

LEGISLATIVE COUNCIL BRIEF

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

INTRODUCTION

At the meeting of the Executive Council on 2 December 2008, the Council ADVISED and the Chief Executive (CE) ORDERED that a non-in-situ land exchange be carried out with the owner of Inland Lot No. 7327 so that the owner will surrender the lot to Government for preservation and revitalisation of the monument thereon while Government will grant simultaneously an adjacent lot (to be known as Inland Lot No. 9022) as shown coloured pink on the plan at Annex A to the owner for private residential development, subject to the main terms including payment of full market value premium as set out in paragraph 14 below.

JUSTIFICATION

Monument declaration

2. Built in around 1937 with gross floor area of about 1,641 square metres, the Building is a private residence with strong association with two famous families. It was built in fine “Chinese Renaissance” style combining the Chinese and Western architectural influences in a sophisticated manner, demonstrating the superb building technology and craftsmanship in Hong Kong’s early colonial period and reflecting the rising status and growing wealth of the Chinese community before World War II (photos at Annex B). The Building was sold to Ice Wisdom Limited in August 2007, and works to remove the roof tiles, stone features and window frames were noticed on site in early September 2007. These works fell outside the scope of demolition subject to control by the Buildings Department.

3. To save the Building from further damage, the Secretary for Development, in her capacity as the Antiquities Authority (the

“Authority”) under section 2A of the Antiquities and Monuments Ordinance (Cap. 53) (the “Ordinance”), took urgent action to declare the Building as a proposed monument on 15 September 2007 after consultation with the Antiquities Advisory Board (AAB). The declaration gave the Building statutory protection and allowed a period of up to 12 months for the Authority to consider in a comprehensive manner whether the Building should be declared as a monument. It also provided an opportunity for the Government to discuss with the owner feasible options for preservation of the Building. Unless withdrawn earlier, the proposed monument declaration would expire after 14 September 2008. Under the Ordinance, proposed monument declaration within private land cannot be extended.

4. Subsequent to the proposed monument declaration, the Antiquities and Monuments Office (AMO) of the Leisure and Cultural Services Department engaged an expert recommended by the State Administration of Cultural Heritage, Professor Tang Guohua (湯國華教授) of the School of Architecture and Urban Planning of Guangzhou University to conduct a study on the restoration works of the Building. Professor Tang confirmed the heritage value of the Building, and considered that the original appearance of the Building could be restored up to 80% while its heritage value could be basically maintained.

5. Meanwhile, the AMO carried out on-site inspections to the Building for further assessment. Based on the information obtained from those inspections and Professor Tang’s conclusions, AMO considered that the heritage value of the Building had reached the threshold that justified its declaration as a monument under the Ordinance. Based on AMO’s professional advice, the Authority intended to declare the Building as a monument under section 3(1) of the Ordinance. The AAB was consulted on the intended declaration at its meeting on 25 January 2008 and Members unanimously supported the proposal.

6. On 29 April 2008, the Authority served a notice under section 4 of the Ordinance to inform the owner about the intended monument declaration, and the owner might object by petition to the CE within a month. Upon the expiry of the one-month period, the owner had not made any objection by petition. Accordingly, in accordance with the Ordinance, the Authority obtained the approval of the CE for the declaration of the Building as a monument. The Authority subsequently declared the Building as a monument by notice in the Gazette on 11 July 2008. The Gazette notice being a subsidiary legislation was subject to negative vetting by the Legislative Council. The negative vetting period

expired on 15 October 2008.

Need for economic incentives

7. Under the new heritage conservation policy endorsed by the CE in Council on 25 September 2007 and announced by CE in his 2007-08 Policy Address, Government recognises the need for economic incentives in order to encourage and facilitate private owners to preserve historic buildings in their ownership. In implementing this policy, we aim to strike a proper balance between preservation of historic buildings and respect for private property rights. It is further noted that given the particular circumstances, the needed economic incentives to achieve the policy objective would have to be considered on a case-by-case basis.

