15/83

No. 31 of 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN:

ATTORNEY GENERAL — Appellant (Defendant)

- and -

MIGHTYSTREAM LIMITED — Respondent (Plaintiff)

RECORD OF PROCEEDINGS

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No. 21 of 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN

ATTORNEY GENERAL — Appellant (Defendant)

- and -

MIGHTYSTREAM LIMITED — Respondent (Plaintiff)

RECORD OF PROCEEDINGS

No. 1

ORIGINATING SUMMONS

In the Supreme Court

No. 1
Originating Summons

1981, No. 586

5th May 1981

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Buildings Ordinance, Cap.123 and the Building(Planning) Regulations

and

IN THE MATTER of Inland Lot No. 2232, 12 Bowen Road, Hong Kong.

BETWEEN

MIGHTYSTREAM LIMITED — Plaintiff

- and -

ATTORNEY GENERAL — Defendant

In the Supreme Court

No. 1
Originating Summons

5th May 1981

(continued)

TO : The Honourable the Attorney General,
Attorney General's Chambers,
Central Government Offices, Main Wing,
Hong Kong.

Let the Defendant, within 8 days after service of this Summons on him, inclusive of the day of service cause an appearance to be entered to this Summons, which is issued on the application of the Plaintiff, Mightystream Limited, whose registered office is at Connaught Centre, 26th floor, Hong Kong.

By this Summons the Plaintiff claims against the Defendant :-

(1) A declaration that Inland Lot No. 2232, 12 Bowen Road, Hong Kong (hereinafter called "the said site") is a Class A Site within the meaning of the Building (Planning) Regulations.

(2) A declaration that the Building Authority's purported refusal by his letter dated June 20, 1980, to approve plans for the redevelopment of the said site is incorrect, null and void.

(3) A declaration that the said plans are deemed to have been approved.

(4) In the alternative to (2) and (3) above or to either of them, a declaration that the purported refusal referred to above is incorrect, null and void in so far as it is grounded on the basis that the said site does not abut a street and that, accordingly, the height of and the site coverage and plot ratio for any building thereon falls to be determined under regulation 19 of the said Regulations.

(5) A declaration that the Plaintiff is entitled to such access as is necessary for the full use and enjoyment of the said site and that, to this end, it is entitled to (i) such exemption under section 42 of the Buildings Ordinance, Cap.123 as may be necessary in light of regulation 6 of the Building (Private Streets and Access Roads) Regulations and/or (ii) such further or other access from the Crown as may be necessary in light thereof.

(6) Such further or other relief as may be just.

(7) Costs.

If the Defendant does not enter an appearance, such judgment be given or order made against or in relation

to him as the Court may think just and expedient.

Dated the 5th day of May, 1981.

(Sgd) N.J. Barnett
Acting Registrar

Note: This summons may not be served more than 12 months after the above date unless renewed by order of the Court.

This summons was taken out by Messrs. Woo, Kwan, Lee & Lo, Solicitors of 26th floor, Connaught Centre, Connaught Road Central, Hong Kong, Solicitors for the Plaintiff.

DIRECTIONS FOR ENTERING APPEARANCE

The Defendant may enter appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed at the Registry of the Supreme Court in Victoria, Hong Kong, or (2) by sending them to the Registry by post.

In the Supreme Court

No. 2
Order of
Mr Justice
Fuad

8th October
1981

No. 2

ORDER OF MR. JUSTICE FUAD

1981, No. 586

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Buildings Ordinance, Cap.123 and the Building (Planning) Regulations

and

IN THE MATTER of Inland Lot No.2232, 12 Bowen Road, Hong Kong

B E T W E E N

MIGHTYSTREAM LIMITED Plaintiff

- and -

ATTORNEY GENERAL Defendant

BEFORE THE HONOURABLE MR JUSTICE FUAD IN CHAMBERS

O R D E R

Upon hearing Counsel for the Plaintiff and Counsel for the Defendant and upon reading the Affidavit of Graham Leonard Lowman filed herein on the 4th day of July 1981, the Affidavit of Clive George Holgate filed herein on the 20th day of August 1981 and the further Affidavit of Clive George Holgate filed herein on the 23rd day of September 1981 and the exhibits therein referred to,

And upon the Plaintiff's applications for :-

(1) A Declaration that Inland Lot No.2232, 12 Bowen Road, Hong Kong (hereinafter called "the said site") is a Class A Site within the meaning of the Building (Planning) Regulations.

