism for operation of TDR. Thirdly, in the case study of Hong Kong Sheng Kung Hui Compound, since TDR is in a planning stage, the church is not willing to disclose the details at the time of writing. Hence the information is only confined to the publications and newspapers and all information may be subject to changes in the future. In view of this, the details of this case including the determination of development potential can be reviewed in the future.

Further Study

The study of TDR can be one of the means for providing incentives to private sector. Further studies can be conducted by exploring other possible incentives so that there can be comprehensive study of incentives.

As for TDR, it is worth studying and reviewing over time in the future so that any modification from this concept can be established in order to be in line with the future changes in the external environment.

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APPENDICES

Appendix I Letter A/B Tender in the Explanatory Statement of New Grant No. 12350 in the Conditions of Grant¹⁴⁶

NEW GRANT NO. 12350

EXPLANATORY STATEMENT

THIS STATEMENT DOES NOT FORM PART OF AN APPLICATION
BUT IS PURELY FOR YOUR GUIDANCE AS TO HOW
THE APPLICATIONS WILL BE CONSIDERED

Letter A/B Tender

Applications are invited from registered legal owners of land exchange entitlements (Letters A & B) for the grant of the lot of land at Area 100, Sha Tin in the New Territories in consideration of the surrender of the said entitlements. It is to be noted that only entitlements giving the owner the right to a grant of building land subject to the provisions of paragraph 4 hereof will be considered and that the entitlements must be registered in the applicant's name at the date of the Application i.e. agreements for sale and purchase will not be accepted.

2. Each applicant who wishes to be considered for the site will be required to submit a list of land exchange entitlements which he would be prepared to surrender for the grant of the site. The list of entitlements may at the option of the applicant be submitted on one of the following bases i.e. *either* by the submission of a list of entitlements, the value of which in relation to their *area and vintage* will be determined in the manner set out in paragraph 4 below *or*, alternatively, by the submission of a list of entitlements, the *monetized value* of which will have been calculated in accordance with the list of prevailing currency values, as at 19.1.1990 and published in the Government Gazette for this purpose.

3. As the intention will always be to accord priority to those tenders submitted on the basis of the *area and vintage* of the applicant's entitlements, a tender submitted on the basis of the *monetized value* of the entitlements held by an applicant *will only be considered for the grant of the site if no tenders submitted on the area and vintage basis are received.*

4. Those land exchange entitlements which have been submitted on the basis of their area and vintage will be converted to their "area of entitlement" at the exchange ratio specified in the land exchange entitlement, normally on a foot-for-foot basis for surrendered building land and at a ratio of 2 square feet for every 5 square feet for surrendered agricultural land, but please note that other ratios may be specified in the land exchange entitlement.

The total "area of entitlement" must equal the area of the site applied for; e.g.:—

Site for exchange—20 000 sq. ft.

Offer	Area of Entitlement	Total
Applicant A		
1 000 s.f. of building entitlement @ 1:1	1 000 s.f.	} 20 000 s.f.
25 000 s.f. of agricultural entitlement @ 5:2	10 000 s.f.	
9 000 s.f. of agricultural entitlement @ 5:2	3 600 s.f.	
13 500 s.f. of agricultural entitlement @ 5:2	5 400 s.f.	
Applicant B		
25 000 s.f. of agricultural entitlement @ 5:2	10 000 s.f.	} 20 000 s.f.
25 000 s.f. of agricultural entitlement @ 5:2	10 000 s.f.	

Note: Applicant A submits a very mixed set of entitlements whereas Applicant B submits two large entitlements.

In order to make a fair comparison of the respective applications it is necessary not only to have regard to the age of the land exchange entitlement since the date of surrender or reversion of the land but also to take into consideration the area of entitlement. This will be done in the following way:—

The area of entitlement for each offer will be multiplied by the number of days between the date of the surrender or reversion of the land and 19th day of January, 1990. The effect of this multiplication is to weight the ages by the areas of entitlement so that, when assessing the value of the entitlements, it is not the aggregate ages of a group of entitlements but the weighted aggregate ages of the entitlements which is considered.

¹⁴⁶ It is extracted from Conditions of Grant – New Grant No. 12350

Continuing our example:—

<i>Area of Entitlement (s.f.)</i>	<i>Age (days)</i>	<i>Weighted Age of Entitlements</i>	<i>Aggregate Age of Entitlements</i>
Applicant A	1 000	2 000	} 23 575 000
	10 000	1 100	
	3 600	200	
	5 400	1 825	
Applicant B	10 000	1 993	} 23 580 000
	10 000	365	

(Applicant B would be the successful applicant)

5. Whenever a number of tenders submitted on the "Aggregate Age of Entitlement" basis are received, the best of those tenders will be determined in accordance with the method outlined in paragraph 4 and the site awarded accordingly.

6. If no tenders submitted on the basis of their "Aggregate Age of Entitlement" are received, subject to any reserve price placed on the site by the Government, the tender will be awarded to the applicant who has submitted the list of entitlements having the highest total monetized value.

