

**Invitation for Expressions of Interest for
Refurbishment, Renovation, Management and
Maintenance of and Operation of Business in
the Seaview Building at Repulse Bay Beach**

Date of Issue: 26 June 2009

The Government of the Hong Kong Special Administrative Region
Leisure and Cultural Services Department

GLOSSARY OF TERMS

Terms and expressions used in the Invitation for Expressions of Interest document ("Invitation") shall, unless the context requires otherwise, have the meaning ascribed thereto in this Glossary of Terms.

"Proponent" means a person who submits an Expression of Interest (Eoi) for refurbishment, renovation, management and maintenance of and operation of business in the Seaview Building for providing beach related services to enhance the role of Repulse Bay as a recreational and tourism area.

"Bidder" means a person who submits a bid during the tender exercise for the refurbishment, renovation, management and maintenance of and operation of business in the Seaview Building.

"Government" means the Government of the Hong Kong Special Administrative Region.

"Intellectual Property Rights" means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other Intellectual Property Rights of whatever nature and wheresoever arising, whether now known or hereafter created, and in each case whether registered or unregistered and including applications for the grant of any such rights.

INSTRUCTIONS TO PROPONENT

- 1.1 The Seaview Building (the “Building”) site is located at Repulse Bay Beach as delineated and shown edged red in Annex A-2. It will be available for refurbishment, renovation, management and maintenance of and operation of business by interested persons. The Government wishes to seek ideas and suggestions for the refurbishment, renovation, management and maintenance of and operation of business in the Building through this Invitation.
- 1.2 The purpose of this Invitation is to –
- (a) canvass interest from the interested persons in refurbishment, renovation, management and maintenance of and operation of business in the Building;
 - (b) seek ideas and suggestions for refurbishment and renovation of and operation of business in the Building;
 - (c) seek ideas and suggestions for management and maintenance of the Building; and
 - (d) seek ideas and suggestions on term of occupancy of the Building for the proposed business.
- 1.3 The ideas and suggestions collected through this Invitation may be used by the Government in formulating the basis of subsequent consultation and tender document for the future use of the Building. A Proponent has no claim whatsoever relating to any use of the ideas and suggestions referred to in the subsequent tender and/or the development of the Building by the Government.
- 1.4 The Government will take all reasonable steps not to disclose information provided to it by a Proponent in his submission of EoI. This provision shall not apply –
- (a) to the disclosure of information to any person for the purpose of considering or exploring the feasibility of or developing a Proponent’s EoI;

- (b) to the disclosure of information to any person in the Government's exercise of the Intellectual Property Rights granted by a Proponent to the Government hereunder;
- (c) to the disclosure of information that is or becomes public knowledge;
- (d) to the disclosure of information that is rightfully in Government's possession prior to the date of a Proponent's submission of the EoI;
- (e) to the disclosure of any information in circumstances where such disclosure is required pursuant to any law or order of a Court of competent jurisdiction; and
- (f) to the disclosure of any information with the prior consent of a Proponent.

1.5 This Invitation is not intended to provide the basis of any investment decision and should not be considered as a recommendation by the Government or any of its officers, agents or advisors to any Proponent to submit any EoI.

1.6 This Invitation is for seeking ideas and suggestions only. The Government is not obliged to proceed with the development of the Building beyond the Invitation stage. Neither this Invitation nor the EoI constitutes an offer or the basis of any contract which may be concluded in relation to the development of the Building.

1.7 This Invitation is not a prequalification exercise to shortlist any Proponent. Interested persons who do not submit an EoI will not be barred from taking part, or prejudiced against, in the subsequent tender exercise.

1.8 A Proponent shall not construe the contents of this Invitation, or any other communication by or on behalf of the Government, or any of its officers, agents or advisors, as financial, legal, tax or other advice. A

Proponent should consult his own professional advisors as to financial, legal, tax or other matters concerning the EoI submitted.

- 1.9 A Proponent shall be solely responsible for the fees, costs and expenses incurred in preparing and submitting the EoI. The Government will under no circumstances be liable to any Proponent for any such fees, costs and expenses.

1.10 Submission of EoI

- 1.10.1 A Proponent shall submit one (1) original (to be marked "ORIGINAL" on the front cover), five (5) copies and one (1) soft copy of his EoI in a sealed envelope clearly marked with "Expressions of Interest for Refurbishment, Renovation, Management and Maintenance of and Operation of Business in the Seaview Building at Repulse Bay Beach" on the outside of the sealed envelope and addressed to District Leisure Manager (Southern). EoI submitted by facsimile or e-mail will not be accepted.

- 1.10.2 Submissions of EoI shall be made in English or Chinese.

- 1.10.3 The EoI marked "ORIGINAL" shall prevail in the event of any inconsistency amongst the copies submitted.

- 1.10.4 Deed of Declaration as per Annex C (in English only) should be carefully read, signed and returned with the EoI. Failure to return the signed Deed of Declaration will render the EoI not being considered at all by the Government.

- 1.10.5 **The EoI must reach the Southern District Leisure Services Office, 4/F, Aberdeen Municipal Services Building, 203 Aberdeen Main Road, Hong Kong before 5:30 p.m. on 27th July 2009 (Monday) (the Closing Date)** by hand or by post. Late submission shall not be considered. All submissions will be opened only after the Closing Date.