8. After several rounds of discussion with the owner's representatives, Government has reached an understanding with the owner on a preservation option. Under the proposed arrangement, the owner will surrender the whole lot of the Building to Government for preservation and revitalisation, while Government in exchange will grant an adjacent site of man-made slope of the same size as the existing lot to the owner for new residential development. The new lot to be granted to the owner is a man-made slope with little vegetation to the west of the Building with slope stabilisation works undertaken in 2002. The site plan of the existing lot and the adjoining new site is at Annex A while some photos showing the current state of the new site as well as maps/photos showing the proposed development are at Annex C. The new lot will be subject to the same development parameters as previously specified on The Peak Area Outline Zoning Plan (OZP) for the existing lot (i.e. a maximum plot ratio of 0.5 and a three-storey height restriction). The owner plans to construct five residential houses on the new lot within the permissible plot ratio. As the new site is subject to the same development restrictions as those previously applicable to the existing lot, the proposed development will not adversely affect the density and traffic load of the area. The proposed development would also not generate substantial adverse impact on the landscape and greenery of the area, or the vista of the neighbourhood, as it is at present a man-made slope with no dense vegetation.

9. The surrender of the old lot will take place at the same time as the grant of the new lot under the proposed non-in-situ land exchange. In addition, the owner has agreed to carry out and fund the restoration works of the Building to the satisfaction of AMO. In order to allow the

owner to complete the restoration works to the Building, Government will grant a short term tenancy to the owner for his occupying the old lot until completion of the restoration works (which has already commenced and is estimated to last until the end of 2010).

The town planning process

10. Following discussions with Government, and to pave way for the proposed land exchange, the owner submitted an application under section 12A of the Town Planning Ordinance (Cap. 131) to rezone the existing lot from “Residential (Group C)1” (“R(C)1”) to “Other Specified Uses” (“OU”) annotated “Historical Building Preserved”, and the new site from “Green Belt” (“GB”) to “R(C)1” to facilitate residential development. To reflect more clearly the planning intention to preserve the Building for adaptive re-use, on 18 April 2008, the Metro Planning Committee (MPC) of the Town Planning Board (TPB) accepted our recommendation to widen the new zoning of the existing site to “OU” annotated “Historical Building Preserved for Cultural, Community and Commercial Uses” to allow for subsequent revitalisation plan. The amendments were incorporated in the draft The Peak Area OZP No. S/H14/8 and published for public inspection under section 5 of the Town Planning Ordinance on 25 April 2008 for two months.

11. Upon the completion of the two-month statutory plan exhibition period, a total of seven representations were received, of which five representations were in support of and two were opposing the zoning amendments (mainly expressing concerns on the height restriction of the new lot). Upon publication of the seven representations, two comments on the representations were received. TPB considered the representations and comments on 26 September 2008 and decided to propose amendment to the draft OZP by rezoning the new lot from “R(C)1” to “R(C)5” subject to not only a maximum plot ratio of 0.5 and a maximum building height of three storeys, but also a maximum building height of 170 metres above Principal Datum. The proposed amendment to the OZP was exhibited for public inspection on 3 October 2008. No further representation was received. TPB confirmed on 31 October 2008 that the proposed amendment formed part of the draft OZP. The draft OZP was approved by the CE in Council on 2 December 2008.

The land exchange process

12. Following the approval of the proposed non-in-situ land exchange, the Lands Department will continue to take forward the land exchange process, including the formal assessment of full market value premium payable by the owner.

13. As for the existing lot to be surrendered to Government, we plan to put it to adaptive re-use and revitalise it into an attraction for local residents as well as tourists. There are wide public interests to have access into the Building to enjoy its architecture and to learn about its history. We plan to consult the public and devise suitable proposals for its revitalisation.

Details of the proposed non-in-situ land exchange

14. We propose to carry out a non-in-situ land exchange with the owner of the Building, subject to the following basic terms and conditions –

Existing lot to be surrendered to Government

Lease term: Government lease dated 14 May 1957 for a term of 75 years commencing from 10 August 1936, renewable for a further term of 75 years

Area: 4,705.5 square metres (about)

Major lease conditions: (a) 1 European type house;
(b) height restriction of 35 feet; and
(c) part of the site specified as non-building area.

New lot to be granted to the owner

Lease term: 50 years from date of Agreement

Area: 4,705.5 square metres (about)

Premium: Full market value premium (to be assessed)

Building covenant: Buildings to be completed and made fit for occupation within 60 months from date of Agreement.

- Major lease conditions:
- (a) private residential purposes only;
 - (b) total gross floor area of building(s) not less than 1,411.65 square metres and not exceeding 2,352.75 square metres;
 - (c) buildings not exceeding three storeys and 170 metres above Principal Datum; and
 - (d) restriction on alienation before completion of the restoration works on the existing lot.