7. The same entitlements or any of them may be used for any number of other lots being offered at the same time as alternatives. If any entitlements are to be used for the numerous lots as an alternative, the applicant should fill in a separate application form for each lot stating which other lots are being applied for simultaneously. Where any entitlements are thus used for more than one application and the applicant's tenders for the lots so applied for simultaneously would be successful according to the rules stipulated in paragraphs 5 and 6 of this Statement, the applicant will be awarded only one of the lots. In the case of vintage Letter B tenders, the lot so awarded will be the lot which has the largest area. For example, if an applicant applies for three lots having areas of 2 000 square metres, 4 000 square metres and 6 000 square metres, and submits the same, or partly the same entitlements for each lot and his tenders for those lots would be successful according to the rules stipulated in paragraphs 5 and 6, he will be awarded the lot having an area of 6 000 square metres. Should an applicant wish to have a chance to secure more than one lot simultaneously, he would have to submit entirely different entitlements for each application, i.e. there would have to be no duplication of entitlements.

8. In general, the intention is to spread the lots to as many applicants as possible, taking into account as far as possible orders of preference of alternatives, but if the entitlements submitted by two or more applicants for a lot have precisely the same aggregate age or, if no tenders have been submitted on that basis, the same and highest monetized value then:—

- (a) if the applicants have applied only for the lot in question, the choice will be made by ballot;
- (b) when any applicant would be awarded another lot in addition to the one tied, he will not be considered for the tied lot; and
- (c) when any applicant would not be awarded any lot in addition to the one tied, the choice will be made by ballot.

Appendix II Questions of interview with Miss Lo Sau Lai, Curator (Historical Building), Antiquities and Monuments Office (AMO)

- 1) In the case of Kom Tong Hall, Transfer of Development Rights (TDR) has been considered in this case, what is the proposed mechanism of the TDR? Has TDR been implemented? If yes, what is the approved TDR? If no, what is the exact economic incentive and why TDR is not implemented?
- 2) What is the differentiation between TDR and land exchange?
- 3) As in the case of Tiger Balm Gardens, the proposed land exchange has been adopted. Has TDR been considered? If yes, what is the proposed TDR mechanism? Why TDR is not implemented?
- 4) In the case of Nga Tsin Wai Village, has TDR been considered? If yes, what is the proposed TDR mechanism? Is TDR been implemented in this case?
- 5) Are there any other cases which TDR has been proposed but not implemented?
- 6) With other economic incentives such as land exchange and compensation, do you think TDR is necessary in Hong Kong? If yes, what are advantages of TDR compared with other economic incentives? If no, why?
- 7) Do you think that TDR is feasible in Hong Kong at the current stage?
- 8) Do you think that it is difficult to identify both the receiving site and sending site? If it is the case, how can the receiving site be identified?
- 9) Do you think that TDR can apply in non-contiguous site? If yes, how can the policy be in line with TDR in non-contiguous site? If no, what is the concern of it?
- 10) Since TDR is a new concept in Hong Kong, what will be the barriers and constraints for applying TDR?
- 11) Do you think that the public is aware of the concept of TDR?

12) What will be your prediction of the public's acceptance of TDR compared with other economic incentives?

Appendix III Questions of interview with Ms. Margaret Brooke, CEO, Professional Property Services Group

1) Do you think that there are sufficient economic incentives for historical conservation?

2) With other economic incentives such as land exchange and compensation, do you think TDR is necessary in Hong Kong? If yes, what are advantages of TDR compared with other economic incentives? If no, why?

3) Do you think that it is difficult to identify both the receiving site and sending site? If it is the case, how can the receiving site be identified?

4) Do you think that TDR can apply in non-contiguous site? If yes, how can the policy be in line with TDR in non-contiguous site? If no, what is the concern of it?

5) As for the mechanism of TDR, what will be the difficulties encountered for measurement in terms of both quantity of transfer and assessment of land value?

6) Since TDR is a new concept in Hong Kong, what will be the barriers and constraints for applying TDR?

7) In the case of King Yin Lei, TDR has been considered but not implemented. If TDR has to be considered,

(i) Do you think that it is difficult to find the comparables adjacent to King Yin Lei during valuation of GFA?

(ii) Do you think that it is difficult to find receiving site with same OZP for TDR?

(iii) Do you think that it will take lengthy time than approved land exchange?

(iv) Do you think that the government is reluctant to implement TDR?

(v) What additional tools are required so that TDR can be feasible in this case?

8) From Letter A/B System, it is suggested that some principles can be applied to TDR. However, TDR and Letter A/B system are different in nature.

(i) Do you think that the developers' attitude in supporting Letter A/B system implies that they will also support TDR?

(ii) Since speculation has arisen in Letter A/B system, do you think that TDR will also incur price fluctuation same as Letter B system?

(iii) How time lag between buying and selling certificate is taken into account in Letter A/B System? Then can this be applied to TDR?

**Appendix IV Questions of interview with Professor Roger Nissim, Adjunct
Professor in the Department of Real Estate and Construction**

*Mechanism of proposed TDR (with reference to former secretary of Planning and
Lands)*

The proposed TDR should be sale and transfer of entitlements from the owners of historic buildings to the receiving site given the same OZP and the restriction that total GFA should not exceed 20% of maximum GFA permitted.