1.10.6 In the event of a typhoon signal no. 8 or above or the black rainstorm warning signal is in force at 9:00 a.m. on the Closing Date, the closing time will be deferred to 5:30 p.m. on the next working day (i.e. except Saturday, Sunday and general holiday) and after the typhoon signal no. 8 or above or black rainstorm warning signal is cancelled.

1.10.7 Enquiries regarding this Invitation can be made to –

Name : Mrs. Sandy CHAN
Telephone : 2554 6092
Facsimile : 2552 8370
E-mail : ddlms1@lcsd.gov.hk

1.10.8 Briefing session will be held by the Leisure and Cultural Services Department at the Conference Room, 4/F, Southern District Leisure Services Office, Aberdeen Municipal Services Building, 203 Aberdeen Main Road, Hong Kong on 8th July 2009 (Wednesday) at 3:00 p.m. A Proponent is strongly advised to attend the briefing session in order to acquaint himself with the requirements of the EoI.

1.11 Intellectual Property

1.11.1 A Proponent as beneficial owner shall assign to the Government absolutely his full Intellectual Property Rights in the works comprised in the EoI free from encumbrances, so as to enable the Government and/or its authorized users to make available, have made, use, import, adapt, or otherwise fully exploit the works comprised in the EoI fully and freely.

1.11.2 A Proponent shall warrant that the provision of the works comprised in the EoI, the use, possession and exploitation of the works comprised in the EoI and/or the ideas and information contained in the works comprised in the EoI by the Government and its authorized users does not and/or will not infringe any Intellectual Property Rights or any other rights of any party.

- 1.11.3 A Proponent shall warrant that the exercise of any of the rights granted under this Invitation by the Government, its authorized users, assigns and successor-in-title will not infringe any Intellectual Property Rights or any other rights of any party.
- 1.11.4 As the author of the works comprised in the EoI, a Proponent shall irrevocably and unconditionally waive all his moral rights in respect of the works comprised in the EoI to which he may now or at any time in the future be entitled under the Copyright Ordinance (Cap. 528) and under any similar laws in force from time to time, such waiver(s) shall operate in favour of the Government and its licensees, assigns and successors-in-title as from the time of the creation of the works comprised in the EoI.
- 1.11.5 A Proponent shall warrant that he is the author and the sole owner of the Intellectual Property Rights in the works comprised in the EoI and has full power to give the warranties and indemnities contained therein.
- 1.11.6 The Proponent shall indemnify the Government and keep the Government fully and effectively indemnified against all actions, costs, claims, demands, damages, expenses (including but not limited to the fees and disbursements of lawyers, agents and expert witnesses) and liabilities of whatsoever nature arising out of or in connection with any allegation and/or claim that the design, development, use, possession or operation of the works comprised in the EoI infringes any Intellectual Property Rights of any party and also against any awards and costs which may be agreed to be paid by the Government in settlement of any proceedings in this regard (where that settlement has first been proposed or approved in writing by or on behalf of the Proponent).

1.12 Disclaimer

- 1.12.1 All information provided in this Invitation is for reference only. A Proponent is required to ascertain or verify the accuracy, completeness and validity of the information in this Invitation from his own source and make his own independent assessment of the technical feasibility and financial viability of his EoI.
- 1.12.2 The Government reserves the right to change, alter, add or delete, revise and update any information contained in this Invitation at such time and in such manner as it considers appropriate.
- 1.12.3 Nothing in this Invitation shall constitute a warranty, statement or representation, whether expressed, implied or imputed, by the Government, its employees or agents as to the accuracy, reliability, completeness and usefulness of the information or shall be relied on as a representation, statement or warranty as to the intention, policy or action of the Government, its employees or agents. The Government shall not be liable for any use of or reliance on any information provided in this Invitation.
- 1.12.4 A Proponent's submission of an EoI shall be taken as his acceptance of all the terms and conditions of this Invitation.

INTRODUCTION TO THE INVITATION

2.1 Purpose

The Government is looking for interested persons to invest for the refurbishment, renovation, management and maintenance of and operation of business in the Building on a self-financing basis.

2.2 Two-stage Development Process

The Government intends to look for interested persons to invest for the refurbishment, renovation, management and maintenance of and operation of business in the Building by two-stage development process: first, the Invitation, and second (but subject to paragraph 1.6 above), a tender exercise under which the Government will select the successful Bidder. Information of the tender exercise is set out in Annex B.

2.3 Destruction of EoI

EoIs not selected for formulating consultation papers and subsequent tender document will be retained for a period of not less than six (6) months after the selection of successful Bidder in tender exercise. Thereafter, the EoIs may be destroyed.

INFORMATION TO BE SUBMITTED

3.1 A Proponent shall ensure his EoI is concise and relevant. In his submissions, a Proponent shall provide the following specific information –

3.1.1 Identity of Proponent

(a) If the Proponent is an Individual –

- (i) Name in English and Chinese;
- (ii) Hong Kong Identity Card Number;
- (iii) Residential Address;
- (iv) Telephone and / or Facsimile Numbers; and
- (v) Details of all consultants and advisers, if any.

(b) If a Proponent is a Body Corporate –

- (i) Name of the Body Corporate in English and Chinese;
- (ii) If a Subsidiary, Name of Parent Company in English and Chinese;
- (iii) Address of Registered Office;
- (iv) Telephone and / or Facsimile Numbers;
- (v) Certificate of Incorporation Number of the Company;
- (vi) Limited or Unlimited Liability;
- (vii) Year of Establishment;
- (viii) Business Registration Certificate Number of the business being operated and its expiry date;
- (ix) Name and Residential Address of the Managing Director;
- (x) Name and Residential Address of the Company Secretary; and
- (xi) Details of all consultants and advisers, if any.

