

Hong Kong Land Policy for Bus Depot Allocation: a Valuation Analysis¹

^{2*}Lawrence W.C. Lai and Jason W.Y. Kwong

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ABSTRACT

There is a looming public interest in the land administration dimension of local transportation infrastructure redevelopment. Such interest is conditioned by the belief that franchised public bus companies were able to obtain government leasehold land parcels on favourable terms. By scrutinizing the land title documents using professional valuation techniques and available internal government documents, this paper provides further and better information for evaluating the proposition that the land parcels for depots were obtained on favourable terms from the government. This interdisciplinary paper identifies the actual sources and methods the franchised China Motor Bus and Kowloon Motor Bus obtained depots from the land market to develop and change their use. It also investigates if there is any evidence of government concessions in terms of land values and development permissions. The findings refute the conspiracy thesis that there are such concessions. The case of the franchised public bus companies in Hong Kong should be of wider academic interest not only because, unlike counterparts in many parts of the world, they have been making profits without direct government subsidies. This does not only shed light on whether or not there was any implicit assistance informed by the corollary of the Coase Theorem, but also the conditions for public bus and other public transport modes are able to provide viable alternatives to private transport.

INTRODUCTION

Consider this criticism of the land administration of lease modifications in *Land and the Ruling Class in Hong Kong*:

Through the workings of the lease modification system, developer conglomerates that acquired utility or public service companies have been able to exploit land assets in those companies. *Idled* utility sites or public bus depots have been converted into lucrative residential or commercial properties via using

¹ The broad neo-institutional economic theoretical setting is provided in Lai, Davies and Cheung (2011). For an econometric inquiry, see Lai, Chau and Cheung (2012).

² *Professor, Department of Real Estate and Construction, Faculty of Architecture, University of Hong Kong. E-mail: wclai@hku.hk.

that system. This brings out the question of social justice and efficient use of land, the single most valuable natural resource that Hong Kong possesses (Poon 2005: p.111; italics authors').

The phenomenon of big consortia with a major real estate development wing taking over public utilities (such as shipbuilding and repair; power generation, gas supply, trams, ferries, and buses) and converting sites originally used as depots or plants into property developments for private residential, commercial, and office use has been criticized in such works as *Land and the Ruling Class in Hong Kong* (Poon 2005) for being socially harmful. The critics tended to subscribe to a conspiracy theory of collusion between the government and business interests and have argued that these consortia have no real interest in providing public utility services save for using their land resources and a land bank for real estate redevelopment at the right time.

Regarding franchised public bus transport, which has been Hong Kong's predominant mode of public transportation (by 2009, franchised buses still claimed 33% of internal transport trips, whereas the heavy railways captured an equal percentage), Kowloon Motor Bus (KMB); New World First Bus (NWFB) and its predecessor, the China Motor Bus (CMB), which lost its franchised routes on 1 September 1998; and CityBus (CTB) are all owned either by developers or have a strategic partnership with a developer. The "conspiracy" has been characterized as one in which the holding company or business partner of the franchised bus operator, itself a legally protected monopoly with guaranteed profits under the Profit Control Scheme, can obtain great *concessions* in the lease modification process, which allowed it to acquire cheaper development rights to convert land to higher value uses than to openly compete for land in public land auctions to secure leasehold interests on plots of land. This has marginalized smaller developers that lack land banks.

It is true that several bus depots have actually been redeveloped by way of lease modifications: three CMB depots in North Point and four KMB depots (in Kwun Tong; Nathan Road; Lai Chi Kok, and Yuen Long). Consider the criticism in *Land and the Ruling Class in Hong Kong* of the system of lease modification:

The modification premium would be a negotiated amount and would not reflect the "contest" value as would be present in a public auction...the utility or public service lands were granted for a public purpose, which raises the question as to the operator should be entitled to turn those lands into private use in the first place (Poon 2005: p.111).

The factual question in this context is if there were any true concessions in the lease modification process by the Lands Department when it permitted these depots to be used for non-industrial purposes. A related and more fundamental question is if such concessions formed part of an *implicit consideration* when the original bus franchises were granted.

RESEARCH AND SOCIAL BACKGROUND: CONCESSIONS AS PART OF THE IMPLICIT CONSIDERATIONS FOR WORSENING FRANCHISED MONOPOLY?

There is a body of international literature that has generally praised the Hong Kong economy as a successful case of *laissez faire* – a characterization that was seriously disputed by Poon (2005) and questioned by the late Nobel Laureate in Economic Science, Milton Friedman (2006), shortly before he passed away – and that its bus market is among the most open in the world (Hibbs 1985, 1986). Besides, overseas observers (for instance, Rowlands 2009) generally found the local bus industry to be admirably profitable without the need for direct government subsidies and excellent in terms of service quality.

Interestingly, there has never been any suggestion by critics that the bus franchises, which have, since 1933, always been granted on a geographical or bundled route basis to private firms, be nationalized or replaced by a public corporation, as in the case of London Transport, or “liberalized” into an unprotected competitive market with a lot more operators, as is the case in Britain today. They simply want them to keep fares low and run more buses on all the routes allocated. However, they are now also keeping an eye on how the land holdings of public utilities are transformed into real estate developments, a process which has also happened to British bus garages. The story of the famous Aldenham Overhaul Work of London Transport, opened in 1956, is a case in point.

The idea of the government granting concessions in leasehold land interests as part of an implicit consideration as a *quid pro quo* for the loss of the full protection of franchise interests arose from the observation that over the years, the government’s safeguards against competition for franchised bus companies (originally KMB and CMB) that initially enjoyed a geographical franchise³ (KMB on the Kowloon Peninsula and outlying islands and CMB on Hong Kong Island) from 1933 have been successively attenuated by the legalization of “public light buses” (PLB) in 1969 (Leeds 1986: p.44); the introduction of franchised maxicabs (“green minibuses”) and later non-franchised buses/coaches operating under “passenger service licences” (PSLs)⁴ under Section 4(3) of the *Public Bus Services Ordinance* (Chapter 230, Laws of Hong Kong); and the ever expanding, government-owned, cross-harbour mass transit railway network (MTR), which recently absorbed the Kowloon Canton Railway (KCR). The most persuasive evidence of the deterioration of each bus company’s full monopoly position is the formal shift from

³ See Figure 4 for mapping details.

⁴ A PSL can be issued for a great variety of services, namely “a tour service,” “an international service,” “an hotel service,” “a student service,” “a resident’s service,” “a multiple transport service,” and “a contract hire service” (Transport Department 2012). There is an element of “co-opetition” in that franchised competitors provide essential new market information to the franchised bus companies about the potential of new franchised routes (Lai 2004) and franchised companies obtain PSLs to operate some non-franchised public bus routes.

geographical franchising to route-based franchising, and the official proclamation in the White Paper on Internal Transport Policy of 1979, which ensued from the Comprehensive Transport Study (CTS) commissioned in 1973 and stated that public rail transit shall be the dominant mode of public land transportation, in which case planned development will focus on mass transit stations.

The “route franchise” way went below 100% protection of a franchisee because the routes were opened to competition from other franchisees, PLBs, maxicabs, and PLS buses/coaches, which could operate rival routes that ran parallel to, overlapped, bypassed, crossed and re-crossed, or went beyond the franchised lines. The route franchise only safeguarded the franchisee from incursion into its assigned terminals and stops. The original geographical protection was like a blanket that ousted competitors, whereas the route franchise system was a number of protected dots, outside which competitors under PSLs could run bus services.

Theoretically, the concept of *implicit consideration* was derived from the theory of *implicit contract*, which was first developed in *labour economics* to explain why employers do not reduce wages when there is a slump. Neo-institutional economists have found “implicit institutions” and “implicit relation contracts,” or “implicit contracts,”⁵ to be significant phenomena in economics (see, for instance, Kasper and Streit 2001: pp. 99-100, 207). While these institutions and contracts are generally conceived within organizations, it is possible to expand their concept to cover relations between contracting parties, as in the case of labour economics or franchise agreements, which is a subject matter of this paper. The benefits of such contracts are not legally enforceable, as there is no explicit oral or written promise or law stating that they must be, but they are experienced by parties to a contract to the extent that if such benefits are discontinued, then a party may seriously reconsider if it wants to renew the contract. The idea of an implicit contract has been subsequently adopted by public economists to deal with the practical issue of compensating regulated utility companies for sunken investment costs lost when their markets are opened by the government. It has been argued that under the circumstances, there is an implicit contract such that compensation is warranted (Boyd 1998). This paper seeks to transfer the theory of implicit contract to public bus franchising under the terminology of implicit considerations.

The Hong Kong Government enforces bus franchises for its franchisees while, at the same time, principally prosecuting operators of unauthorized private bus services and other types of authorized bus services that pick up or drop off passengers in franchised

⁵ The term, *implicit contract*, is not used to avoid entangling the analysis, which is qualitative, with high mathematical exposition in the literature of implicit contract. A contract must have “consideration,” but not *vice versa*. The concept, *implicit consideration*, advanced here can be said to be “Coasian” in the sense that it is a means of reducing the transaction costs to better fulfill an existing contract – the explicit franchise agreement.

bus stop zones. What are the implicit benefits besides such an explicit form of contractual protection?