1) With the restriction to transfer the development rights to the receiving area with the same OZP with sending site, is it difficult to identify the receiving site in Hong Kong? As for sending site, is it also difficult to identify for operation of TDR?

2) Do you think that TDR can apply in non-contiguous site? If yes, how can the policy be in line with TDR in non-contiguous site? If no, what is the concern of it?

3) Since introduction of TDR is a new concept in Hong Kong, what is your main concern for using TDR for heritage preservation?

4) As for the mechanism of TDR, is there any difficulty for using the unused GFA as a means of transfer? If yes, how it can be solved?

5) Do you agree that it is difficult to assess the value of the unused GFA in the sending site? If yes, how it can be solved?

6) From Letter A/B System, it is suggested that some principle can be applied to TDR. However, TDR and Letter A/B system are different in nature.

(i) Do you think that the developers' attitude in supporting Letter A/B system implies that they will also support TDR?

(ii) Since speculation has arisen in Letter A/B system, do you think that TDR will also incur price fluctuation same as Letter B system?

(iii) How time lag between buying and selling certificate is taken into account in Letter A/B System? Then can this be applied to TDR?

Appendix V Questions of interview with Mr. Tsang, Estate surveyor in a developer

Mechanism of proposed TDR (with reference to former secretary of Planning and Lands)

The proposed TDR should be sale and transfer of entitlements from the owners of historic buildings to the receiving site given the same OZP and the restriction that total GFA should not exceed 20% of maximum GFA permitted.

- 1) What will be the role of the developer in heritage preservation?
- 2) Do you think that there is sufficient economic incentive for historic preservation?
 - Yes
 - No
 - Neutral

Reason:

- 3) Do you think that the government has done enough to promote these economic incentives to the heritage owners?
 - Yes
 - No
 - Neutral

Reason:

- 4) Do you think that the government has done enough to promote TDR including both receiving and sending site, the compensation mechanism?
 - Yes
 - No
 - Neutral

- 5) As for the nature of TDR, do you think that TDR should be compulsory or voluntary?

- Yes
- No
- Neutral

6) Do you support TDR programme?

7) Do you think that it is feasible to use GFA to transfer for the operation of TDR?

Reason:

8) Among the following approach of implementing TDR, which one will be favourable?

Option: Direct sale of development right from heritage owners to developers / TDR authority as the centre between receiving site and sending site)
If any other approach is more suitable, please propose the way to implementation of TDR.

Reason:

9) Please rank the preference of the economic incentive for historic preservation. (1st is the most favourable. 3rd is the least favourable.)

Please explain the choice and the considerations involved.

Option: Transfer of Development Rights / Land Exchange / Cash Compensation

Reason:

10) Please rank the preference for using TDR as follow. (1st is the most favourable. 2nd is the least favourable.)

Option: In-situ TDR / Non-in-situ TDR

Given the non-in-situ TDR, what will be the main obstacles of using this option?

Reason:

Thanks for your effort.

Appendix VI Speech on Transfer of Development Rights by Mr. John C. Tsang, the former Secretary for Planning and Lands in 2001¹⁴⁷

Speech on transfer of development rights (English only)

The following is a speech delivered by the Secretary for Planning and Lands, Mr John C Tsang, at the annual general meeting of the Hong Kong Institute of Architects today (December 18):

Transfer of Development Rights for the

Preservation of Historical Buildings in Hong Kong

Mr President, Ladies and Gentlemen,

It is a great honour for a failed student of architecture to have the opportunity to speak at the annual general meeting of the Hong Kong Institute of Architects. The topic that I have chosen this afternoon is the transfer of development rights, or TDR, for the preservation of historical buildings.

Historical buildings of architectural and heritage value are quickly disappearing in Hong Kong. We need to do something fast to save remaining historical structures in sound conditions so that our young people and future generations would still be able to admire them up close in future instead of just seeing them in photographs. There is a great deal of urgency but we cannot rush into this subject emotionally and indiscriminately. We must be pragmatic and rational.

It would, indeed, be impractical for us to preserve every single structure in our community just because they are old. That is too simplistic. We have the responsibility to devise a way to help us choose the buildings of value at an affordable cost to the community. In the process we need to assess not only the historical and artistic values of these building, but also the social and economic costs to society in preserving these buildings. We must weigh carefully the costs and benefits before we

¹⁴⁷ It is extracted from the electronic press release of Planning and Lands Bureau <http://www.info.gov.hk/gia/general/200112/18/1218098.htm>

make a rational decision to choose which ones to preserve, and the community must know at what cost.

My colleagues in the Home Affairs Bureau are currently doing precisely that, conducting a review on heritage preservation policy in Hong Kong. I shall leave it to them to come up with the proper solutions. In anticipation, we are giving preliminary thoughts to identifying viable means from the policy perspective of the Planning and Lands Bureau to make the new preservation policy workable.