(2) A declaration that the Building Authority's purported refusal by his letter dated June 20, 1980, to approve plans for the redevelopment of the said site is incorrect, null and void.

(3) A declaration that the said plans are deemed to have been approved.

(4) In the alternative to (2) and (3) above or to either

of them, a declaration that the purported refusal referred to above is incorrect, null and void in so far as it is grounded on the basis that the said site does not abut a street and that, accordingly, the height of and the site coverage and plot ratio for any building thereon falls to be determined under regulation 19 of the said Regulations.

(5) A declaration that the Plaintiff is entitled to such access as is necessary for the full use and enjoyment of the said site and that, to this end, it is entitled to (i) such exemption under section 42 of the Buildings Ordinance, Cap.123 as may be necessary in light of regulation 6 of the Building (Private Streets and Access Roads) Regulations and/or (ii) such further or other access from the Crown as may be necessary in light thereof.

(6) Such further or other relief as may be just.

(7) Costs.

IT IS ORDERED that the said application of the Plaintiff be dismissed with costs to be taxed and paid by the Plaintiff to the Defendant. Certified fit for 2 counsel on both sides.

Dated the 8th day of October 1981.

Registrar.

In the Supreme Court

No. 3
Judgment of Mr Justice Fuad

8th October 1981

No. 3

JUDGMENT OF MR JUSTICE FUAD

M.P. 1981, No.586

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Buildings Ordinance, Cap. 123 and the Building (Planning) Regulations

and

IN THE MATTER of Inland Lot No. 2232, 12 Bowen Road, Hong Kong

B E T W E E N

MIGHTYSTREAM LIMITED — Plaintiff

- and -

ATTORNEY GENERAL — Defendant

Coram : Fuad, J.
Date : 8th October, 1981

J U D G M E N T

By this originating summons the plaintiff company seeks a declaration as to the true construction of certain provisions of the Building (Planning) Regulations ("the Regulations") made by the Governor in Council under s.38 of the Building Ordinance (Cap. 123) ("the Ordinance"). A number of consequential declarations are also sought.

The plaintiff company is the registered owner of Inland Lot, No. 2232, 12 Bowen Road, by virtue of an assignment dated 9th July 1980 of a Crown lease granted in 1918. On the 28th April 1980, a Mr. Kevin MA Ching-ngor, an "authorized person" within the meaning of the Building Ordinance applied to the Building Authority on behalf of the plaintiff for the approval of plans to re-develop the site. It was proposed that a building comprising 24 storeys of domestic accommodation (over four storeys of car parks) would be built. The flats would be built to a high standard of a quality intended for the more affluent members of society. It is common ground that the proposed height would comply with regulation 16 of the

Regulations and the site coverage and plot ratio would be within the permissible limits in respect of "Class A sites" under the Regulations.

The developers' hopes were dashed when they received a letter dated the 20th June 1980 by which the Authority informed them, inter alia, of its view, as follows:-

> "As the site does not abut a street, the Building Authority has determined, under Building (Planning) Regulation 19, that the maximum permissible height, site coverage and plot ratio of any building to be erected on this site should be 40 m, 39% and 2.9022 respectively. Accordingly your proposal is unacceptable in these terms."

There is no controversy that under regulation 19, the Authority has power to determine the height of, and the site coverage and plot ratio for, the building if the site does not abut a street or if it abuts a street less than 4.5 m wide. If the Authority is right the building would have to be only about half its proposed height and the potential loss to the developers does not need to be stressed.

It is contended by Mr. Ogden, on behalf of the plaintiff company, that the Building Authority wrongly construed the Ordinance and the Regulations and that a true construction of the relevant provisions, when read together, renders the site one to which regulation 19 has no application and one which falls within the definition of the expression "class A site" in the Regulations. For the Crown, Mr. Kaplan supports the Authority's stand.