(c) If the Proponent is a Firm or other body Unincorporated

- (i) Name of the Firm in English and Chinese;
- (ii) Address of the Firm;
- (iii) Telephone and / or Facsimile Numbers;

- (iv) Business Registration Certificate Number of the business being operated and its expiry date;
- (v) Names of all Partners in English and Chinese;
- (vi) Residential Addresses of Partners; and
- (vii) Details of all consultants and advisers, if any.

3.1.2 Financial Overview of the EoI

- (a) A Proponent shall give an indication of how finance will be secured for the refurbishment, renovation, management and maintenance of and operation of business in the Building; and
- (b) A Proponent shall give a brief appraisal of the financial overview of his EoI, such as the capital and recurrent costs, etc.

3.1.3 Refurbishment and Renovation and Business Operation Plan

- (a) A Proponent shall submit a refurbishment and renovation and business operation plan describing how the design principles in Section 2 of Annex A can be met. The refurbishment and renovation and business operation plan should include but not restrict to the scope, extent and parameters of proposed business to be operated in the Building, conceptual drawings for ideas and suggestions on refurbishment and renovation of the Building, etc.
- (b) A Proponent shall observe and comply with the relevant Government procedures and licensing requirements and laws and regulations of Hong Kong, as and when applicable, in his refurbishment and renovation and business operation plan;

- (c) The refurbishment and renovation and business operation plan should blend in the surrounding environment. Activities that are not permitted by laws and regulations of Hong Kong should not be conducted, promoted or allowed in the Building; and
- (d) A Proponent shall demonstrate that the refurbishment and renovation and business operation plan is environmentally acceptable and meets all relevant statutory requirements. It will be important to maintain high environmental standards in the refurbishment, renovation and business operation and to promote high quality design.

3.1.4 Management and Maintenance Plan

- (a) A Proponent shall give an account of a management and maintenance plan to ensure proper management and maintenance of the Building throughout the term of occupancy; and
- (b) A Proponent shall describe the proposed measures to be implemented by him to ensure that the management and maintenance services provided will be at standards acceptable to the Government and the users throughout the term of occupancy.

3.1.5 Outline Implementation Programme

A Proponent shall give an outline of his preferred implementation programme, such as indicative timelines for the refurbishment and renovation of the Building, key project milestones, target completion date, etc.

ASSESSMENT OF THE EoI

- 4.1 All specific information required in paragraph 3 above shall be submitted in the EoI, otherwise the EoI may not be considered since assessment on the viability of the EoI cannot be made.
- 4.2 This Invitation has been translated into Chinese. If there is any inconsistency or ambiguity between the English version and the Chinese version, the English version shall prevail.

- END -

The Seaview Building Site at Repulse Bay Beach

SITE DETAILS

1.1 Location and Area

1.1.1 Located at 16 Beach Road, Repulse Bay Beach in Southern District.

1.1.2 Ancillary to the Repulse Bay Beach for beach related leisure use to meet the needs of local residents and the general public.

1.1.3 Directly accessible by driving or by public transport to the nearest Repulse Bay Road which is linked to Beach Road.

1.1.4 Surrounded by residential buildings and low-rise houses.

1.1.5 One of the popular scenic and tourist spots in Hong Kong.

1.2 Demographic Information

1.2.1 According to 2006 Population By-census, the population of the Southern District and the Bays Area Constituency are about 275 000 and 17 895 respectively.

1.2.2 Being a territory-wide public bathing beach and a prestigious scenic spot for tourists, the annual attendance of Repulse Bay Beach in 2008 is approximately 2 866 000.

1.3 Land Use Zoning

The land use zoning of Seaview Building Site in the Shouson Hill & Repulse Bay Outline Zoning Plan, shown as Item A in Annex A-1, is

zoned as “Other Specified Uses” zone annotated “Beach Related Leisure Use”.

1.4 The Site

1.4.1 The Seaview Building (the “Building”) site is about 1 380 square metres and is delineated and shown edged red in Annex A-2.

1.4.2 The Gross Floor Area of the Building for refurbishment, renovation, management and maintenance of and operation of business is about 2 300 square metres as delineated and shown edged blue on the floor plan at Annex A-3.

1.5 Condition of the Premises

1.5.1 The three-storey Building was probably built in the 1950s in Modernist style.

1.5.2 The Building was probably built over 50 years ago. It was used for catering and beach-related service through letting out of service contracts until 2003. Much works will be required to put it back to a usable state.

1.5.3 The Leisure and Cultural Services Department does not have record on as-built drawings and the loading for the Building. The Building has not been recorded or graded as a historical building. The interior height of each floor is approximately 3m.