15. Lease condition (b) reflects the maximum development potential of a plot ratio of 0.5 previously applicable to the existing site while condition (d) ensures that the restoration works to the Building will be completed timely and satisfactorily.

16. Full market value premium payable for the proposed non-in-situ land exchange will be assessed by the Lands Department in accordance with the established policy and practices. The new lot to be granted to the owner is a man-made slope previously zoned “GB” which Government would not normally seek rezoning for inclusion for public sale. The proposed non-in-situ land exchange through the grant of this man-made slope is justified as a measure to facilitate the preservation of the Building.

OTHER OPTIONS

17. We have considered a range of economic incentives, starting with the easier options first, but these other options are found to be not viable or desirable –

- (a) in-situ land exchange – although the Building occupies only about 15% of the existing site, in light of the holistic heritage value of the main building, garden and the respective layout of the existing lot, the option of permitting in-situ residential development would adversely affect the integrity of preservation and create a cramped development which would not be a desirable option;
- (b) transfer of unused development rights – this option cannot be readily implemented under the current case, and even if it could, it would be far more controversial than the one now preferred and proposed. For example, any such transfer of development rights would involve the difficult issues of the determination of

the value and the development potential of the sites involved given the different planning restrictions and development potentials; and

- (c) cash compensation to the owner – the owner has confirmed through his representative at the outset that he would not be prepared to sell the Building to Government for cash.

18. If we do not offer any economic incentives to the owner after proceeding with monument declaration, the owner could resort to the compensation provisions under the Ordinance. Under Section 8 of the Ordinance, the Authority may, with the prior approval of CE, pay to the owner compensation in respect of the financial loss suffered by the owner by reason of the exercise by the Authority of her power under the Ordinance or by reason of refusal to grant a permit (under Section 6) or any conditions imposed in a permit. If the Authority could not reach an agreement on the amount of compensation with the owner, the owner may apply to the District Court to assess the amount of compensation. However, this statutory compensation mechanism has never been tested in court. We do not consider it a desirable course of action to resort to the compensation provisions under the Ordinance.

IMPLICATIONS OF THE PROPOSAL

19. This proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not have any civil service, economic and productivity implications.

20. As for financial implications, the proposed non-in-situ land exchange itself will not lead to additional expenditure on the Government. The restoration cost of the Building will be met by the owner. Full market value premium and administrative fee will be charged on the owner for the proposed non-in-situ land exchange. The revitalisation of the Building for adaptive re-use may or may not involve additional capital works expenditure of Government depending on the mode of operation. In the case of a commercialisation mode (in which a private sector operator would be selected through competitive bidding), the successful bidder would probably be required to undertake the necessary capital works. If the commercialised route is not viable, we may pursue other modes of operation (such as a social enterprise model), in which Government may need to fund the capital works expenditure. We will seek capital works funding for the project, where necessary, under the

established procedures. In case the social enterprise model would be adopted and the Building is included under the Revitalising Historic Building Through Partnership Scheme, the non-recurrent expenditure requirement (mainly the starting cost and initial operating cost) of the social enterprise would be met from within the commitment of \$100 million under the Scheme approved by the Finance Committee on 1 February 2008.

21. As for environmental implications, since the proposed new site is a man-made slope with little natural vegetation, there would be minimal tree felling or disturbance to the natural greenery of the area. The new residential development at the man-made slope would not result in any adverse impact on the cityscape.

22. In line with the sustainability principle of protecting and enhancing the vibrancy of Hong Kong's leisure activities and historical and architectural assets, the Building will be preserved and subsequently revitalised for public enjoyment. Urban living space would also be enhanced through retention of an important heritage structure.

PUBLIC CONSULTATION

23. We consulted the AAB at its meeting on 25 January 2008 on the Authority's intention to declare the Building as a monument under section 3(1) of the Ordinance. Members of the AAB unanimously supported the proposed declaration. Members of the AAB also indicated support to the proposed land exchange which was hailed as a major breakthrough in facilitating the preservation of privately-owned historic buildings.

24. We consulted the Sub-committee on Heritage Conservation of the Panel on Home Affairs of the Legislative Council at its meeting on 22 February 2008. Members generally supported the proposal.

25. The relevant draft OZP incorporating the zoning amendments has been published for public inspection in accordance with the provisions of the Town Planning Ordinance.