At the invitation of Counsel for the parties the Court visited the site during the hearing. We approached the site along Borrett Road from the North. At a certain point, where there are two trees, Borrett Road leads slightly to the left onto a bridge which connects it with the site. At the same point there is a road which continues slightly to the right which seems to lead only to a car port belonging to an occupant of another house on Bowen Road. It is not clear whether that part of the road is still named Borrett Road or not. The west side of the site is bounded by a "nullah" which the bridge crosses on its way to the site.

It would now be convenient to set out the relevant legislative provisions. In the interpretation section of the Ordinance, s.2, the following definition occurs:-

> "'street' includes the whole or any part of any square, court or alley, highway, lane, road, road-bridge, footpath, or passage whether a thoroughfare or not;"

In Regulation 2 of the Regulations we find the following definitions:-

> "'class A site' means a site, not being a class B site or class C site, /these are corner sites which do not concern us/ that abuts on one street not less than 4.5 m wide or on more than one such street;"
>
> "'street' includes any footpath and private and public street;"

Mr. Ogden contends that since the bridge leading from Borrett Road to the site is a road-bridge, it is a "street" within the meaning of s.2 of the Ordinance.

As regards its width, while conceding that for nearly all of its length (approximately 22 m.) the bridge is less than 4.5 m wide measured between the paving stones at each side, he argues that the proper approach is to measure the overall width of the bridge because the definition of "street" in s.2 states that it "includes the whole or any part of any ..... road-bridge." In Mr. Ogden's submission, therefore, since the site abuts a street not less than 4.5 m wide, it is a class A site.

It was also contended on behalf of the plaintiff that the "nullah" at the edge of the site should be disregarded and the site in fact also abutted Borrett Road which, it was common ground, was more than 4.5 m wide throughout its relevant length. This was so in respect of the road which led from the two trees to the car port whether it could still properly be called Borrett Road or not.

As part of his argument in relation to the foot-bridge, Mr. Ogden submitted that the definitions of the word "street" in the Ordinance and the Regulations should be read together. Mr. Kaplan's case is that the governing definition of "street" is that contained in the Regulations. There can be no doubt that unless the contrary intention appears or can be inferred, words and expressions in subsidiary legislation bear the meaning attributed to them by the principal legislation under which they are made. This principle is enshrined in s.31 of the Interpretation and General Clauses Ordinance (Cap. 1). However it is quite common, where circumstances require, to assign a different meaning to a word in subsidiary legislation to that which it bears in the enabling statute and, of course, there can be no objection to this if the ultra vires rule is not infringed.

Mr. Ogden seeks some support for his contention from the general words with which regulation 2 of the Regulations begin -

> "2(1) In these regulations, **unless** the context otherwise requires, words and expressions have the meaning

attributed to them by the Building Ordinance, and - "

This formula, Mr. Ogden suggests, has the effect of enlarging, and not derogating from the meaning given to the word "street" in the Ordinance. Mr. Kaplan counters by pointing out that since the word "footpath" occurs in the definitions of "street" in the Ordinance and the Regulations, this is some indication that the two definitions are to be separately construed for the purpose of the Ordinance and the Regulations. It is to be noted that "street" is the only word defined in the general interpretation clause of both the Ordinance and the Regulations, although it is given a special meaning for the purposes of regulation 16.

It is not usual for a draftsman to repeat (except ex abundanti cautela) a provision in legislation which is not necessary by virtue of a general interpretation statute. Certainly the draftsman here did so in the Regulations when he defined "Ordinance". This was unnecessary in view of the concluding words of s.31 of the Interpretation and General Clauses Ordinance. In my judgment the opening words of regulation 2 are not to be construed as requiring definitions of the same word occurring in the Ordinance and the Regulations to be read as one. I agree with Mr. Kaplan that the presence of the word "footpath" in both definitions is highly significant. I reach the conclusion that it is the definition of "street" in the Regulations which is relevant to the determination of this summons.

It was no part of Mr. Ogden's case that the bridge was a street as ordinarily understood and it clearly not so. Nor is it rendered so by virtue of the extended meaning to "street" given by regulation 2 of the Regulations. In so far as the plaintiff company bases the reliefs sought by its summons on the existence of the bridge, I find in favour of the Crown.