The success of Hong Kong is couched in the operation of market forces. We cannot expect the developers to turn away from their objective to maximize profits and to volunteer to preserve historical buildings in the community without any return. They just don't behave like that. Nor can we expect Government to acquire all the historical buildings in the open market or to resume them under the Lands Resumption Ordinance. That is not the best use of public revenue and is, any way, just too expensive. It would be better if we can employ market forces to pay for the preservation of these historical buildings. Providing an incentive for property owners to encourage them to preserve these historical buildings is one way and TDR could be such an incentive.

The purpose of a TDR scheme is to create a "win-win" solution. With TDR, the owners of historical buildings of value will be able to keep their existing buildings, and use or sell the unused development rights as they see fit. The community would also benefit from the preservation of these buildings without having to buy or resume the properties.

TDR is nothing new. Many overseas cities and communities, such as New York City and Vancouver, operate such schemes. The question is: can TDR work in Hong Kong?

The existing framework of density control under the Buildings Ordinance and the statutory town plans does not allow any TDR to apply across sites that are not contiguous. At present, "transfer" of development rights or permissible gross floor area (GFA) is only allowed between different parts of the same development site. This method should actually be more accurately referred to as clustering of GFA, rather than transfer of GFA.

The idea of a TDR Scheme is to enable property owners to "deed-restrict" their properties that are of historical value against future development, and to transfer the unused development rights to other sites of the same land use category in the same

statutory town plan area, ie, the area covered by an Outline Zoning Plan. In exceptional cases, the unused development rights could also be transferred to a contiguous Outline Zoning Plan.

The basic principle behind this idea is relatively simple. Under such a TDR scheme, historical buildings may be declared as monuments, and become eligible "sending sites". The owners of such properties could apply to modify their land leases against future redevelopment and obtain a right or entitlement to the unused development rights in exchange for the deed restriction or lease modification. The entitlement would be calculated by deducting the existing GFA of a historical building from the maximum GFA permitted under the land lease, the Outline Zoning Plan or the Buildings Ordinance, whichever is the least. The unused GFA permissible could then be transferred to other "receiving sites". A certificate of entitlement specifying the amount of transferable GFA, or GFA credits to be more precise, would be issued to the owner. These GFA credits could then be used in approved receiving sites or sold to other owners or developers.

By obtaining or buying such GFA credits, owners or developers could apply to a designated authority to use such rights to build at a higher density ratio, or plot ratio, than the development controls would normally permit for a building development on the receiving site.

The size of the building development should be commensurate with the size of the site in order to prevent excessive building bulk and should not overload infrastructural facilities. Under the proposed scheme, receiving sites would not be allowed to receive too much GFA credits. The total GFA of a building development on a receiving site should not exceed 20 per cent of the maximum GFA normally permitted.

Besides historical buildings, Hong Kong's older neighbourhoods are also fast disappearing as a result of redevelopment. Some of these older neighbourhoods are an important part of our history. They include some parts of Kowloon City, Wan Chai and Yau Ma Tei. We are thinking also about preserving these neighbourhoods by the proposed TDR scheme.

Similarly, the vistas of landmark historical buildings could also be protected by TDR. Some important historical buildings are now towered over by neighbouring high-rise buildings. A good example is the Western Market. The proposed TDR scheme could help to avoid redevelopment on neighbouring sites in order to protect the vistas of these buildings.

If we were to implement the TDR scheme, the existing legislation on density control would have to be amended. The Government would need new legislative powers:-

- * to designate heritage areas instead of just individual historical buildings;
- * to transfer GFA credits from a sending site to a receiving site that are not contiguous;
and
- * to relax the maximum plot ratio and site coverage permissible under the Building (Planning) Regulations and the statutory town plans.

Heritage preservation is an issue that is very close to my heart. I know that it is also a matter very close to the heart of every architect. We are considering these proposals now in the context of our review on the preservation policy. We will be consulting the public in the near future on the entire scheme. I look forward to receiving your input in due course on the feasibility of this proposal.

Thank you.

End/Tuesday, December 18, 2001

NNNN

Historic Building Appraisal
Bishop's House
No. 1, Lower Albert Road, Central, Hong Kong

Located on a commanding site in Central District, formerly known as Tit Kong (鐵崗) or Iron Mound, the Bishop's House (會督府) is one of the most remarkable symbols of the development of the Anglican Church of Hong Kong (also known as Hong Kong Sheng Kung Hui 香港聖公會). The first building on the site appears to have been a boys' school constructed in 1845-8. Alterations and additions were made to the school building in 1851 in "collegiate style". The building then housed St. Paul's College and also the Residence of the first appointed Bishop, **George Smith**, who was Warden of the College. The College nurtured many figures, including Wu Ting-fang (伍廷芳), a well known diplomat and the first unofficial member of the Legislative Council in 1880. In 1951 St. Paul's College moved to Bonham Road, and the old college building became the residence and office of the Bishop of Hong Kong. Today the stone plaque inscribed with 聖保羅書院 (St Paul's College) is still visible near the main entrance of the Bishop's House.