DESIGN PRINCIPLES OF THE SEAVIEW BUILDING

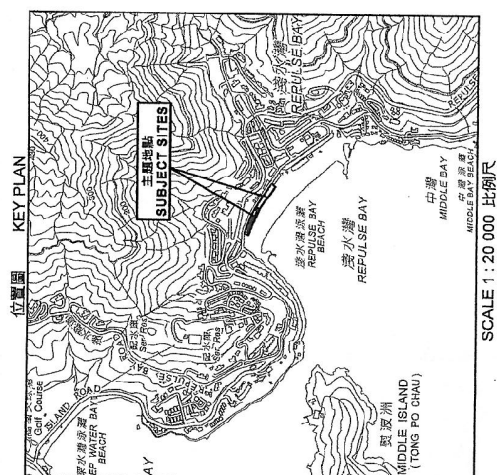
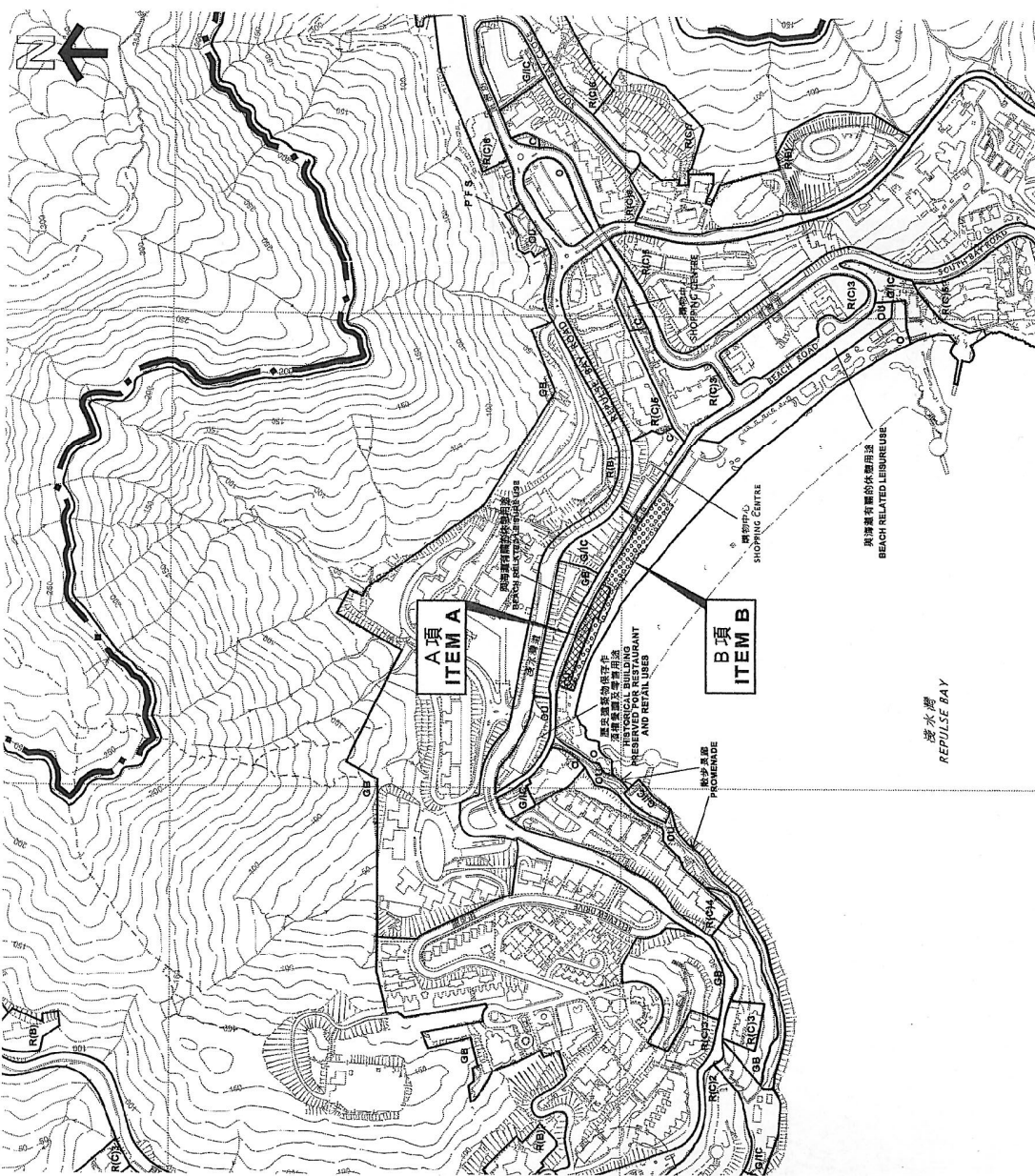
2.1 A Proponent is welcomed to propose refurbishment, renovation, management and maintenance of and operation of business in the Building to enhance the role of Repulse Bay Beach as a recreational and tourism area. The proposed business in the Building should be open for public use.

2.2 The future use of the Building should blend in harmoniously with the

surrounding environment in term of use and design.

- 2.3 Proponents may propose uses of the Building that may be permitted under Column 2 of the Notes of the “Other Specified Uses” zone annotated “Beach Related Leisure Use” in Annex A-4. Any proposed uses permitted under Column 2 of the Notes of the “Other Specified Uses” zone annotated “Beach Related Leisure Use” will be subject to the specific approval of the Town Planning Board. The Town Planning Board will consider a planning application within two months upon receipt.
- 2.4 The Government would only take forward proposals on the basis of the current zoning of the Building site.
- 2.5 The proposed use of the Building should not involve extension / addition works that result in any structure exceeding the existing building height.
- 2.6 The proposal must comply with all relevant statutory requirements including but not limited to the current requirements on Fire Services and Barrier Free Access for business to be provided.
- 2.7 A pedestrian passageway of at least 4 metres in width in the beach front of the Building should be maintained at all times for unimpeded public access.
- 2.8 The future use of car parking area next to the Building is subject to review separately and is not included in this Invitation.
- 2.9 Using the roof terrace for outdoor seating accommodation can be accepted subject to no permanent building structure and any noise impact on the nearby residential developments can be mitigated.