PUBLICITY

26. Press releases were issued on 25 January 2008 and 11 July 2008 respectively on the consultation with the AAB and the declaration of the

Building as a monument. We will continue to adopt the approach of keeping the public informed at every stage of the process to preserve the Building. A press release will be issued on 2 December 2008, and a spokesperson will be available to answer media and public enquiries.

BACKGROUND

Historic background of the building

27. The Building has strong association with two famous families. It was built in 1937 by Mrs Shum Li Po-lun (岑李寶麟), the granddaughter of Mr Li Sing (李陞), the daughter of Mr Li Po-chun (李寶椿) and the wife of Mr Shum Yat-chor (岑日初), all were notable merchants and philanthropists in Hong Kong. The Building was sold in 1978 to the Yow family – Mr. Yow Qhei-man (邱子文) and his son Mr. Yow Mok-shing (邱木城), who gave the name “King Yin Lei” to the Building which meant “house of virtuous views”.

28. The Building is important in signifying the historical development of Hong Kong. As one of the luxurious historic houses located along the hillside of Hong Kong Island, the Building reflects the rising status and growing wealth of the Chinese community in Hong Kong. It also represents an earlier phase of Hong Kong history when the upper-class residential area took shape in the Mid-Levels.

29. The Building was built in the “Chinese Renaissance” style that was very popular between the 1920’s to 1930’s in Hong Kong. It is a fine and unique example of the style that generally features a Western floor plan with lavish Chinese decorations and architectural elements. The Building is an outstanding and unique example of such a style as it combines the Chinese and Western architectural influences in a very sophisticated manner. There are not too many buildings in Hong Kong characterising the Chinese Renaissance style.

30. The façade of the Building has been a popular spot for taking photographs by visitors. The social value of the Building also lies in the role it played in the film heritage and entertainment industry of Hong Kong. The mansion has been featured in films of international renown such as “*Soldier of Fortune*” (江湖客) (1955), “*Love is a Many-Splendoured Thing*” (生死戀)(1955) and a locally produced television series “*Delightful Dream of the Capital*” (京華春夢) (1980).

These examples reflect the high scenic character of the site.

Economic incentives for heritage conservation

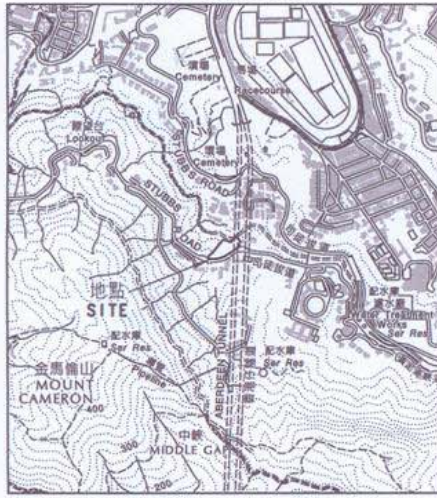
31. As announced in the package of new heritage conservation initiatives by the Chief Executive in his 2007-08 Policy Address, the Government will actively explore new arrangements to provide economic incentives for private owners to encourage heritage conservation. The case of King Yin Lei is the first illustration of our commitment to facilitating preservation of privately-owned historic buildings under the new policy.