Historical Interest

The style of the building, which is quite unusual for Hong Kong, is the **Tudor Revival** style. The building is two-storey with a semi-basement and an octagonal tower at the north-east corner which has an additional storey. Tudor style elements include an oriel window, flat head and pointed windows, label mouldings over the windows, buttresses, and imitation cross-shaped loopholes to the top of the tower. Classical elements are also apparent in the use of quoins, rusticated granite stonework to the G/F storey on the north-east façade, the regularly spaced windows and the glazing bar patterns. A local adaptation is the use of red painted Chinese roof tiles. Overall the impression is castle-like and imposing. Internally, the building is believed to have undergone extensive modernization, but the exterior is considered to be largely original and authentic. It is a rare piece of architecture with obvious built heritage value and local interest.

Architectural Merit

Built Heritage Value & Authenticity

Rarity, Social Value & Local Interest

The Bishop's House is the heart of the Diocese of Hong Kong Island. Together with other historic buildings in its neighbourhood, such as St. Paul's Church (聖保羅堂, not yet graded) and Old Kei Yan Primary School (舊聖公會基恩小學, now Sheng Kung Hui Ming Hua Theological College 聖公會明華神學院, Grade II), the Bishop's House also has group value and social value. Other historic buildings around the area include the Old Dairy Farm Depot (舊牛奶公司倉庫) and the Former Victoria Barracks (舊域多利軍營).

Group Value

¹⁴⁸ It is extracted from the website of Antiquities and Monuments Office http://www.amo.gov.hk/form/Brief_Information_on_proposed_Grade_I_Items.pdf

It is unlikely that adaptive re-use will need to be found for this building in the foreseeable future. *Adaptive Re-use*

Remarks:

The Bishop's House was accorded a Grade II status by the Antiquities Advisory Board in 1992 in view of its historical and architectural significance. *Grade II Historic Building*

Historic Building Appraisal
St. Paul's Church,
No. 76 Glenealy, Central, Hong Kong

St. Paul's Church (聖保羅堂) was built in 1911 to serve the spiritual needs of expatriate British residents and visitors of the Anglican faith. Its founding emanated from the joint efforts of four individuals: Lam Woo (林護), Huang Mou-lin (黃茂林), Li Wei-zhen (李維楨) and the Rev. A.D. Stewart (史超域牧師). It has evolved from a small church for the British living in Hong Kong since those early days into one that accommodates a wide range of churchgoers. In 1938, St. Paul's Church Parish was put under the direct control of the Anglican Church of Hong Kong. During the Japanese Occupation, the building was used as a training school for gendarmes. In the post-war years of reconstruction, St. Paul's Church expanded its activities and established the **Sheng Kung Hui Kindergarten**.

*Historical
Interest*

The present Archbishop, the Rev. Peter Kwong (鄭廣傑大主教), points out that the Church's greatest asset is its talented personnel, as evidenced by the fact that six out of the thirty-five bishops produced by the Church have become archbishops in Hong Kong and overseas. It is indeed a "cradle of church leaders."

Architecturally the church is an interesting mix of styles, predominantly **Neo-Gothic** with features and motifs drawn from **Tudor**, **Dutch** and **Classical Revival** styles. The colour scheme externally consists of crisp white stuccoed walls accentuated by the blue-painted roof and mouldings. A Dutch gable and canted bay adorn one end of the Church and a Gothic tower dominates the other end. A variety of different window shapes contribute to the interesting architectural composition. Overall the effect is rather pleasing and makes the Church a rarity of its kind with obvious built heritage value.

*Architectural
Merit*

*Rarity,
Built Heritage
Value &
Authenticity*

In order to keep the building in good condition, renovations would take place regularly in the St. Paul's Church. For example, the church has undergone a renovation process in mid 1980s, mainly in repairing works like re-painting of walls and repairs of furnishings. The Church is believed to have retained much of its original appearance and is therefore considered to be authentic.

Administering to spiritual needs means that the Church has obvious social value to the community. The Church occupies a prominent position at the

*Social Value,
Local Interest*

¹⁴⁹ It is extracted from the website of Antiquities and Monuments Office.

http://www.amo.gov.hk/form/Brief_Information_on_proposed_Grade_I_Items.pdf

lower end of Glenealy in Central and together with the **Bishop's House** (會督府) form important religious landmarks of local and historical interest. Together with Hong Kong Sheng Kung Hui Theological College (聖公會明華神學院), Hong Kong Sheng Kung Hui Welfare Council (香港聖公會福利協會) and Sheng Kung Hui Kindergarten (聖公會幼稚園) in its neighbourhood, the integrity of the Diocese is very strong. Other historic buildings around the area include the Old Dairy Farm Depot (舊牛奶公司倉庫) and the Former Victoria Barracks (舊域多利軍營). **& Group Value**

Remarks:

Not yet graded

The Church has not yet been graded. It is considered that the question of adaptive re-use does not arise as the Church will certainly continue to be used for its present purpose for many more years to come.

Historic Building Appraisal
Church Guest House
No. 1 Upper Albert Road, Central, H.K.