- END -



草圖編號 S/H 17/10 的修訂
AMENDMENTS TO DRAFT PLAN No. S/H 17/10

根據城市規劃條例第 6G 條作出的修訂

A項 ITEM A

由「綜合發展區」地帶改劃為「其他指定用途」註明「與海濱有關的休憩用途」地帶 REZONING FROM "COMPREHENSIVE DEVELOPMENT AREA" TO "OTHER SPECIFIED USES" ANNOTATED "BEACH RELATED LEISURE USE"

B 項 ITEM B

由「綜合發展區」地帶改劃為「休憩用地」地帶
REZONING FROM "COMPREHENSIVE DEVELOPMENT AREA" TO "OPEN SPACE"

英附的《註釋》屬這份圖則的一部分，並根據城市規劃條例第 6G 條作出修訂。
THE ATTACHED NOTES ALSO FORM PART OF THIS PLAN
AND HAVE BEEN AMENDED UNDER SECTION 6G OF THE TOWN PLANNING ORDINANCE.

(參看附表)

圖則編號 S/H 17/10 作出的修訂
AMENDMENTS TO DRAFT PLAN No. S/H17/10 MADE UNDER
SECTION 6G OF THE TOWN PLANNING ORDINANCE ON
29 MAY 2009

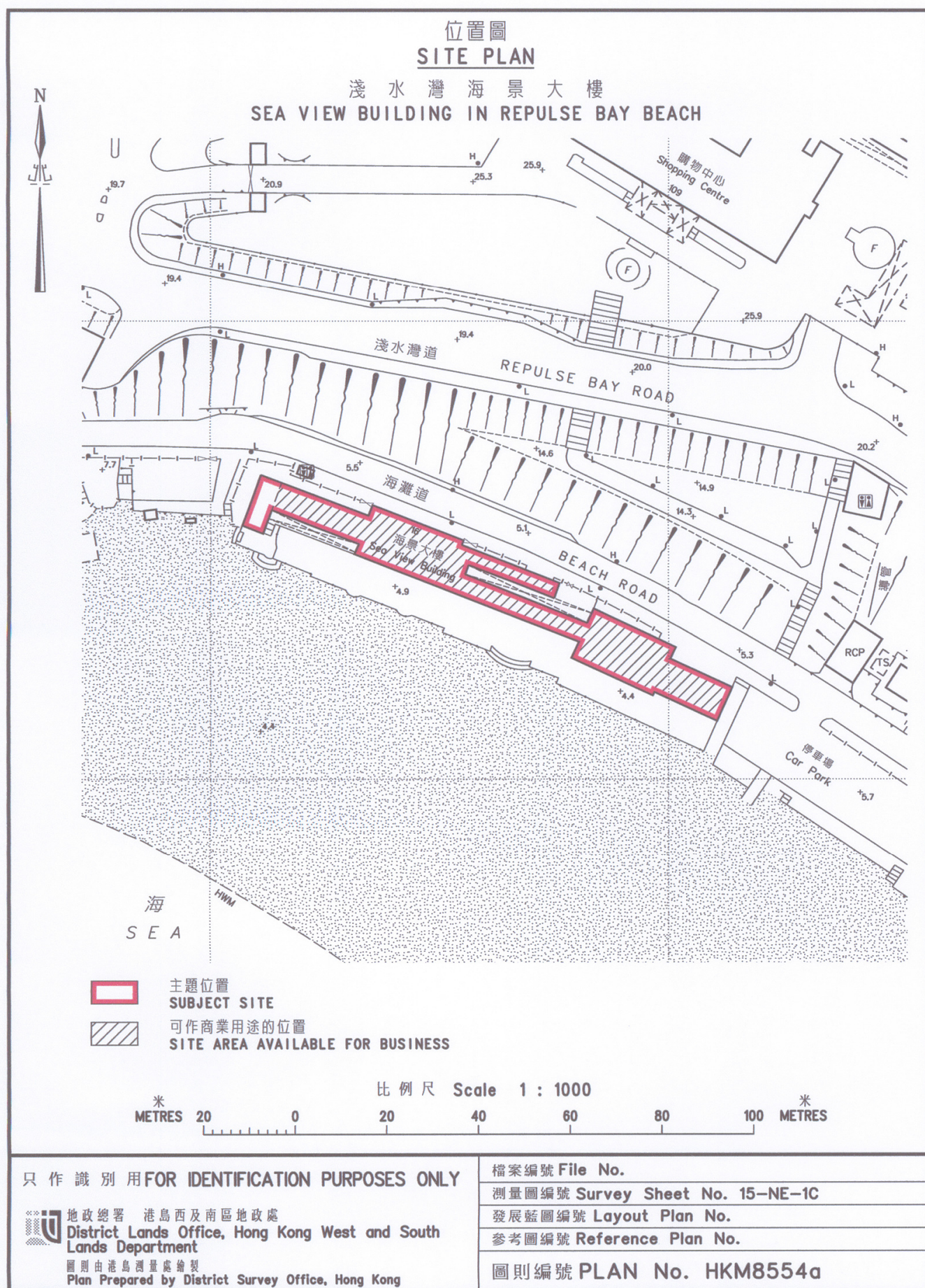
Phyllis Y. S. Wong
Phyllis Y. S. Wong
SECRETARY, TOWN PLANNING BOARD
黃婉霜
城市規劃委員會秘書