I have now to consider whether Borrett Road can help the plaintiff company. For their contention to succeed, the court must be satisfied that the site abuts Borrett Road. Mr. Ogden asks me to hold that for a site to abut a street it does not have to touch the road itself and so for that purpose the existence of the "nullah" must be ignored. While recognizing that the cases he cited to me were not of any great value since the subject matter of the legislation construed in them had to be borne in mind in resolving their scope and objects so that the true intention of the legislature could be determined, Mr.Ogden drew my attention to Wakefield Local Board of Health v Lee (1876) 1 Ex. 336. In that case a statute of 1848 empowered the Board to require owners or occupiers of premises "fronting, adjoining, or abutting" certain streets

to carry out certain works. The premises of the respondents were separated from the relevant street by a narrow stream crossed by two bridges under their control. The Court by a majority held that the premises fronted and abutted the street. There was for practical purposes no division by intervening land and the premises could be said in popular language to abut upon the street, for the bridges, so far as appeared, were useful only to the respondents - they might also be said to front the lane. Cleasby, B. held that the most important word was "adjoining" and since the stream was very small the premises were not really separated from the street and might be said to adjoin it. All three judges emphasized that it was essentially a question of fact.

In Lightbound v Higher Bebington Local Board (1885) 16 Q.B.D. 577 the Board sought from a resident his share of the expenses incurred for paving and making a street on the grounds that his plots of land with two cottages on it were premises "fronting, adjoining or abutting" the street. The plots of land were divided from the street by a wall 5 feet in height. A public footpath ran between the two plots and there was access to the street through an opening in the wall. It was only the backs of the cottages which faced the street and there was no access for vehicles from the cottages to the street except by way of a small roadway which led into one end of the street without touching the part of the street that had been paved. The Court of Appeal held that the resident was not the owner of premises "fronting, adjoining or abutting" on the street within the meaning of the relevant statute, and upheld the finding of the Q.B.D. against the Board.

It seems to me that in any given case it must be a question of fact, depending on the facts and the application of any rules which may have been laid down in the cases (slightly to paraphrase the words of Lord Esher, M.R. in Lightbound at p.580) whether a site abuts a street in the ordinary meaning of the word abut, in the absence of a definition. I think, too, that the court must approach the problem in a practical and common sense way, bearing in mind that it is for the authority seeking to restrict the owner's user of the land to satisfy the court that his contention cannot be right. Clearly every slight obstruction or intervention between a site and a street could not be said to prevent the former from abutting the latter. It will be a question of degree.

Here, as I observed from the view, there is a very substantial natural feature in the form of the "nullah" which lies between Borrett Road and the site throughout its length, even where the roadway continues (by whatever name) up to the car port belonging to the other house on Bowen Road. The "nullah" increases in width and depth

as it runs down hill but it is far from something in the nature of a mere gulley which might perhaps properly be disregarded, if precise contiguity is not required. In my judgment it cannot successfully be maintained that despite the existence of the "nullah" (it was not measured for me, probably because its irregular features would make it most difficult to do so) the plaintiff company's site abuts in its entymological sense, any part of Borrett Road, or its continuation. I hold the view that in any fair use of language the site does not have a common boundary with a street, nor does it border or end upon a street.

I therefore reach the conclusion on the facts before me, applied to the relevant legislative provisions, that the Building Authority was right to object to the proposed plans and to make the appropriate determinations under regulation 19 of the Regulations. The plaintiff company is not therefore entitled to any of the reliefs sought, and the summons is dismissed with costs.

(K.T. Fuad)
Judge of the High Court

Michael Ogden, Q.C. & Kemal Bokhary (Woo, Kwan, Lee & Lo) for Plaintiff.

Neil Kaplan, Senior Asst. Crown Solicitor & S.Y. Chan, C.C. for Defendant/Attorney General.