ENQUIRIES

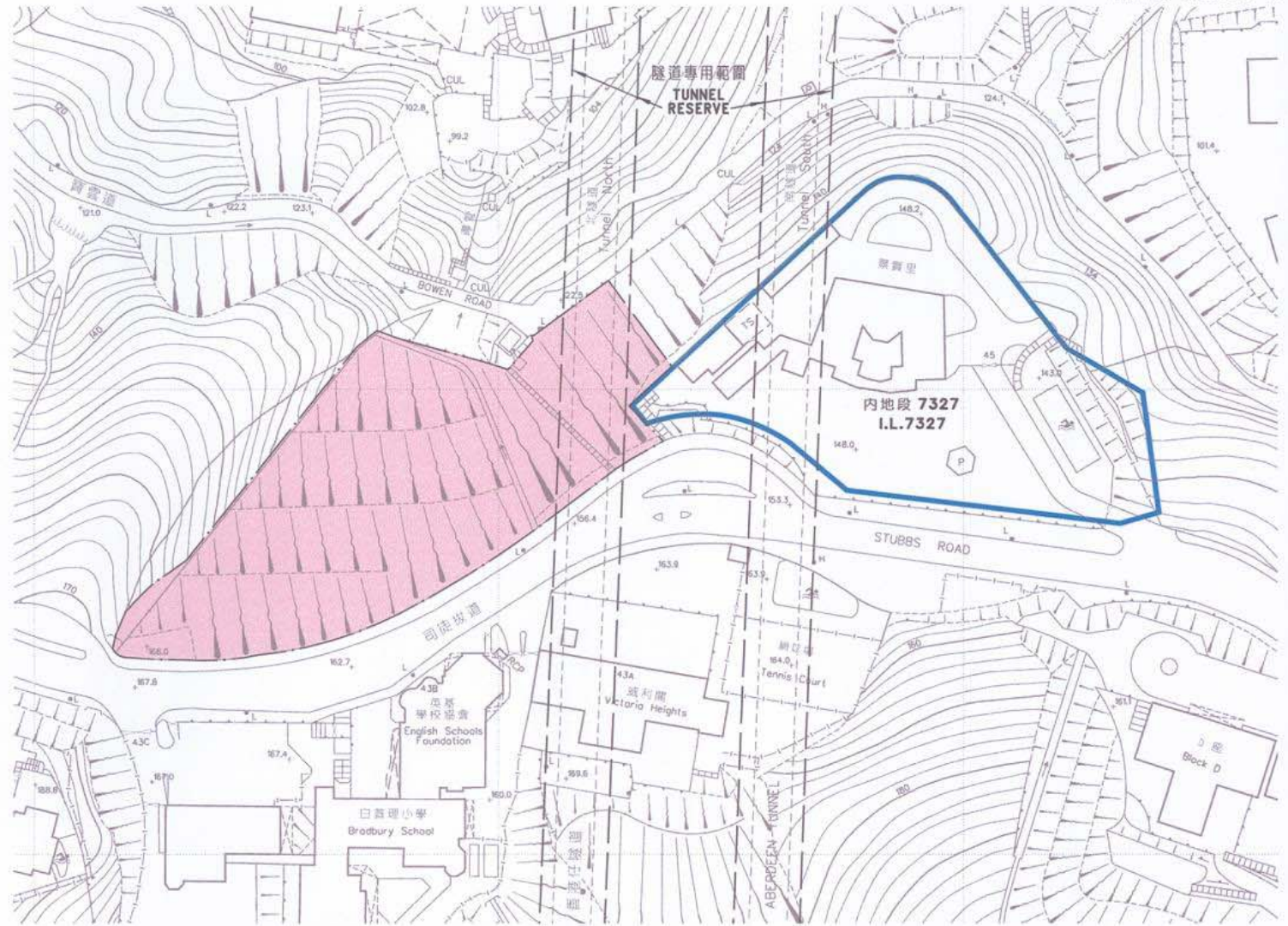
32. For any enquiries on this brief, please contact Mr. Jack Chan, Commissioner for Heritage of the Development Bureau at 2848 2104.

**Development Bureau
December 2008**

位置 LOCATION



比例 Scale 1 : 20000



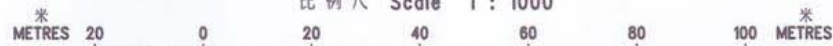
舊地段以藍色邊線標示的面積約為50 650 平方呎或4 705.5 平方米

新地段以粉紅色標示的面積約為4 705.5 平方米

OLD LOT EDGED BLUE AREA 50 650 SQUARE FEET OR 4 705.5 SQUARE METRES (ABOUT)

NEW LOT COLOURED PINK AREA 4 705.5 SQUARE METRES (ABOUT)

比例尺 Scale 1 : 1000



只作識別用 FOR IDENTIFICATION PURPOSES ONLY

地政總署 港島東區地政處
District Lands Office, Hong Kong East
Lands Department
圖則由港島測量處繪製
Plan Prepared by District Survey Office, Hong Kong

建議換地
(將稱為內地段 9022)
PROPOSED LAND EXCHANGE
(TO BE KNOWN AS INLAND LOT No. 9022)

檔案編號 File No. DLO/HE L/M 256/EHLT/87

測量圖編號 Survey Sheet No. 11-SW-20A

發展藍圖編號 Layout Plan No.

參考圖編號 Reference Plan No.