A good example of the implicit benefits granted to franchisees is immunity from prosecution if a bus carries too many passengers; is not parked within an authorized bus park zone, or emits too much smoke. Such a favour has never been granted to taxis or non-franchised red maxicabs.

Another good example of a benefit conferred under an implicit contract, which was discovered by Lai, Davies, and Cheung (2010), is that the franchisor, the state, would “automatically” reserve land, as well as plan for and build bus terminals in major catchments for passengers (i.e., at both ends of the franchised routes). Theoretically, there is no need for such terminals, and the bus can simply stop along kerbside bus stops where there is a need to let off and/or pick up passengers. Practically, a terminal allows for better bus scheduling, cleaning, and re-servicing, as well as offers a rest area for drivers.

This paper seeks to cover three basic areas of public policy and theoretical concern rarely jointly considered in the literature on the geography of public transport (**Figure 1**), namely legally created or franchised monopolies, land administration of a leasehold system, and planning controls. The first concern is economics, and it involves such policy issues as the proper regulation of public utilities that are legally protected; privatization (proponents of which rely on the findings of constant returns to scale); efficient pricing for decreasing costs or natural monopolies by Nobel laureate Ronald H Coase (Coase 1946); and theoretical issues such as the genesis of the government-protected monopolies (Coase 1959; Lai and Yu 2002) and their efficient pricing (Lai et al 2008a, 2008b).

The second theoretical concern is the question of the lease modifications of leasehold interests controlled by the government. Hong Kong has practiced a leasehold land regime since it was colonized in 1841, and this, together with statutory zoning plans, forms a peculiar dual system of development control (Lai 1998, 2010). While the issue in focus is surely of great local political interest, as indicated by a recent query by a Legislative Councillor who questioned bus depot allocation policies (Hong Kong Special Administrative Government 2011), it has ceased to be a parochial Hong Kong matter since China adopted the equivalent system for its “land use rights” reforms in 1993 (Lai 1995). Above all, according to the corollary of the Coase Theorem, variation in institutional arrangements (in our case ways of allocating government leasehold land interests) would affect efficiency in the use of resources. Therefore, this study is a contribution to Coasian economics.

The third concern is the operation of the statutory planning system in rationing redevelopment rights, which, in the case of Hong Kong, means an additional hurdle to redevelopment according to the Crown/Government Leases.

The looming criticism of developers in relation to the use of land assets of bus operators should not be taken into isolation, but interpreted from a public policy development point of view of the wider constitutional context of post-colonial Hong Kong, which has witnessed “rising public mistrust of the government and intensifying grassroots grievances” (Lau and Kuan 2000: p.1024). It is hoped that this paper would provide the public and policymakers with a better-informed picture of a key dimension of everyday life in Hong Kong – bus transportation – as well as its real estate implications.

Figure 1 about here

The local public policy significance of this paper should be viewed in light of a certain kind of public opinion with a sentiment that is highly critical of developers as anti-social oligarchs controlling the economy and helping to drive up property prices. The public policy research project⁶ on planning conditions for the development of public facilities and open spaces in private developments (Lai 2009; Lai et al 2007; 2009) has unintentionally added to the media literature on certain business practices of developers after a press conference in 2008. It so happens that these developers are also members of consortia that hold key public utilities (with land assets for plants) protected by the government under legislation and franchised conditions. Several opinion groups (such as “Myradio” and “Left 21”) have criticized the Town Planning Board for favouring large developers. Their views were certainly conjectural, but there is a need to rigorously investigate how this relates to bus depots.

The idea of unifying these concerns is the notion of an *implicit consideration* taken on a *quid pro quo* basis by the franchisor/government in return for a franchisee’s services in uncertain market conditions. The difficulty of this concept is what actually constitutes implicitness. If a condition is an express term of a contract or lease, then it is definitely not implicit, but explicit. The question is whether something observable can be treated as a condition of an implicit contract or a merely accidental fact. Help is available for eliminating those observations, which are indeed part of the applicable contracts (and hence, not implicit) or those that cannot be found to be related to the maintenance of the franchise agreements.

However, the better answer to this question is that the purpose of using the idea of an implicit consideration is a convenient way (there are surely other ways) of diagnosing the criticism of the existing land administrative practice. Seeking to verify its existence by looking into the terms of applicable contractual documents is a way of evaluating the practice because if the reality was that the concessions were actually contractual, then the focus of the public should not be on land policy, but on public utility franchising. If

⁶ PPR HKU 7023-PPR-2.

the concessions turn out to be something other than what the franchise conditions state, but clearly refer to the franchise agreements, then the case of implicit consideration would not be refuted as a proposition.

METHODOLOGY

This paper basically adopts a case study approach that relies on the *textual* analysis of public documents, particularly the franchise conditions, Crown Lease terms and Conditions of Surrender, and a Re-grant and *contextual* analysis of these documents. The case study approach is favoured by neo-institutional economist Coase (1959, 1974, 2000) in studying transport matters from an institutional economic perspective. The textual and contextual interpretations require some training in law, economics, and planning. Besides, this case study is intended to engage the surveyor and hence details essential for a skeleton a valuation report are provided.

The specific objectives of this case study are to find out firstly if the *conditions of the franchises* of KMB and CMB from 1933 onwards provide specific requirements or concessions regarding their land acquisitions for garages, depots, and workshops; secondly whether the *terms of the Crown (Government) Leases* for KMB and CMB's garages, depots, and workshops provide specific concessions regarding land acquisitions for subsequent modifications to favour other uses; thirdly if the *terms of the Conditions of Modifications/Surrender and Re-grant* of the land originally for KMB and CMB's garages, depots, and workshops enjoy specific concessions in terms of premia or other conditions compared to those of comparable sites subject to lease modifications; and lastly whether the *planning permissions* for changing the use of land are easy for bus companies to obtain.

Figure 2 below shows the steps in the analysis. The specific research objectives (denoted by an S) for a comprehensive study fall into three stages of analysis. The first stage covers the original Crown Leases for the depots. The key question is whether their allocation or any of their terms represented a contractual or implicit concession to bus operators. This is the first round of verifying the existence of an implicit consideration.

The second stage covers the process of lease modification. The key question is whether such a modification in itself or any of the terms under the Conditions of Surrender and Regrant were tantamount to a contractual or implicit concession to bus operators. This is the second round of examining if any implicit consideration existed.

Figure 2 about here

The final stage deals with the time involved in the planning process for and the environmental and operation consequences of redeveloping and relocating bus depots. While it goes beyond the theoretical question of implicit consideration granting, this is

essential for completing a study of a major type of regulated utility from a public interest point of view.

However, due to time restrictions, this paper shall limit itself to addressing the first research question. However, it goes beyond the scope and depth of the work of Lai et al. (2012) in terms of valuation analysis.

The work of Lai, Davies, and Cheung (2010) *partially* simulated Stage 1 of **Figure 2**, which is the focus of this paper. Its key finding was that the provision of depots was actually a requirement (in other words, a burden) under franchise conditions. The franchisees had to bid in the open land market for their depot sites, and there was no obligation on the part of the government to make provision for these sites. Under Section 19 of the *Public Bus Services Ordinance*, the current law, introduced one day before the return of Hong Kong to China, a grantee of a franchise “shall provide and maintain such premises as the Commissioner considers necessary for construction, repair and maintenance of vehicles used by the grantee in connection with its franchise and for the parking of all such vehicles when they are not in use.” This mirrors the prevailing franchise licence term requiring the bus company to obtain sites (depots) for the construction, repair, and maintenance of vehicles. However, there was evidence of *implicit* government support for the operation of franchise buses by way of a public provisioning of land, town planning, and the construction of bus termini in areas with heavy patronage, notably franchised ferry piers and public rental housing estates.

Yet, there was no evidence that the bus and ferry operators were favoured when they acquired the land required to build their depots or shipyards (Lai, Davies, and Cheung 2010; Sham 2007). Their investigation was limited in time span and did not go beyond 1972, when the first cross-harbour tunnel began operations and broke the geographical monopolies of both bus companies by allowing each company’s “tunnel buses” to invade the originally insulated domain of the other. Besides, their research was constrained by limitations in funding, which prohibited a full investigation of the relevant Crown Leases of other significant land documents, notably the Conditions of Sale and archive materials.

The general hypothesis is that the government favoured the bus companies by implicit contract. The four specific hypotheses that correspond to the four specific objectives are:

Hypothesis 1: There is a provision in the franchise agreement that states that the government would grant the franchisee sites for depot use.

Hypothesis 2: The bus depots were mainly allocated by the government to the bus companies through private treaty grants (PTGs). When they were obtained through land auctions, competitors were limited to franchised bus operators in terms of the Conditions of Sale.

Hypothesis 3: The bus company did not need to pay any premium when the terms of the Crown Leases, which restricted use to “industrial only,” were modified for other uses at any site bought from the government or acquired from another source.

Hypothesis 4: Planning permission for a change in the use of a bus depot site, if required under the Town Planning Ordinance (Chapter 131, Laws of Hong Kong), was easily obtained by the bus company.