需臣山及淺水灣分區計劃大綱草圖編號 S/H 1 7/1 0 的修訂
AMENDMENTS TO DRAFT SHOUSON HILL & REPULSE BAY OUTLINE ZONING PLAN No. S/H17/10

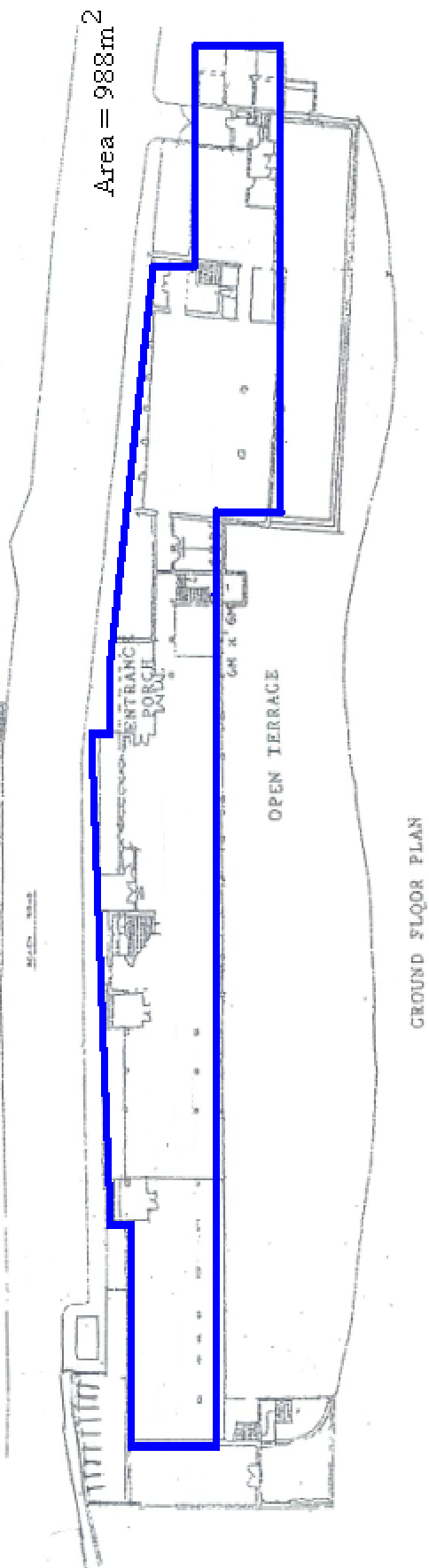
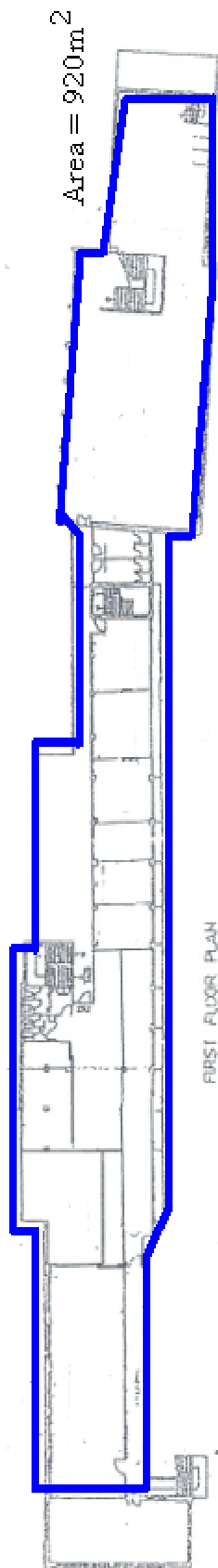
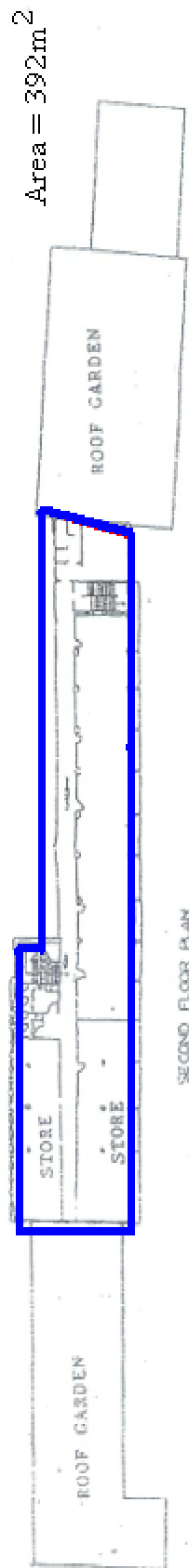
規劃署遵照城市規劃委員會指示擬備
PREPARED BY THE PLANNING DEPARTMENT UNDER
THE DIRECTION OF THE TOWN PLANNING BOARD

圖則編號
PLAN No.

R/S/H17/10 - A2



Floor Plan of Seaview Building



OTHER SPECIFIED USES

Column 1 Uses always permitted	Column 2 Uses that may be permitted with or without conditions on application to the Town Planning Board
<u>For "Beach Related Leisure Use" only</u>	
Barbecue Spot Changing Room Eating Place Place of Recreation, Sports or Culture Playground/Playing Field Public Convenience Public Vehicle Park (excluding container vehicle) Shop and Services	Government Use Hotel Private Club Public Clinic Social Welfare Facility Utility Installation not ancillary to the Specified Use

Planning Intention

This zone is intended to enhance the role of Repulse Bay as a recreational and tourism district, as well as maintaining the existing beach related character of the developments. Future development/redevelopment should blend in harmoniously with the environment in terms of use and design.