圖則編號 PLAN No. HKM8322-X

Photos of King Yin Lei



Annex C

Photos showing the current state of the new site as well as maps/photos showing the proposed development

Aerial photo of the sites



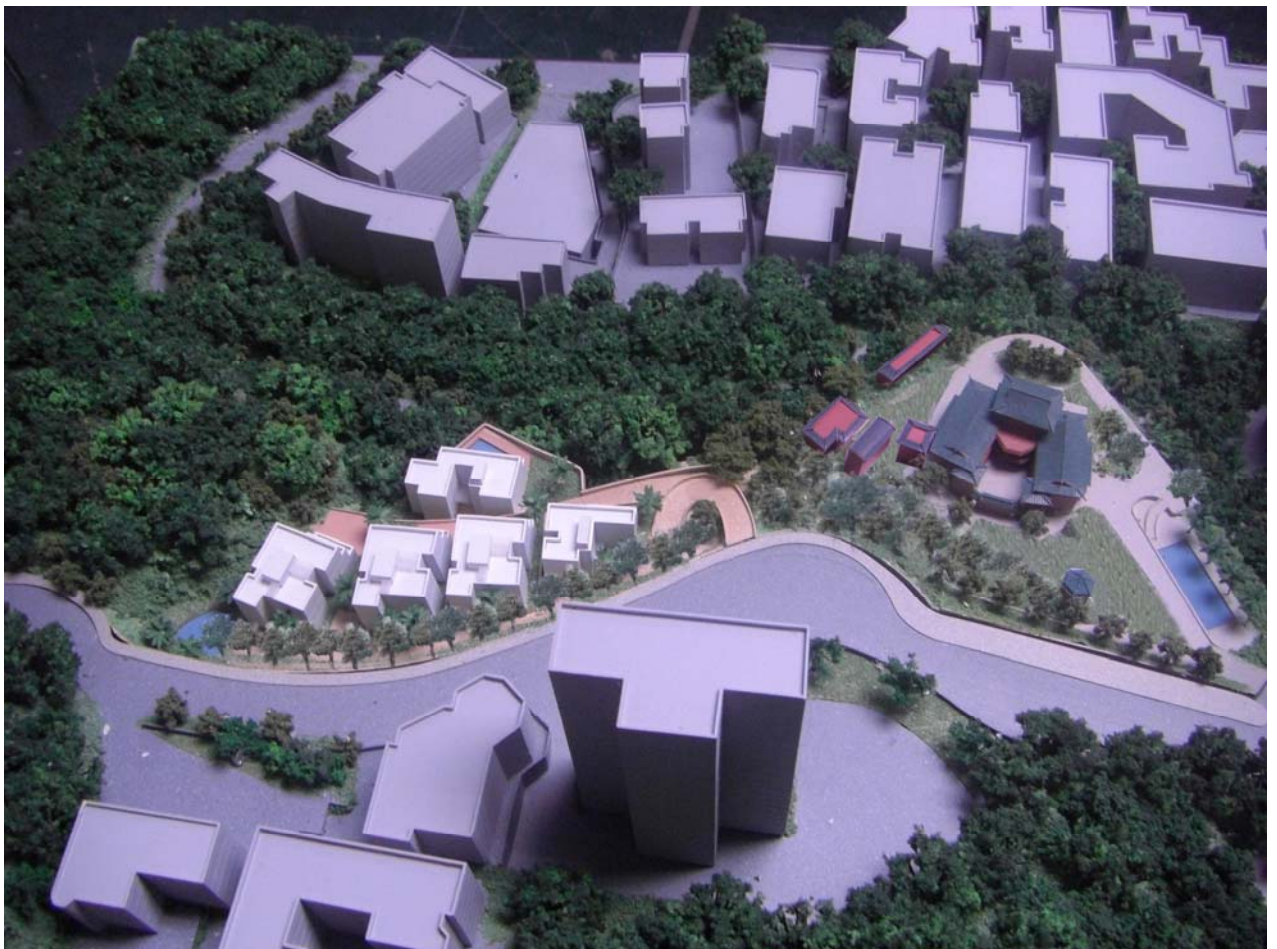
Layout plan of the proposed development



View on the man-made slope as at January 2008



Layout of the proposed development



Aerial view showing new houses covering up the man-made slope without affecting the view of residential and institutional buildings



New houses helping to cover up the man-made slope and enhance cityscape