The first specific hypothesis was to evaluate if the availability of land to the bus companies was something to be undertaken by the state. It would be rejected if a bus company had a contractual or licensed entitlement to obtain land from the government.

The second specific hypothesis was to look into the actual mode of land acquisition by the bus company. Its structure assumed that the government would either bestow upon the bus company sites for depot use or severely restrict entry to competition if land parcels were allocated in auctions.

The third specific hypothesis was to test if the government gave preferential facilitation of a change in the use of depot sites. It would be rejected if a bus company had to pay a “modification premium” for depot land obtained from any source, as in the case of any private landowner who wishes to modify the land use restrictions in his/her land lease. The logical process of evaluating Hypotheses 2 and 3 is presented in **Figure 3**.

Figure 3 about here

The last specific hypothesis was to test if the government gave preferential facilitation of a change in the use of depot sites. It would be rejected if the statutory development applications for planning permission (Lai, Ho, and Leung 2010) were always permitted in the first instance.

Corresponding to the three research objectives are four types of data that had to be obtained. Their requirements, sources, and resource implications are stated in **Table 1** below:

Table 1 about here

In the drafting of this paper, scholars and experts in the field of bus transport operation, franchising and regulation and land administration were consulted. In the study, a bus depot is defined as a permanent site with building(s) and facilities to inspect, clean, fabricate, repair, and maintain buses. Sites obtained from the government that lacked major building works for parking under short term tenancy were not considered, as no

exhaustive official record of such during the entire study period was maintained or found.

FINDINGS AND INTREPRETATIONS

The first major discovery was that no franchise agreement provided a government guarantee that Crown land would be made available to the franchisee for use as a garage or depot. On the contrary, the bus company had a duty to maintain its own garages. **Hypothesis 1** was therefore refuted. The finding of Lai, Davies, and Lorne (2011) was affirmed.

The second fact established was that there were three ways a bus company could obtain land for bus depot use. The first method was to purchase sites in the second-hand land market from another private landowner. KMB's depots in Lai Chi Kok (New Kowloon Marine Lot 3) and Kwai Chung (Kwai Chung Town Lot 215), both having been redeveloped for non-depot uses, were obtained this way. The seller of the first depot was Dairy Farm; the sellers of the latter were owners of agricultural (Demarcation District) lots in Yuen Long. The second method was to obtain land from the government through public auctions. This method was established as early as 1928, before KMB or CMB obtained their geographical franchises, when KMB won the bid for its depot in Mong Kok (Kowloon Inland Lot 2111). This method was formally affirmed in 1958 when the Colonial Secretariat turned down a request by KMB to obtain land through a grant from the New Territories Administration (Lai, Davies, and Cheung 2011), and was replaced in 1979, four years after geographical monopolies were formally superseded by route franchising.

The second method was initiated by a bus company, which proposed to buy a site under Crown ownership through a legal representative. The government then valued the land and determined an "upset price" for an auction, chose a date for a public auction, drafted a set of "Conditions of Sale," and auctioned the land publicly on the appointed date. The bus company could only obtain the site in question if it was the highest bidder. Bidding could be in cash or Letters A/B issued by the government in exchange for land held by indigenous villages (Nissim 1998). Our research identified 16 depot sites obtained from public land auctions. Two of these, Mong Kok (Kowloon Inland Lot 2111) and Camp Street (New Kowloon Inland Lot 2622), were purchased before World War II, while the Kwai Chung site (Kwai Chung Town Lot 215) was obtained using Letters A/B. KMB's Yuen Long depot (DD120 Lot 3543) was purchased from private landowners. **Photo 1** shows the three bus depots in North Point obtained by CMB.

Photo 1 about here

The third method, currently still in use, was for the bus company to obtain land through PTG. In our study, only two permanent KMB depots were obtained this way – namely the depots in Tuen Mun (Tuen Mun Town Lot 82) and Kowloon Bay (New Kowloon

Inland Lot 5801). This last method was first adopted in 1979 by the government to allocate the Tuen Mun Town Lot 82 to KMB. This happened four years after the formal dissolution of the geographical franchises in 1975 by a new Public Omnibus (later Public Bus) Services Ordinance (Chapter 230, Laws of Hong Kong). The key findings on the locations of bus depots, price considerations paid by the bus companies, and present land uses are presented according to the method of their acquisition: government auction, the second-hand market, and PTG, in **Tables 2a, b, and c**, respectively.

The bus depots identified were plotted on a recent map of Hong Kong in **Figure 4**, which demarcates the *de jure* and *de facto* geographical franchise zones of the two bus companies from 1933 to 1972.

The third finding was that there was no evidence of any post-war government preferential treatment in any of the methods of depot acquisition.

A total of 16 sites were bought from the government by both bus companies for depot use. The key data for the valuation of four of them (Items 9, 11, 13, and 14 in Table 1) could not be found, even after we had exhausted our search of PRO records, due to the loss of official files or the use of Letters A/B in the land transactions. Each of the remaining 12 depots was obtained through a public land auction, and hence, there was open and fair competition for them. Indeed, the *actual transaction prices were greater than the upset prices* in seven out of the 16 sites examined. They were the To Kwa Wan depot (Kowloon Inland Lot 6393), which KMB bought in 1953; the North Point depot (Inland Lot 7178), which CMB bought in 1954; the two Kwun Tong depots (Kwun Tong Inland Lots 192 and 240), which KMB bought in 1961; the Wong Chuk Hang depot (Aberdeen Inland Lot 339), which CMB bought in 1970; and two of the three Tuen Mun depots (Tuen Mun Town Lots 80 and 81), which KMB bought in 1974. This means that the bus companies had to compete with other commercial or industrial operators for land and no taxpayers' subsidies were involved. The upset prices of the other five sites bought through public auctions were also considered reasonable after taking into account "comparables" in neighbouring or similar industrial sites.

The comparables were selected and the conditions of sale obtained and examined. The opinion of a chartered estate surveyor was that for each depot, the upset price was at the market level. The "comparables" were selected primarily on the basis of geographical characteristics from land parcels on the same street block or locality, which were, more or less, of the same size and characteristics as those of the bus depot on the same street block or area. These parcels were then screened along with those for which the conditions of sale imposed the same type of land use and development restrictions AND were bought at a time closest to the time of the purchase of a comparable bus depot being retained. Then the per-metre value of the bus depot was compared to those of its comparables. When no comparable could be found in the same locality, land parcels in districts subject to the same land use restrictions sold at around the same time were chosen as comparables. In our study, the land values of five sites

(Items 1, 2, 3, 5 and 12 in **Table 1**) sold at upset prices were found to be at market levels.⁷

After examining the post-war sites auctioned and obtained by the bus companies, their conditions of sale, and their subsequently issued Crown Leases, we found no restriction of use for only franchised bus operators, but rather general industrial uses. This affirmed that there was no artificial restriction on the status of potential competitors to limit competition to CMB and KMB. Apparently, when KMB applied to obtain a bus depot in 1958 by using the third method, it had experienced strong competition for the To Kwa Wan depot and known about the allure of the North Point depot (Inland Lot 7178) during an era in which Hong Kong worked hard to gain an international reputation as an export-led manufacturing economy. The government, however, upheld the public land sale method until 1979 before switching to PTG. The PTG, unlike what some members of the public might think, was, according to our analysis, not a gift because not only was the bus company required to and did pay an assessed land premium⁸ but also because the terms of the land were tied in with the terms of the franchise so that the land would revert to the government as soon as the bus companies lose their route franchises. Section 6, “Grants by Private Treaty” in the restricted *Land Administration Policy* of the Hong Kong Government (1986), which was prescribed from as early as 1982 until mid-1986 for sites that would house public utilities, had to be valued at full market rates. “Sites might be granted to public utility companies for the utility purposes covered by the franchise subject to the company undertaking not to dispose of any land granted by Government or acquired on the open market and already used for such purposes without Government’s permission” (Para 28: Hong Kong Government 1986: 17).⁹ However, the same document also stated that CMB had refused to grant the undertaking and KMB’s undertaking was no longer valid. Also, future PTGs to KMB required the “Executive Council’s approval” (Para 28: Hong Kong Government 1986: 18). Pending further and better research on the evolution of this policy beyond the resources of the authors, we believe that the government has always been keen to ensure that there was a clear policy intent of not permitting concessions to franchised bus companies in the form of land grants. Any allegation of a conspiracy must be viewed in light of this clear policy.

Based on the above observations, **Hypothesis 2** is refuted. From 1928, before the creation of a franchised bus law, to 1979, well after the *de facto* breakdown of each bus company’s geographical franchise, the government did not grant any more land to

⁷ The “comparables” for five sites were, respectively: (1) KIL 9174 & 9175; (2) IL 7178, IL 7666, IL 7359, IL 7860, IL 7733, IL 7732, IL 6895SA, IL 6876, and KIL 192; (3) IL 6155, NKILs 2622, 2621 & 2623 NKML 3, & NKPIER No. 8; (5) AIL 340, AIL 341, AIL 342, AIL 343, AIL 344; and (12) KIL 6393, IL 7069, KIL 6053, KIL 6088, IL 6895.