In the Court of Appeal

No. 4
Notice of Appeal

20 October 1981

No. 4

NOTICE OF APPEAL

1981, (Civil) No.122

IN THE COURT OF APPEAL
(On Appeal from H.C.M.P. No. 586 of 1981)

B E T W E E N

MIGHTYSTREAM LIMITED — Appellant (Plaintiff)

- and -

ATTORNEY GENERAL — Respondent (Defendant)

NOTICE OF APPEAL

TAKE NOTICE that the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the Appellant on appeal from the Judgment of the Honourable Mr. Justice Fuad given in the abovementioned proceedings on October 8, 1981 whereby the Appellant's claim for the relief sought by its Originating Summons therein (save for the 5th prayer thereof which was stood over) was dismissed with costs FOR AN ORDER that the said Order may be set aside and that order may be given for the Appellant for the said relief with costs to be taxed or for such further or other Order as may be just AND FOR AN ORDER that the Respondent pay to the Appellant the costs of this appeal to be taxed

AND FURTHER TAKE NOTICE that the grounds of this appeal are as follows:-

(1) That the Appellant is entitled to such relief and that the learned Judge erred in holding otherwise.

(2) That the learned Judge erred in law in holding that the relevant definition of 'street' was solely the one contained in the Building (Planning) Regulations rather than a combination of that one and the one given in the Buildings Ordinance, Cap.123.

(3) That having regard to the relevant legislative purpose and facts, the learned Judge erred in law and fact in holding that by reason of the nullah which ran along it the site in question did not abut Borrett Road or the cul de sac which may or may not be Borrett Road.

AND FINALLY TAKE NOTICE that the Appellant proposes to apply to set down this appeal in the Appeals List.

Dated the 20th day of October, 1981

(Signed)

WOO, KWAN, LEE & LO,
Solicitors for the Appellant

TO; the Registrar,
Supreme Court,
Hong Kong.

and

The Respondent,
The Hon. Attorney General,
Attorney General's Chambers,
Central Government Office,
(Main Wing),
Hong Kong.

In the Court of Appeal

No. 5
Order of the Court of Appeal

21st January 1982

No. 5

ORDER OF THE COURT OF APPEAL

IN THE COURT OF APPEAL
CIVIL APPEAL NO. 122 OF 1981

(On appeal from the High Court Miscellaneous Proceedings No. 586 of 1981)

B E T W E E N

MIGHTYSTREAM LIMITED — Appellant (Plaintiff)

- and -

ATTORNEY GENERAL — Respondent (Defendant)

BEFORE THE HONOURABLE MR. JUSTICE LEONARD, VICE-PRESIDENT, THE HONOURABLE MR. JUSTICE CONS,J.A. AND THE HONOURABLE MR. JUSTICE ZIMMERN, J.A. IN COURT

O R D E R

UPON READING the Notice of Appeal dated the 20th day of October 1981, on behalf of the Appellant by way of appeal from the order of the Honourable Mr. Justice Fuad given on the 8th day of October, 1981 whereby the Appellant's claim for relief sought by its Originating Summons therein was dismissed with costs.

AND UPON READING the said Order dated the 8th day of October, 1981.

AND UPON HEARING Counsel for the Appellant and Counsel for the Respondent.

IT IS ORDERED :

(1) that this appeal be allowed;

(2) that the said Order of the Honourable Mr. Justice FUAD dated the 8th day of October 1981 be set aside and in lieu thereof the 1st and 4th Declarations be granted to the Appellant in its said Originating Summons namely:-

(i) a declaration that Inland Lot No.2232, 12 Bowen Road, Hong Kong (hereinafter called "the said site") is a Class A site within the meaning of the Building (Planning) Regulations; and

(ii) A declaration that the purported refusal by the Building Authority's letter dated the 20th June 1980, to approve plans for the redevelopment of the said site is incorrect, null and void in so far as it is grounded on the basis that the said site does not abut a street and that, accordingly, the height of and the site coverage and plot ratio for any building thereon falls to be determined under regulation 19 of the said Regulations; and

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(3) that the question of costs of this appeal be reserved for further argument on a date to be fixed if not agreed. Certificate for two counsel on each side if necessary.

Dated the 21st day of January 1982.