Remarks

- (a) No new development, or addition, alteration and/or modification to or redevelopment of an existing building shall result in a total development and/or redevelopment in excess of a maximum building height of two storeys or the height of the existing building, whichever is the greater.
- (b) Based on the individual merits of a development or redevelopment proposal, minor relaxation of the building height restriction stated in paragraph (a) above may be considered by the Town Planning Board on application under section 16 of the Town Planning Ordinance.

**Information of tender exercise for the
Refurbishment, Renovation, Management and Maintenance of
and Operation of Business in
the Seaview Building at Repulse Bay Beach**

CONSULTATION BEFORE TENDER EXERCISE

- 1.1 The ideas, suggestions and proposals collected from the EoI will form part of the basis upon which the Government will formulate a consultation paper for seeking comments from the Southern District Council.
- 1.2 Where necessary, a planning application under Section 16 of the Town Planning Ordinance is required for approval by the Town Planning Board on any proposed uses permitted under Column 2 of the “Other Specified Uses” zone annotated “Beach Related Leisure Use” in the Shouson Hill and Repulse Bay Outline Zoning.
- 1.3 Should the Government decide to proceed with the tender exercise, the ideas, suggestions and proposal collected from EoI and agreed by the Southern District Council will be incorporated into the tender document.
- 1.4 The tender exercise will commence at a later date to be announced by the Government.

INFORMATION TO BE SUBMITTED BY BIDDERS

- 2.1 Subject to the Government’s final decision on the use of the Building and the terms and conditions to be particularized in the tender

document, Bidders may be required to submit, inter alia, the following if the Government proceeds with the tender exercise –

- 2.1.1 in accordance with the tender document, proposals for refurbishment, renovation, management and maintenance of and operation of business in the Building that are permitted under Column 1 and/or Column 2 of the Notes of the “Other Specified Uses” zone annotated “Beach Related Leisure Use” in the Shouson Hill and Repulse Bay Outline Zoning as detailed in Annex A-4. If the proposals fall under Column 2 of the Notes of the “Other Specified Uses” zone annotated “Beach Related Leisure Use” in the Shouson Hill and Repulse Bay Outline Zoning Plan, the successful Bidder would be required to submit the planning application under Section 16 of the Town Planning Ordinance for approval by the Town Planning Board at his own resources. The Town Planning Board will consider a planning application within two months upon receipt.
- 2.1.2 bid price, comprising a Monthly Basic Rent plus a Percentage of Gross Monthly Receipts from operating business in the Building.
- 2.2 The proposals submitted by Bidders should enhance the role of Repulse Bay as a recreational and tourism area.
- 2.3 The successful Bidder will be expected to refurbish, renovate, manage and maintain the Building and operate business in the Building at its own costs. Government may carry out the general repair of the Building before handing over it to the successful Bidder.
- 2.4 Upon the Government’s permission, the successful Bidder has to abide by all the statutory procedures as required under the relevant legislations prior to any refurbishment and renovation work of the Building, including but not limited to the Town Planning Ordinance (Cap. 131), the Environmental Impact Assessment Ordinance (Cap. 499), and the Buildings Ordinance (Cap. 123). The successful Bidder shall observe the provisions of the relevant statutory outline zoning plan and seek all necessary approvals from the relevant authorities, including the Town Planning Board.

- 2.5 Depending on the nature and scale of the proposals, the successful Bidder may be required to produce other assessments such as traffic impact assessment, environmental impact assessment in order to comply with the statutory requirements.
- 2.6 In ordinary circumstances, the successful Bidder will be granted a permit for operation for a maximum of seven (7) years by signing an agreement with the Government.
- 2.7 Assignment of any right or obligation in the agreement by the successful Bidder to any person shall not be allowed.
- 2.8 The Government reserves all rights in deciding on the assessment process and criteria applicable to the subsequent tender exercise.

- END -

DEED OF DECLARATION

THIS DEED OF DECLARATION made the _____ day of _____ 2009

by (1) _____ (name) of _____ (HKID No.) of

_____ (address);

OR (2) _____ (name of company)
whose registered office is situated at

_____ (address);

OR (3) _____ (names and
addresses of partners) carrying on business in partnership at

_____ (address) under the name of
_____ (firm/association);

OR (4) _____ (name) for and on
behalf of _____ (firm/association)
carrying on business in partnership at
_____ (address);

("Proponent")

WHEREAS the Hong Kong Special Administrative Region Government ("the Government") represented by the Director of Leisure and Cultural Services intends to seek ideas, suggestions and materials in the form of Expressions of Interest ("Eoi") in response to the Invitation for Expressions of Interest ("Invitation") on the use of the

Seaview Building ("Building") at 16 Beach Road, Repulse bay Beach in order that the Government is free to collect and use the ideas, suggestions and materials embodied in the Eol for formulating a consultation paper on matters including but not limited to the renovation, refurbishment, management and maintenance of the Building and the operation of business in the Building for the consideration and comments by Southern District Council and for the forthcoming open tender exercise leading to the selection of a successful Bidder (as defined in the Invitation) and in order to allow that successful Bidder to adopt the ideas, suggestions and materials contained in the Eol and specified in the tender documents.