⁸ Based on the “comparables” obtained in the same way as those for auction sites, it was judged that the premia of the sites were a discount of the market values of those comparable sites free of encumbrances.

⁹ “Department of Building and Lands file reference” (16) & (40)1 in BLD 1/1307/82 II. The date of the policy for “Full Market Value Grants” was stated to be “1.6.1986”.

either bus company. Instead, it sold land in public auctions in which contenders often bid up land prices, and there was an incentive for the bus companies to press the government to limit competition. But the government stood firm. Therefore, there was no case to make that there was government preferential treatment or concessions to the bus companies prior to 1979. When the government adopted the new policy of PTG in 1979 – 21 years after KMB attempted to persuade it to do so – the terms of grant stipulated that the land would revert to the state when the company loses its franchise.¹⁰ In the same vein of the concept of implicit contract articulated by Lai, Davies, and Cheung (2011), we considered the mechanism of a grant as a possible *quid pro quo* to the bus companies to compensate for losing their geographical monopolies. The route franchising system is, upon closer analysis, too open to competition by PLBs, which, as mentioned, emerged in the late 1960s illegally and were regulated by the 1970s. However, the greatest rival to the public bus is the Mass Transit Railway, which came into the scene from 1979.

The third finding, as shown in the last column of **Table 2a**,¹¹ was that the bus companies had to pay substantial lease modification premia to change the user restrictions. A total of six depots were redeveloped after lease modifications and/or land exchange. These included CMB's three depots along or near Kings Road in North Point (Inland Lots 7550, 5532, and 7178), one of KMB's Kwun Tong depots (Kwun Tong Inland Lot 192), KMB's Kwai Chung depot (Kwai Chung Town Lot 215), and KMB's Yuen Long depot (DD120 Lot 3543). None of these sites was obtained by way of a PTG and all were either bought from the government through auctions or from private owners. Comparables were considered, and the premium was not considered unreasonable. **Hypothesis 3** is, therefore, refuted.

The fourth discovery was that there was no sign of a universal grant of immediate planning permissions for planning applications for a change in use. Not all of the six planning applications by CMB and KMB were instantly approved.

Immediate planning permissions were granted to KMB's Kwun Tong depot (Kwun Tong Inland Lot 192) for each of the four rounds of applications (first round with Kwun Tong Inland Lot 240) in April 1992, September 1994, November 1994, January 1997, and February 1998; KMB's Kwai Chung depot (Kwai Chung Town Lot 215) in May 1994;

¹⁰ As for the PTG for Tuen Mun (TMTL 82), the three comparables in Kwai Chung (KCTL 264, KCTL 267, and KCTL 258) indicated that in 1973, the accommodation value (AV) of a car park site was about 38% of the industrial site. It was visualized that the ratio would be lower had the car park been confined to accommodating cars without car repair facilities. A comparison of the subject land and the comparables in Tuen Mun indicated that the AV of the bus depot site was about 18% of the industrial site. Taking into consideration the differential between the business of parking private cars and buses, the timing factor, the location of the depot, and the industrial land and land grant being conditional upon the licencing of the omnibus services, the premium paid for the subject lot should represent the prevailing market value. As for the PTG for Kowloon Bay (NKIL 5801), the corresponding percentages of the AV discount were 38% and 44.77% based on comparables NKIL 6306, KCTL 264, KCTL 267, and KCTL 258.

¹¹ All dollars are in Hong Kong Dollars (HKD). (1 USD = 7.8 HKD).

CMB's North Point depot (Inland Lot 8849, re-granted upon the surrender of Lots 5532 and 7178) in December 1995; and King's Road (Inland Lot 7550), which was earlier approved in the first instance in two rounds (March 1994 and December 1995). The second round of planning applications for the Kwai Chung depot, however, failed. Three other cases suffered initial and even subsequent rejection. The planning application for CMB's North Point depots (Inland Lots 5532 and 7178) succeeded during its review application in September 1992. But KMB's Lai Chi Kwok depot's (NKML3) third, fourth, fifth, and sixth rounds of application (in February 1998, August 2000, July 2001, and February 2002) were all approved in the first instance after two previous unsuccessful applications and reviews (in July 1996 and December 1995).

Therefore, **Hypothesis 4** is refuted. However, while one could not say that these few applications were exceptionally difficult to approve (and in any event, the conversion of an industrial use into a non-industrial use should not have been too controversial on environmental planning grounds), one may still say that it was *relatively easy* for KMB and *especially* CMB to get through the planning system, despite what Lai and Ho (2009) found. The easier CMB land conversion, however, could not reasonably be argued to be an anticipatory compensation for her loss of 36 lucrative routes in 1993 on a close analysis of the institutional design of the Town Planning Board. Transport Department was only one voice in the Town Planning Board, an independent statutory body subject to strong influence by Planning Department.

CONCLUSION AND DISCUSSION

All four hypotheses on possible government preferential treatments of franchised bus companies were refuted. (In other words, Stage I in Figure 2 was completed.) All in all, there is evidence from franchise terms, land transaction mechanisms, and other records to defeat the conspiracy theory about government concessions to bus companies when it allocated individual bus depots, but this matter should be subjected to a further valuation study (Stage II in Figure 2) on the premia of lease modifications for a few depots for the sake of comprehensiveness. Any possible concession under PTG could be treated as an implicit consideration of the less exclusive route franchising system, which has been in place since 1975. However, this is just a conjecture, and even if it were valid, it has little significance in terms of numbers, as only two KMB depots were involved. In any event, s.20 of the *Public Bus Services Ordinance* expressly disallows the use of bus depots for non bus operational uses or for carrying out such uses outside these depots so that bus depots could be "idled" for other purposes.¹² Poon's (2005) criticism could not be substantiated yet.

"Except with the written permission of the Commissioner, a grantee shall not: (a) use any premises provided and maintained in accordance with section 19 other than for the construction, repair, maintenance or parking of vehicles used by the grantee in connection with its franchise; or (b) undertake or permit to be undertaken the construction, repair or maintenance of vehicles used by the grantee in connection with its franchise, or the parking of such vehicles when they are not in use, other than in premises provided and maintained in accordance with section 19."

Besides the two subsequent stages of research shown in **Figure 2**, the effect of the 1975 changes to the land allocation policy on the number and spatial distribution of permanent bus depots, as well as open air parking yards under STT, is an interesting economic geography question and this has been covered by Lai et al (2013).

Our initial presumption, informed by a Coasian theory of *implicit considerations*, shaped the hypotheses tests. However, the evidence collected indicated that other than the replacement of the public auction mode by the private treaty grant mode in land administration, there was no demonstrated preferential treatment of the franchised bus companies. Besides the provision of planned bus termini, the stated change in the land policy was an implicit consideration that did not involve any equity issue, as redevelopment was ruled out. How does the new depot allocation policy fare economically? On one hand, one may argue that this ban on redeveloping sites obtained by way of grant would not be conducive to economic efficiency, as the bus companies and the government would lose valuable intelligence on factor (land) costs and the development potential of the land. On the other hand, as a price-regulated monopoly, this arrangement may stimulate Schumpeterian innovation, which involves a downward shift of the cost curve (Lorne and Lai 2011, Lai and Lorne 2012). Empirical evidence for this was provided by Lai, Chau, and Cheung (2013), who discovered that both franchised bus (as well as ferry) companies enjoyed scale economies.

It is worth examining the global picture of acquisition, decommissioning, and redeveloping depots in terms of timing, sequence, and location in relation to the actual operational needs of the bus companies. The results of such an examination would alleviate doubts about the strategic behaviour of bus companies in obtaining new depots by PTG and/or STT to replace those used for redevelopment. This would enable us to judge if any of the redeveloped depots was actually “idled” and reallocated for real estate profits or really redundant/in surplus and, hence, ripe for redevelopment. For such an examination, however, the collection of actual bus fleet and operational data is essential. Due to resource limitations, we did not attempt this task, which awaits further and better inquiry.

This case study should have important public policy implications not only for land administration practices, but also for the regulation of franchised transportation informed by the corollary of the Coase Theorem. It should also make a theoretical contribution to the economic understanding of the genesis and evolution of the franchised public transport operation as a legally protected monopoly.

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References

Boyd J (1998), The 'Regulatory Compact' and Implicit Contracts: Should Stranded Costs be Recoverable? *The Energy Journal*, 19:3, 69-83.

Coase RH (1946), The Marginal Cost Controversy, *Economica*, 13:51 (August), 169-182.

Coase RH (1959), The Federal Communications Commission, *Journal of Law and Economics*, 2 (October), 1-40.

Coase RH 1974. The Lighthouse in Economics, *Journal of Law and Economics*, 17:2, 357-376.

Coase RH (2000), The Acquisition of Fisher Body by General Motors, *Journal of Law and Economics*, 43:1 (April), 15-31.

Friedman M (2006), Death of the Hong Kong Model, *The Wall Street Journal, Asia*, October, 6-8.

Hibbs J (1985), *Regulation: an International Study of Bus and Coach Licensing*. Cardiff: Transport publishing projects.

Hibbs J (1986), International Comparison of Bus Licensing, *Transport Reviews*, 16:3, 259-272.