The Church Guest House (教堂禮賓樓), also known as Martin House, was built in 1919. It is a three-storey building owned by the Bishop of Victoria, Hong Kong. The main function of this building is residential use. It was purposely built and first used as the hostel of St. Paul's College (聖保羅書院), a school with a long history since the 19th century and was formerly situated on Glenealy Road. In the late 1940s, Ms Han Suyin (韓素音), author of a famous novel titled *A many-splendoured thing* (which was produced into a Hollywood film known as "Love is a many-splendored thing" (生死戀) starring William Holden 威廉荷頓) in 1955, has once resided there. In fact, many missionaries who moved to Hong Kong also stayed there in that period.

*Historical
Interest*

The front façade of the Church Guest House facing Upper Albert Road is obscured by trees so that its architectural qualities cannot really be appreciated. The style has been described as **Neo-Classical** with **Baroque** influence although the stylised classical features are more akin to **Art Deco**. The main entrance porch is formed by square columns, arches, brackets and a flat roof with a parapet wall in a heavy blocky geometric style. The columns are very unusual and do not conform to any formal classical order. The glazing pattern of the entrance doors shows definite **Art Deco** influence although this style did not come into vogue until the 1920s and only was given its name in the 1960s.

*Architectural
Merit*

The elevations follow classical principles with giant pilasters, string courses, entablatures, cornices and ornamental parapets, but like the porch do not conform to any formal classical order. There appears to have been an open arched verandah at first floor level but this has been enclosed with windows. The central portion of the roof is pitched and covered with aluminum sheeting. The two side wings have flat roofs. Several ornate chimney stacks can be seen. The front parapet wall has a very distinctive pattern and matches the boundary wall. The building is rendered or stuccoed and tastefully painted in grey and white. The interior of the building retains many original features such as arches, doors, cornices, etc.

This style of architecture is rarely seen and the Church Guest House may be unique in Hong Kong. It has obvious built heritage value and great architectural interest. Some alterations have been made which are fairly obvious but the building retains much of its authentic appearance.

*Rarity,
Built Heritage
Value &
Authenticity*

¹⁵⁰ It is extracted from the website of Antiquities and Monuments Office.
http://www.amo.gov.hk/form/Brief_Information_on_proposed_Grade_I_Items.pdf

The social value of Church Guest House lies in the historical role it has played as a hostel to St. Paul's College, and also as a hostel for visiting missionaries. Its distinctive architecture makes it a well known building in Upper Albert Road. *Social Value & Local Interest*

The Church Guest House has historical and local interest and also group value being situated between the Bishop's House (會督府, Grade I) and St. Paul's Church (聖保羅堂, not yet graded) and Old Kei Yan Primary School (基恩小學, originally the south wing of St. Paul's College, Grade II). *Group Value*

As the internal layout of the building is not known it is difficult to suggest an alternative adaptive re-use. Possibly the best use is for it to continue to be used for residential purposes. *Adaptive Re-use*

Remarks:

Although not yet graded the building is obviously of historical and architectural interest and is one of the Antiquities and Monuments Office's recorded items. *Not yet graded*

Historic Building Appraisal
Old S.K.H. Kei Yan Primary School
Glenealy Road, Central, H.K.

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Built in 1851, this building was originally the south wing of St. Paul's College (聖保羅書院) which provided English classes to the Chinese and nurtured many figures, including Wu Ting-fang (伍廷芳), a well known diplomat and the first unofficial member of the Legislative Council in 1880. The first building on the site appears to have been a boys' school constructed in 1845-48. The premises was ordered to be rebuilt in a more "Collegiate Style" by the newly appointed Bishop, the Rev. George Smith. The top floor was added in 1937 and the open verandahs of the old building enclosed giving it a modern appearance. In 1953 the building was taken over by Kei Yan Primary School (基恩小學).

*Historical
Interest*

With a new school campus available in the summer of 1996, Kei Yan Primary School was then evacuated from Glenealy and moved to the new site at Hollywood Road. After that, Sheung Kung Hui Ming Hua Theological College (聖公會明華神學院) occupied one of the two buildings of the school premises. Another former school building has been used as an office of *Echo* (教聲), journal of Sheung Kung Hui.

The building was originally two storeys high and built in a restrained **Tudor Revival** style with a pitched roof of Chinese tiles, gables, and open colonnaded verandahs. Unfortunately **the work carried out in 1937 drastically altered the appearance and height of the old building** giving it a **Modernist** look. The southwest elevation has cantilevered balconies running the full length of the façade with a projecting wide eaves or typhoon canopy at roof level. Only one arched opening survives on this elevation. The southeast elevation also has a modern look, but Tudor style arches and buttresses still survive at ground floor level. Moulded string courses and cornices run along the full length of the façade. Windows to the upper two (first and second) floors are rectangular in shape. The roof of the building is flat with an indented or battlemented parapet. Ornamental brackets, hood mouldings, and period style joinery still exist internally and externally.

*Architectural
Merit*

Because of the unsympathetic alterations to the building, it has lost its authenticity. However the original structure appears to be still there so that the building does have historical and built heritage value. Although the premises of Old S.K.H. Kei Yan Primary School experienced several refurbishment works, its old appearance can still be traced from its stone foundation, remaining buttress at ground level and arched doorway. Tudor Revival architecture is rare in Hong Kong and it is fortunate that some features still survive.