AND WHEREAS this Deed of Declaration is intended to be a binding agreement between the Government and the Proponent to facilitate the adoption of the Eol and avoid uncertainty about possible liability, claims and legal proceedings on Intellectual Property Rights arising from or incidental to the Eol.

The Proponent **HEREBY DECLARES, WARRANTS** and **AGREES** as follows:-

- 1.1 The Proponent understands, admits and consents to the terms hereof as a condition of my/our participation in the Eol exercise and in which I/we intend to participate for the purpose of submitting the Eol for putting the Building to use as required in the Invitation. It is my/our intention that my/our Eol made in response to the Invitation is to be made freely available for use by the Government and/or any other person authorized by the Government including but not limited to Southern District Council and the successful Bidder in the renovation, refurbishment, management and maintenance of the Building and the operation of business in the Building and other similar or analogous projects free of claims of infringement, and will not be subject to any defined or undefined licensing terms of third parties.
- 1.2 The Government will ensure that the Proponents shall commit to this Declaration as a basis for the Government's adoption of any Eol.

INTELLECTUAL PROPERTY

- 2.1 The Proponent hereby **DECLARES** that the Eol is fully original and the Proponent has full capacity and power to make this Declaration including but not limited to the grant of the rights upon the terms and conditions of the Invitation and full right to assign to the Government as herein provided.

- 2.2 As the author of the works in the Eol, the Proponent hereby irrevocably and unconditionally **WAIVES** all his moral rights in respect of the Eol to which he may now or at any time in the future be entitled under the Copyright Ordinance (Cap. 528) and under any similar laws in force from time to time and **DECLARES** that such waiver(s) shall operate in favour of the Government and its licensees, assigns and successors-in-title as from the time of the creation of the Eol.
- 2.3 The Proponent as beneficial owner **ASSIGNS** to the Government absolutely his full Intellectual Property Rights in the works in the Eol free from encumbrances, so as to enable the Government and/or its authorized users to make available, have made, use, import, adapt, or otherwise fully exploit the works in the Eol fully and freely.
- 2.4 The Proponent hereby warrants that he is the author and the sole owner of the Intellectual Property Rights in the works of the Eol and has full power to give the warranties and indemnities contained herein.
- 2.5 The provision of the Eol, the use, possession and exploitation of the Eol and/or the ideas and information contained in the Eol by the Government and its authorized users does not and/or will not infringe any Intellectual Property Rights or any other rights of any party.
- 2.6 The exercise of any of the rights granted under this Declaration by the Government, its authorized users, assigns and successor-in-title will not infringe any Intellectual Property Rights or any other rights of any party.
- 2.7 The Proponent shall **INDEMNIFY** the Government and keep the Government fully and effectively indemnified against all actions, costs, claims, demands, damages, expenses (including but not limited to the fees and disbursements of lawyers, agents and expert witnesses) and liabilities of whatsoever nature arising out of or in connection with any allegation and/or claim that the design, development, use, possession or operation of the Eol infringes any Intellectual Property Rights of any party and also against any awards and costs which may be agreed to be paid by the Government in settlement of any proceedings in this regard (where that settlement has first been proposed or approved in writing by or on behalf of the Proponent).

- 2.8 "Intellectual Property Rights" means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights of whatever nature and wheresoever arising, whether now known or hereafter created, and in each case whether registered or unregistered and including applications for the grant of any such rights.

NO JOINT VENTURE

3. Nothing in this Declaration and no action taken by the Proponent shall be deemed to render the Proponent an employee, agent or representative of the Government or any other proponents, or shall be deemed to create a partnership, joint venture or syndicate among or between any of the proponents or their trustees.

GOVERNING LAW

4. This Declaration shall be governed by and construed under, and the legal relations among the parties hereto shall be determined in accordance with, the laws of the Hong Kong SAR. This Declaration may be asserted against the Proponent as a binding admission in defence of a claim of infringement in any jurisdiction.

REQUISITE AUTHORITY

- 5.1 In the case of the Proponent being a body corporate, it represents and warrants that it is authorized to enter into this Declaration under its constitution. The person executing this Deed of Declaration represents and warrants that he or she is duly authorized to execute this Declaration on behalf of the Proponent under its constitution.
- 5.2 In case where the Proponent is a partnership or other unincorporated association, the person who executed this Deed of Declaration represents and warrants that he/she is duly authorized to so execute this Deed on behalf of all the partners or the association, as the case may be.
6. The provisions of this Declaration shall bind and inure to the benefit of the parties and their successors-in-title and assigns.

IN WITNESS of which the Proponent has set his/her/their hands and seal to this Deed the day and year first above written.

SIGNED SEALED and DELIVERED)
by above-named Proponent)
_____)
_____)
_____)
_____)
(names and HKID Card nos.))
In the presence of)
_____)
_____)
(names and HKID Card no.))

OR

SIGNED SEALED and DELIVERED)
by : _____))
_____)
(name, HKID Card no. and capacity))
for and on behalf of)
the above-named Proponent)
in the presence of:)
_____)
_____)
(name, HKID Card no. and capacity))

OR

THE COMMON SEAL of the)
above-mentioned Proponent (Company))
was affixed pursuant to a resolution)
of the board of directors)
in the presence of:)
_____)
_____)
(name, HKID Card no. of Director))
and _____))
_____)
(name, HKID Card no. of Secretary))