Hibbs J (2003), The Bus Industry: Franchise and the Loss of Freedom, *Economic Affairs*, 23(4), 46-47.

Hibbs J (2007), The Bus Industry in Danger, *Economic Affairs*, 27:4, 74-76.

Hong Kong Government (1986), *Land Administration Policy*, Hong Kong Government, Hong Kong.

Hong Kong Special Administrative Region Government 2011, *LCQ12: Land granted to franchised bus companies (Online)*
<http://www.info.gov.hk/gia/general/201110/26/P201110260207.htm> (accessed 17.5.2012).

Kasper W and Streit ME (2001), *Institutional Economics: Social Order and Public Policy*. Edward Elgar, Cheltenham.

Lai LWC (1995), Some Theoretical Issues of Land Use Rights Reform in China: Some Theoretical Issues, *Land Use Policy*, 12:4, 281-289.

Lai LWC (2000), Enforcement against Alleged Breaches of Crown (Government) Leases in Hong Kong Industrial Premises, *Property Management*, 18:1, 63-73.

Lai LWC (2004), Spontaneous Catallaxis in Urban and Rural Development under Planning by Contract in a Small Open Economy: the Ideas of Hayek and Mises at Work in Town and Country Planning in Hong Kong, *Review of Austrian Economics*, 17:2and3, 155-186.

Lai LWC (2009), Bridges Too Far, Garden Too Secret: the Double Danger of Disallowing Planning Conditions to Avoid Technical Problems and Perpetuating a Defensive Mentality, *Planning and Development*, 25:1, 23-25.

Lai LWC (2010), A Model of Planning by Contract: Integrating Comprehensive State Planning, Freedom of Contract, Public Participation and Fidelity, *Town Planning Review*, 81:6, 647-673.

Lai LWC and Ho DCW (2009), *A Study of the Hong Kong Development Approval Process: the Road to Sustainable Development?* Bauhinia Foundation Research Centre, Hong Kong.

Lai LWC and Hung CWY (2008), The Inner Logic of the Coase Theorem and a Coasian Planning Research Agenda, *Environment and Planning B: Planning and Design*, 35:2, 207-226.

Lai LWC and Lorne FT (2012), Schumpeterian Innovations, the Coase Theorem, and Sustainable Development: a Hong Kong Case Study of Bus Innovations, in David Emanuel Andersson ed., *The Spatial Market Process, Advances in Austrian Economics*, 16, 141-179.

Lai LWC and Yu BT (2002), The Hong Kong Fish Marketing Organisation: a Case Study of the Financial Problem of a Legal Monopoly, *Pacific Economic Review*, 7:1 (February), 85-96.

Lai LWC, Davies SNG, and Cheung PACW (2011), Government Transport-Land Use Planning and Development by Implicit Contract for Franchised Buses and Ferries in Hong Kong: 1933 to 1972, *Planning Practice and Research*, 26:4, 435-464.

Lai LWC, Davies SNG, and Lorne FT (2008a), The Political Economy of Coase's Lighthouse in History (Part I): a Review on the Theories and Models of the Provision of a Public Good, *Town Planning Review*, 79:4, 395-425.

Lai LWC, Davies SNG, and Lorne FT (2008b), The Political Economy of Coase's Lighthouse in History (Part II): Lighthouse Development along the Coast of China, *Town Planning Review*, 79:5, 555-579.

Lai LWC, Ho DCW, and Leung HF (2010) *Change in Use of Land: A Practical Guide to Development in Hong Kong*. Hong Kong University Press, Hong Kong.

Lai LWC, Liu KT, and Yung P (2009), Planning Conditions for Comprehensive Development Area Zones: a Technical Note on a Survey on Factual Compliance and the Deposit of Associated Master Layout Plans at the Land Registry, *Planning and Development*, 24:1, 2-14.

Lai, LWC, Yung P, Li RYM, and Ho DCW (2007), The Private Supply of and Public Demand for Planning: Compliance with Planning Conditions in the Absence of Direct Statutory Enforcement Measures, *Planning Policy and Research*, 22:4, 535-557.

Lai LWC, Chau KW, Kwong JWY, Ching ST, Cheung PCW, and Lorne FT (2013), Acquisition and Redevelopment of Bus Garages: a Hong Kong Land Policy and Planning Case Study, *Habitat International*, 39, 75-84.

Lai LWC, Chau KW, and Cheung PCW (2012), Scale Economies of the Franchised Buses and Ferries of Hong Kong, 1948 to 1998, *Review of Urban and Regional Development Studies*, 24:3, 121-140.

Lau SK and Kuan HC (2000), Hong Kong's Stunted Political Party System, *The China Quarterly*, 163, 1010-1028.

Leeds PF (1986), *The Development of Public Transport in Hong Kong: an Historical Review*. Unpublished research manuscript, Hong Kong.

Lorne FT and Lai LWC (2011), Schumpeterian Innovation for Regulated Natural Monopoly as a Corporate Strategy, *International Journal of Information Systems for Logistics and Management*, 7:1, 1-7.

Nissim R (1998), *Land Administration and Practice in Hong Kong*. Hong Kong University Press, Hong Kong.

Poon A (2005), *Land and the Ruling Class in Hong Kong*. Alice Poon, Hong Kong.

Sham WC (2007), *The History of Hong Kong Yaumati Ferry Company Ltd.: 1923 to the 1970s*. Unpublished Master of Philosophy Thesis, Lingnan University, Hong Kong.

Staley S (1994), *Planning Rules and Urban Economic Performance*. Chinese University of Hong Kong, Hong Kong.

Transport Department, 2012.

[http://www.td.gov.hk/en/transport in hong kong/public transport/buses/non franchised/application for passenger service licence psl fo/index.html](http://www.td.gov.hk/en/transport%20in%20hong%20kong/public%20transport/buses/non%20franchised/application%20for%20passenger%20service%20licence%20psl%20fo/index.html) (accessed 29 July 2012).