*Rarity,
Built Heritage
Value &
Authenticity*

¹⁵¹ It is extracted from the website of Antiquities and Monuments Office.

http://www.amo.gov.hk/form/Brief_Information_on_proposed_Grade_III_Items.pdf

The social value of the school lies in the role it has played in the fields of education and religion. ***Social Value
& Local Interest***

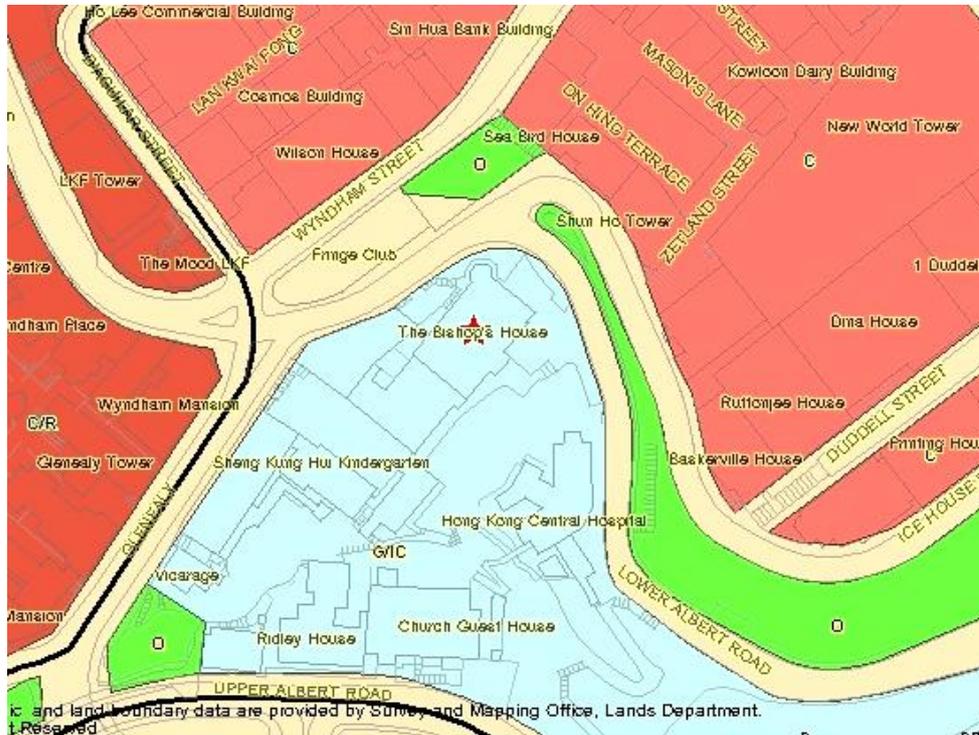
The subject building is very important as an integral component forming up both the Anglican heartland in Glenealy and the Heritage Trail - Central Route. It has historical and local interest and also group value being situated between the Bishop's House (1848, Grade I) and St. Paul's Church (聖保羅堂) (1911) within the Sheng Kung Hui complex, and opposite the Old Dairy Farm Depot (舊牛奶公司倉庫). ***Group Value***

As far as is known there are no plans to close down the School, so that the question of adaptive re-use does not arise at present. ***Adaptive
Re-use***

Remarks:

The building was accorded a Grade II status by the Antiquities Advisory Board in 1992. ***Grade II
Historical
Building***

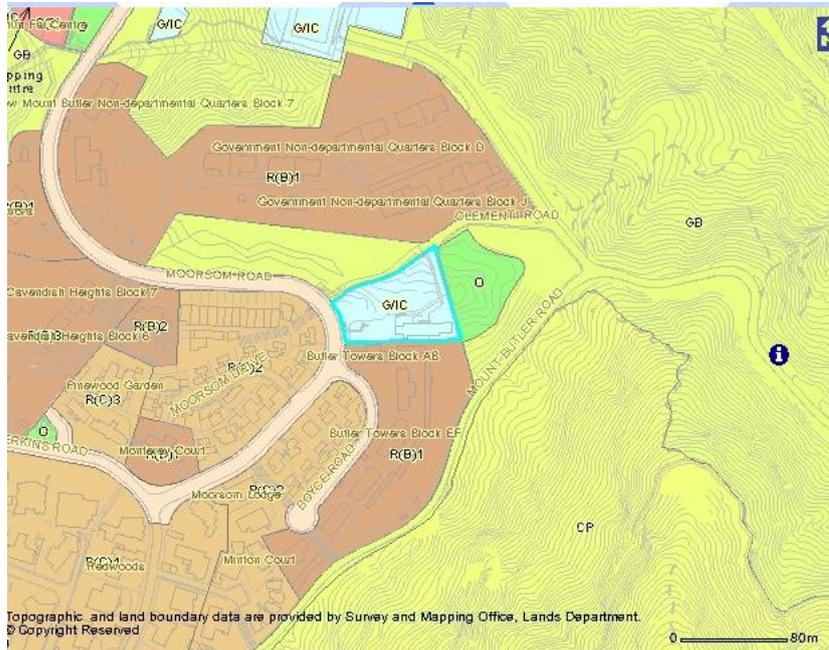
Appendix XI Zoning of sending site in Hong Kong Sheng Kung Hui Compound in Central