Figure 1: Theoretical and Public Policy Concerns

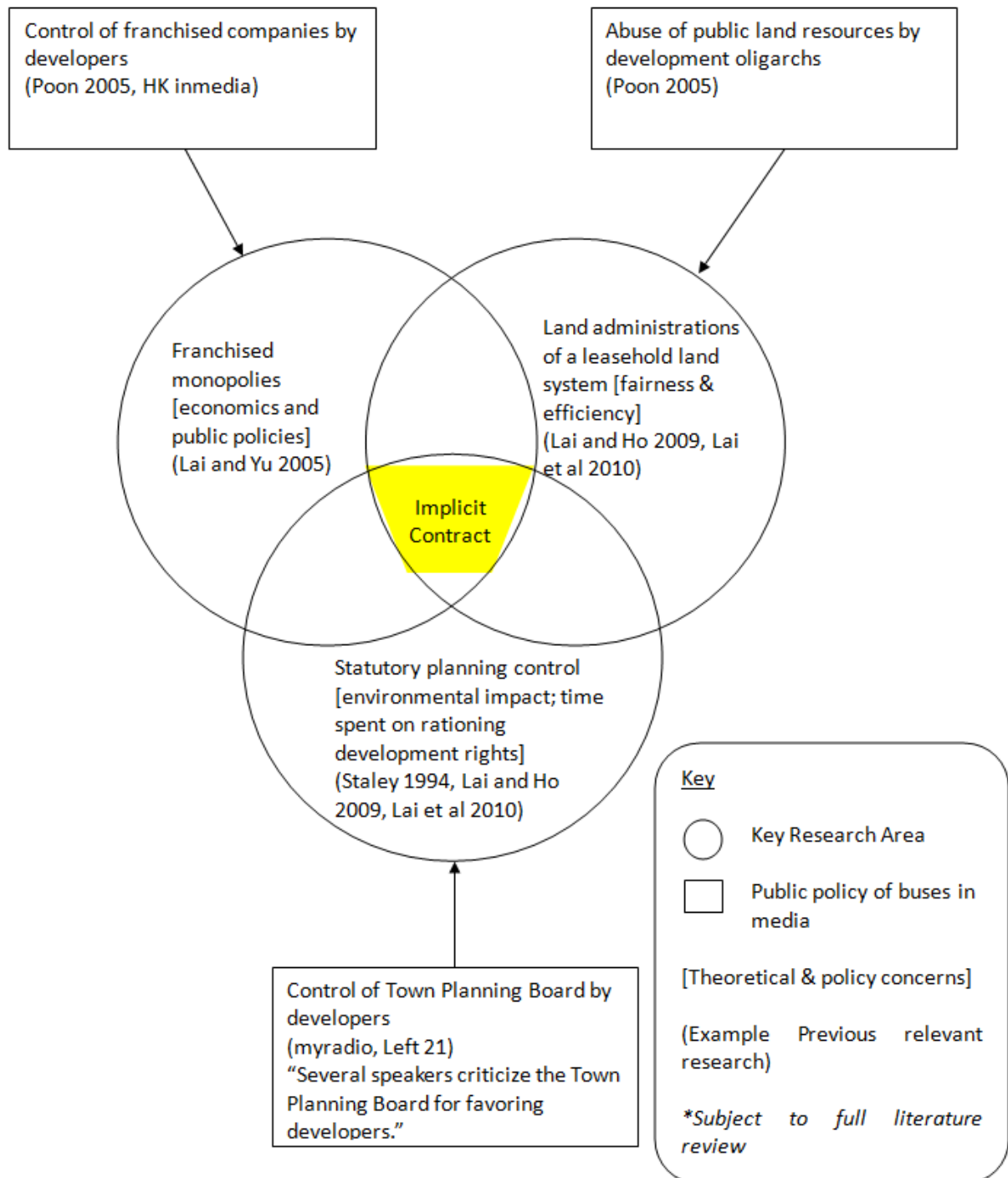
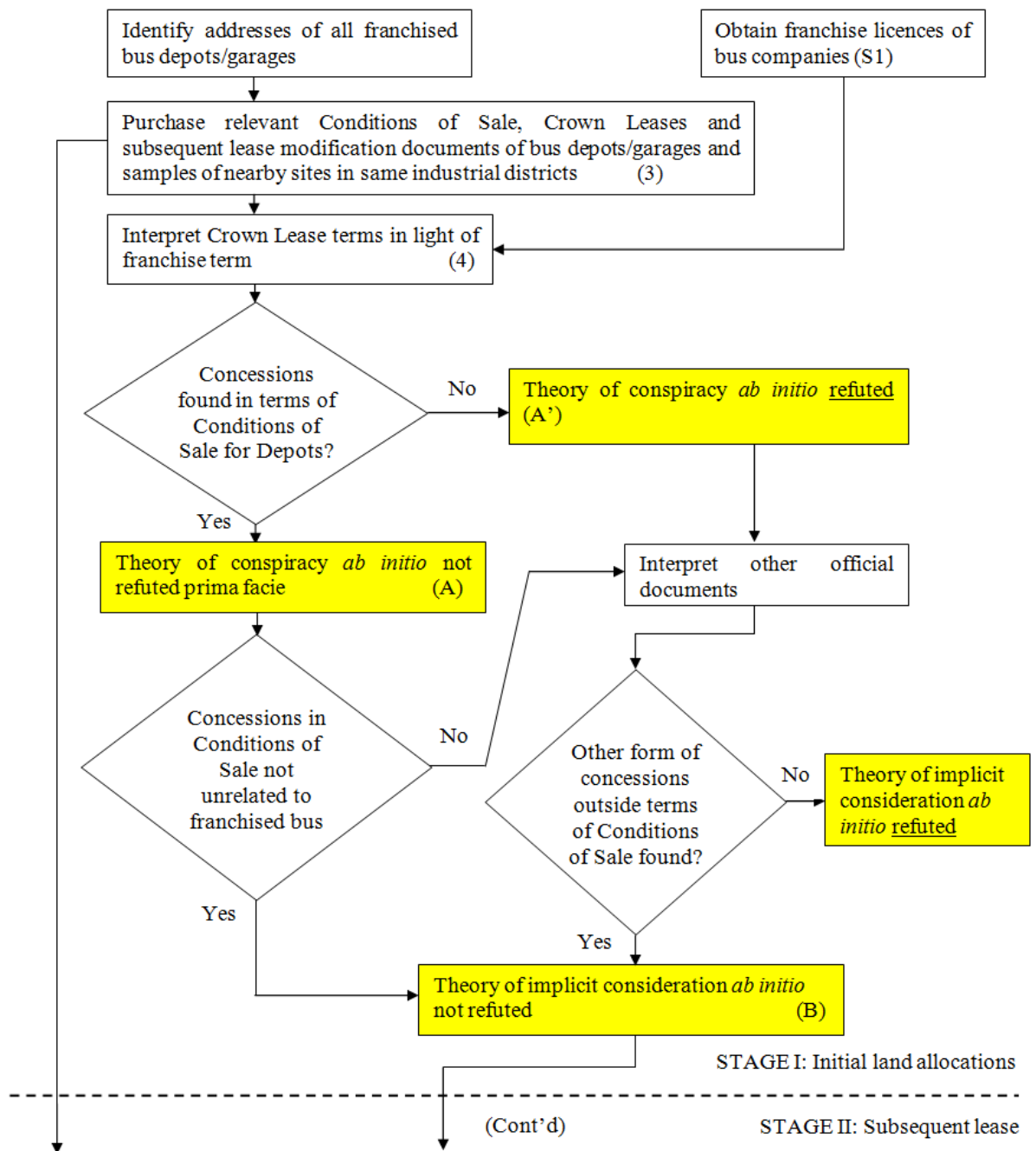
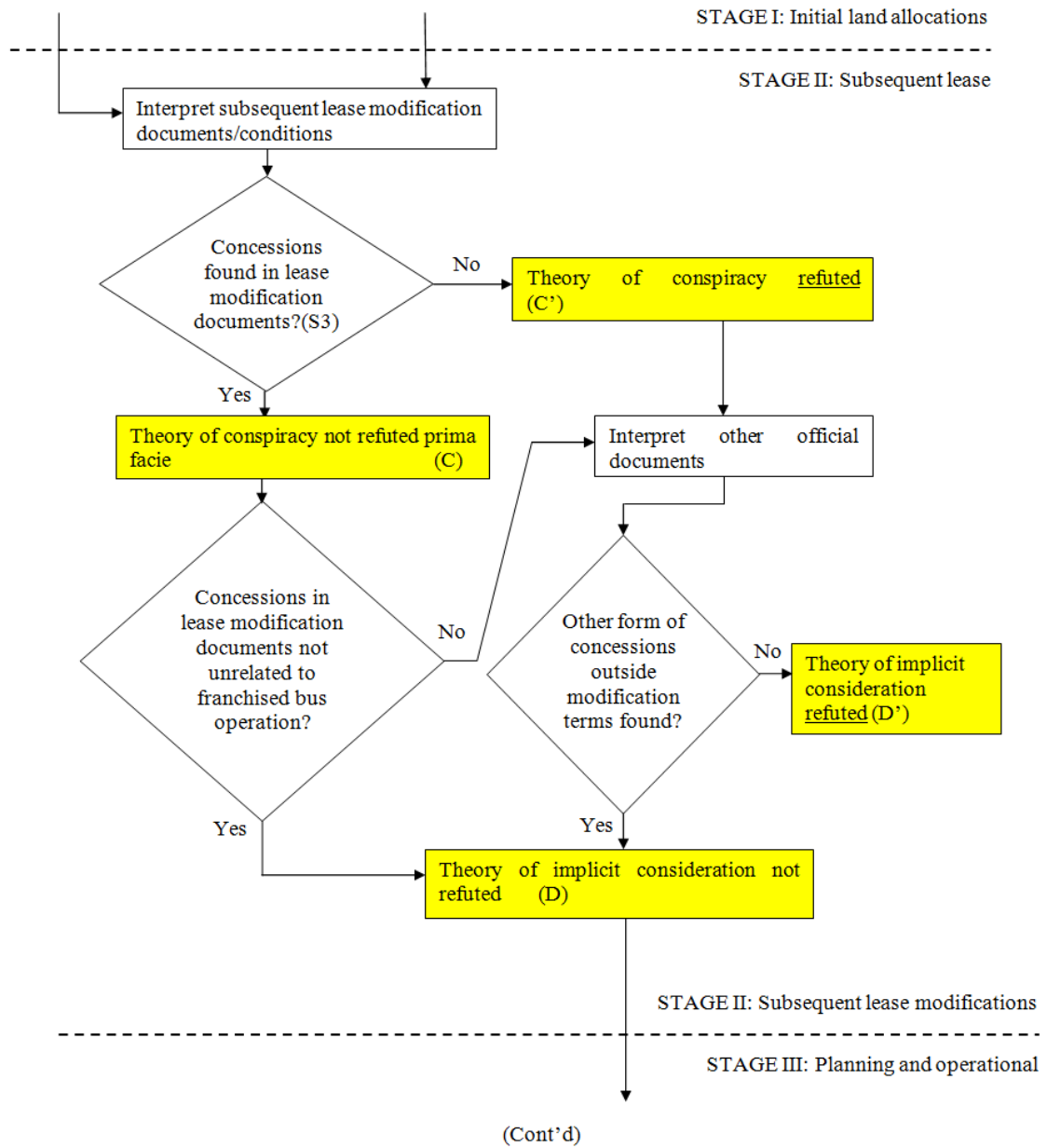


Figure 2: Outline research procedures





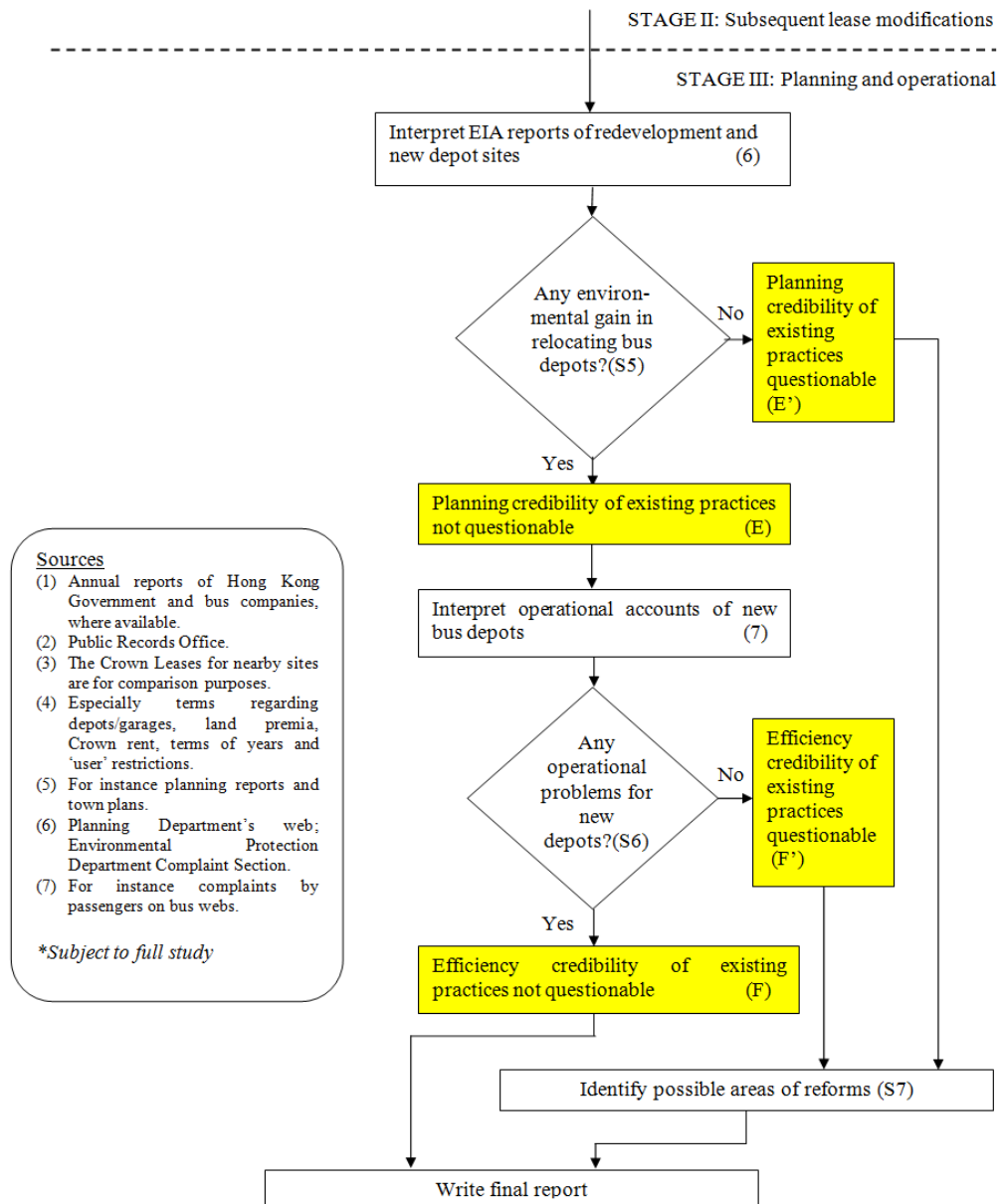
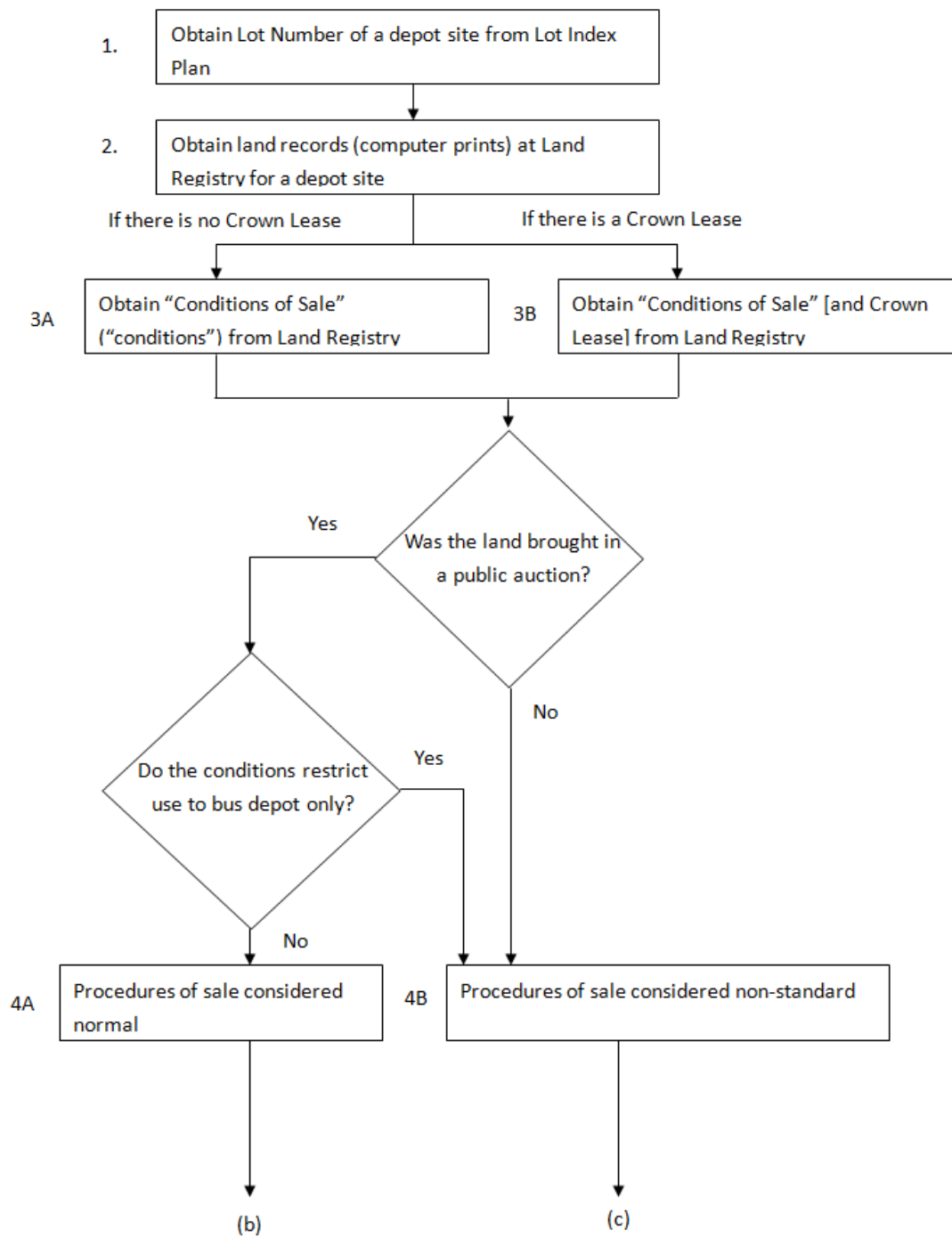
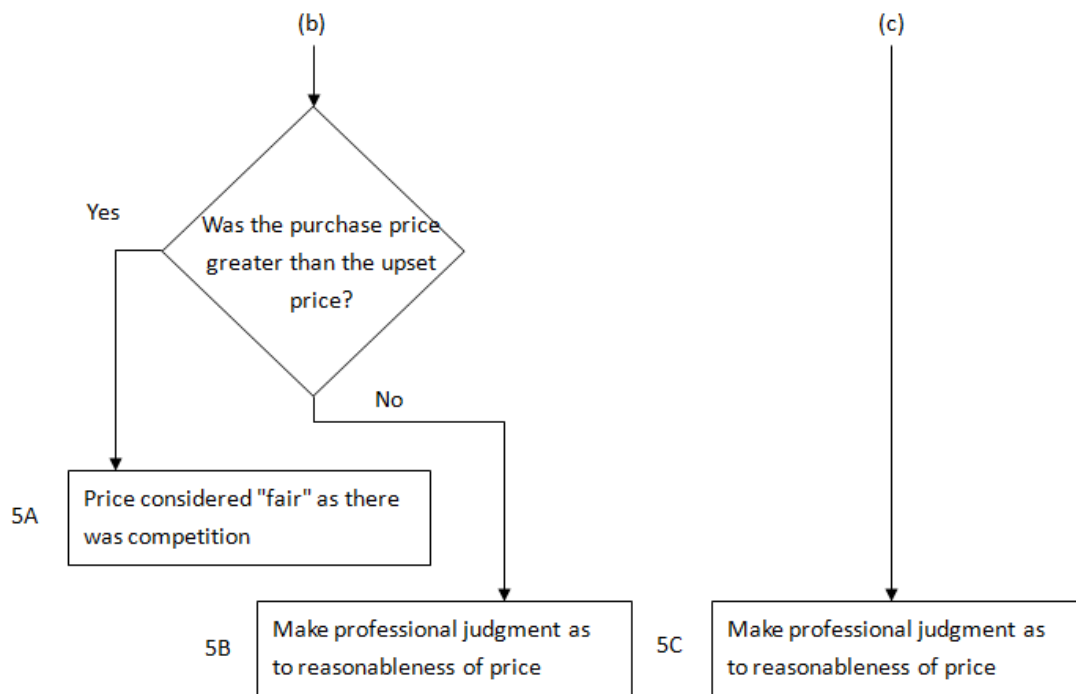