GIC zoning of sending site in Hong Kong Sheng Kung Hui Compound in Central¹⁵²

¹⁵² It is extracted from electronic statutory planning portal in the website of Town Planning Board

Appendix XII Zoning, location and size of the possible receiving site in Mount Butler Inland Lot No. 7883



GIC zoning of the possible receiving site in Mount Butler Inland Lot No. 7883¹⁵³

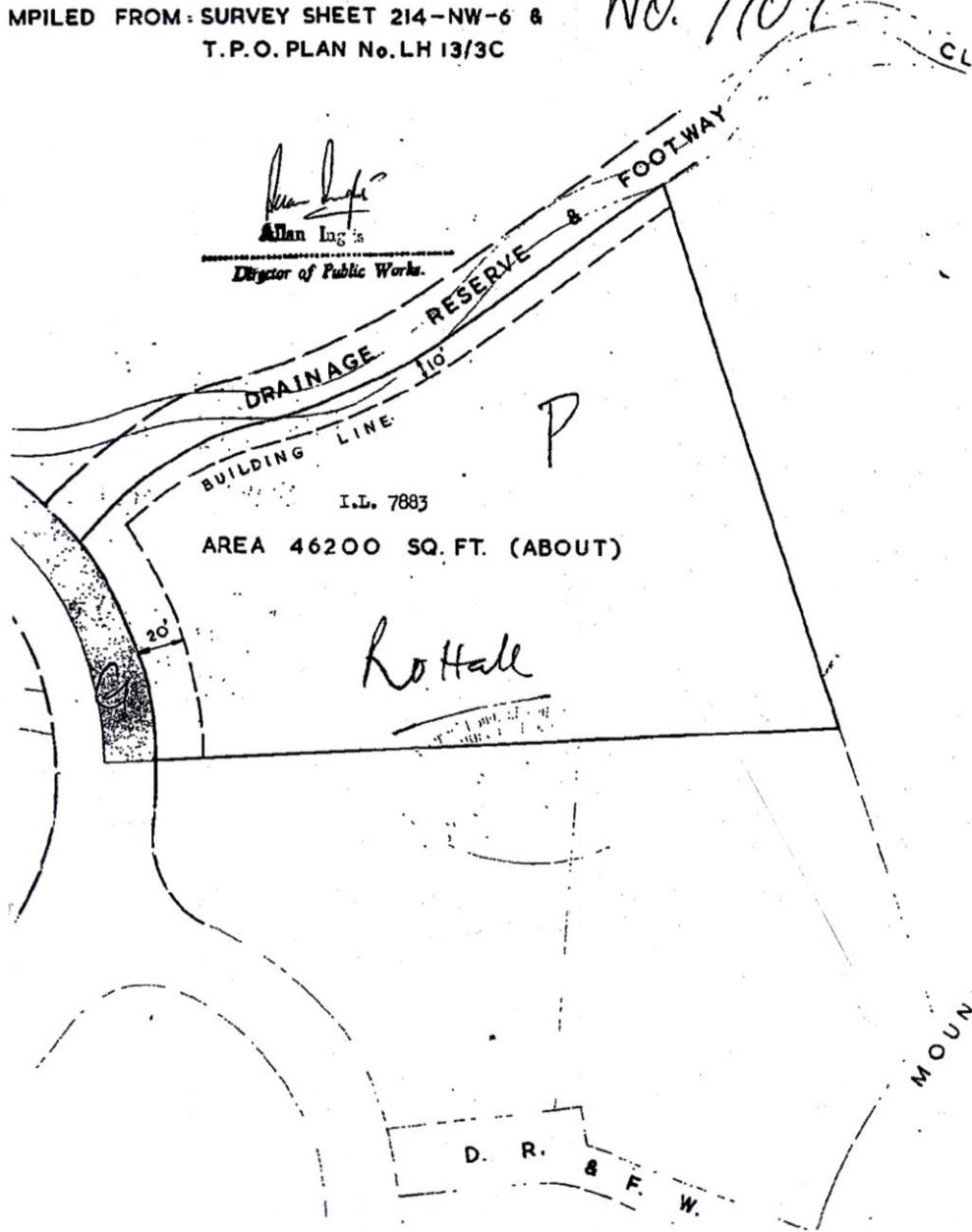


Location of the possible receiving site where there is Sheng Kung Hui Kindergarten Hong Kong (Mount Butler)¹⁵⁴

¹⁵³ It is extracted from electronic statutory planning portal in the website of Town Planning Board

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NO. 7107



Size of receiving site in possible receiving site in Mount Butler Inland Lot No.

7883¹⁵⁵

¹⁵⁴ It is extracted from the website of Centamap.

¹⁵⁵ It is extracted from the Conditions of Grant – Inland Lot No. 7883

Appendix XII **Figures showing the Sheng Kung Hui Kindergarten Hong Kong (Mt Butler)**