Figure 3: Steps taken to evaluate fairness and reasonableness of bus depot purchase prices





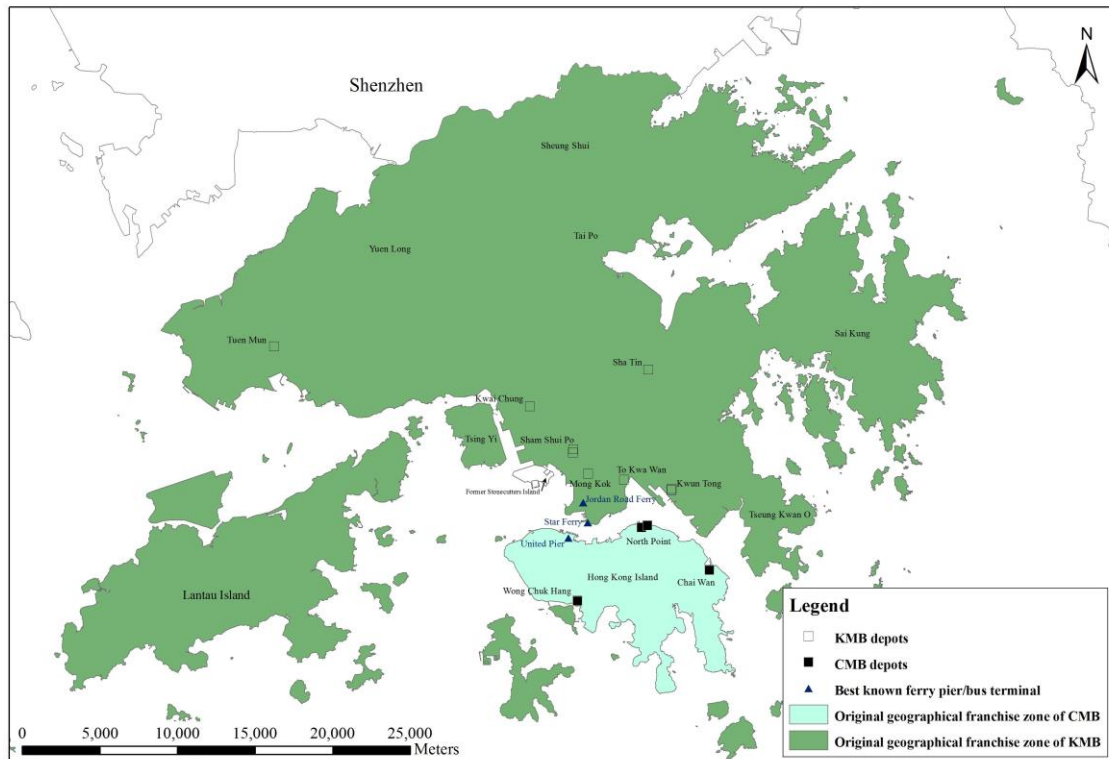


Figure 4: Locations of CMB and KMB depots

Table 1: Data requirements and Sources

Data required (Specific Objective)	Data Sources
(S1) The conditions of franchise for KMB and CMB	Public Records Office, Government of the Hong Kong Special Administrative Region (Government of the HKSAR); Transport Department
(S2) The terms of the Conditions of Sale, Crown (Government) Leases and Private Treaty Grants for KMB and CMB's garages, depots, and workshops	(a) Addresses from the annual reports of each bus company, telephone directories, specialist books on Hong Kong buses or the government's Annual Reports; (b) Lot Numbers shown in Lot Index Plans kept in the Lands Department's; (c) Land transaction records, Crown Leases and Conditions of Sale/Private Treaty Grants kept in the Lands Registry ; and (d) old Conditions of Sale not kept in Land Registry but in Public Records Office
(S3) The Terms of Conditions of the Modifications or the Surrender and Re-grant of the land originally for KMB and CMB's garages, depots and workshops	Land transaction records, Conditions of the Modifications or the Surrender and Re-grant kept in the Lands Registry
(S4) The planning permissions for change in use of bus depot sites	Planning Department's website for planning application statistics

Table 2a: Depot sites sold by government to bus companies in public auctions

	Location (bus company)	Lot No	Method of allocation by government	Purchase price [Upset price]	Current property [Redevelopment method]	Premium of lease modification or exchange
1	Chai Wan (CMB)	CWIL 88 (Ex-CWIL 33)	Sale by public auction in 1965	\$1,435,000 [\$1,435,000]	Bus depot/car park	NA
2	North Point (CMB)	IL 7550	Sale by public auction in 1958	\$800,000 [\$800,000]	625 King's Road (office building) [Modification Letter in 1997]	\$430,350,000
3	North Point (CMB)	IL 5532	Sale by public auction in 1939	\$63,400 [\$63,400]	Island Place IL 8849 [Land Exchange (C/E NO.12353) in 1995]	\$887,000,000
4	North Point (CMB)	IL 7178	Sale by public auction in 1954	\$811,000 [\$728,000]		

5	Wong Chuk Hang (CMB)	AIL 338	Sale by public auction in 1969	\$650,000 [\$650,000]	Vacant	NA
6	Wong Chuk Hang (CMB)	AIL 339	Sale by public auction in 1970	\$1,060,000 [\$620,000]	Vacant	NA
7	Kwun Tong (KMB)	KTIL 192	Sale by public auction in 1961	\$3,710,000 [\$3,060,000]	Millennium City 1 KTIL 733 [Land Exchange (C/E NO.12421) in 1996]	\$464,000,000
8	Kwun Tong (KMB)	KTIL 240	Sale by public auction in 1961	\$3,623,000 [\$3,350,000]	Vacant	NA
9	Mong Kok (KMB)	KIL 2111	Sale by public auction in 1928	\$92,300 [\$92,300]	Pioneer Centre [No need modification nor exchange]	NA
10	To Kwa Wan (KMB)	KIL 6393	Sale by public auction in 1953	\$651,000 [\$360,000]	Merit Industrial Centre [No need modification nor exchange]	NA

11	Camp Street, Sham Shui Po (KMB)	NKIL 2622	Unknown due to war time loss of conditions of sale/grant, likely public auction	Unknown	Manor Centre and Petrol Filling Station [No need modification nor exchange]	NA
12	Shun Ning Road, Sham Shui Po (KMB)	NKIL 3602	Sale by public auction in 1950	\$257,400 [\$257,400]	Merlin Centre and Park [No need modification nor exchange]	NA
13	Tau Lin Pei Road, Kwai Chung (KMB)	KCTL 215	Sale for Letters B in 1971	NA	Kowloon Commence Centre [Modification Letter in 1996]	\$186,550,000
14	Shatin (KMB)	STTL 241	Sale by public auction in 1984	\$36,400,000 [No data]	Bus Depot	NA
15	Tuen Mun (KMB)	TMTL 80	Sale by public auction in 1974	\$5,810,000 [\$5,000,000]	Bus Depot	NA

16	Tuen Mun (KMB)	TMTL 81	Sale by public auction in 1974	\$8,530,000 [\$7,000,000]	Bus Depot	NA
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Table 2b: Depot sites sold by private individuals to bus companies

	Location (bus company)	Lot No	Method of acquisition by bus companies (Year)	Purchase price	Current property [Redevelopment method]	Premium of lease modification or exchange paid
1	Lai Chi Kok (KMB)	NKML 3	Privately acquired from Dairy Farm (1955)	No Data	Manhattan Hill [No need for modification nor exchange]	NA
2	Yuen Long (KMB)	DD120 Lot 3543	DD lots, acquired from other owners (1960?)	No Data	Yuen Long Plaza YLTL 449 [Land Exchange (New Grant 3595) in 1989]	\$13,300,000

Table 2c: Depot sites granted by government to bus companies

	Location (bus company)	Lot No	Method of allocation by government (Year)	Purchase price	Current property [Redevelopment method]	Premium of lease modification or exchange paid?
1	Kowloon Bay (KMB)	NKIL 5801	Allocation by grant – tied in with franchise terms (1986)	\$62,000,000	Bus depot	NA
2	Tuen Mun (KMB)	TMTL 82	Allocation by grant – tied in with franchise terms (1979)	\$5,274,000	Bus depot	NA

Table 3: Time taken for obtaining planning permissions for change in use of bus depots

Depot (Bus company)	Date first planning application made	Date final planning permission granted	Time taken (Number of years) to obtain final planning permission from date of first application (About)
North Point (CMB) [Inland Lot 7550]	22/5/1992	15/12/1995	3 years
Lai Chi Kwok (KMB)	4/11/1994	11/2/2002	7 years
Kwun Tong (KMB) [Kwun Tong Inland Lot 192]	20/3/1992	6/2/1998	6 years
Kwai Chung (KMB)	5/11/1993	20/5/1994	1 years
Kings Road depot (CMB) [Inland Lots 5532 & 7178, which became Inland Lot 8849]	17/3/1993	15/12/1995	2 years

Photo 1 Bus Depots North Point Marked