N.J. BARNETT
Registrar

In the Court of Appeal

No. 6
Judgment of the Court of Appeal

21st January 1982

No. 6

JUDGMENT OF THE COURT OF APPEAL

IN THE COURT OF APPEAL

Civil Appeal No.122 of 1981
(On appeal from M.P. No.586 of 1981)

B E T W E E N

MIGHTYSTREAM LTD — Appellant (Plaintiff)

- and -

ATTORNEY GENERAL — Respondent (Defendant)

Coram: Leonard, V-P, Cons & Zimmern, JJ.A.
Date: 21 January 1982

J U D G M E N T

Leonard, V-P

Leonard, V-P:

The sole issue in this appeal is whether for the purposes of the Building (Planning) Regulations Inland Lot 2232, 12 Bowen Road ("the site") abuts a street not less than 4.5 m wide. If it does not, the Building Authority has power under Regulation 19 to determine the height of, the site coverage and the plot ratio for any building to be erected on it. If the site does abut such a street height is catered for by Regulation 16, the site is a class A site and its site coverage and plot ratio are governed by Regulations 20, 21 and 22.

I am satisfied from the plans, the photographs and the trial judge's description that the site cannot be said to abut such a street unless the bridge by which one approaches the site can be said to be such a street and unless the site abuts it.

It has been suggested by Mr. Ogden that, notwithstanding that the site is separated from Borrett Road by a nullah, it abuts Borrett Road. However the trial judge visited the site and found "a very substantial natural feature in the form of the nullah". "Far from being something in the nature of a mere gulley" separated the site from Borrett Road. I consider that the trial judge was right in his conclusion that whether or not a given site "abuts" a street is a question of fact and degree. I could not

say he was wrong in holding that the site does not abut Borrett Road.

Mr. Ogden also suggested that the trial judge was wrong in holding that the definition of "street" in the Regulations was relevant to this consideration to the exclusion of the definition of "street" in the Ordinance.

The trial judge, noting that "street" was the only word defined in both the Ordinance and the Regulations and the presence of the word "footpath" in both came to the conclusion that he should not have regard to the definition in the Ordinance. I cannot agree. To my mind the use of the opening words in Regulation 2 and the use of the word "includes" in both definitions in preference to the word "means" indicate that the definitions should be read together. This view is strengthened by section 31 of the Interpretation Ordinance, and by the consideration that if one was to have regard only to the definition in the Regulations the Regulations could have said so instead of using the conjunctive in Regulation 2(1) Mr. Kaplan did not contend that the bridge was not a "road bridge" but contended that even if the definition in the Ordinance applied the bridge was not a street for the purposes of Regulations 16 and 20 and 21 and 22 because it had none of the characteristics of a street. This argument was countered by Mr. Ogden's argument that the bridge was a road bridge and therefore a "street" by reason of the definition. If Mr. Kaplan is right many sites which abut on roads more than 4.5 m wide will fall under Regulation 19 rather than Regulations 20, 21 and 22 unless the roads on which they abut have the characteristics of streets and his argument is therefore one which may affect the interests of many developers in the Colony. The argument is based on R. v. Fullford(1) and R. v Laird(2) in the first of which a highway and in the second of which a road were held not to be streets; in the one for the purposes of the Local Government Amendment Act 1861 Section 28 and in the other for the purposes of the Public Health (Buildings in Streets) Act 1888 Section 3 although by an interpretation clause applicable to the 1861 Act the word 'street' was to "apply to and include any highway not being a turn pike road" and by an interpretation clause applicable in the 1888 Act 'street' included a 'road'. The clause in the latter act bore a marked resemblance to the clause I have quoted from our Building Ordinance. In R. v Fullford it was shown in a trial on indictment that the Fullfords had built an addition to their house covering a space intervening between the house and West Street beyond a line demarcated by the surveyor of the Local Road of Health and within 4 feet 4 inches of the footway adjoining the highway which was a turn pike road. On the facts Erle C.J. directed the jury to find the Fullfords guilty and stated a case. It was held that

(1) (1864) 33 L.J. (M.C.) 122
(2) (1925) 1 Ch. 318

there was a question of fact for the jury to decide, the question being whether the houses on West Street had the necessary degree of continuity and proximity, the term "street" referring "to a row of houses in some degree continuous and in some degree proximate to one another".

In A.G. v Laird(3) a mandatory injunction had been granted ordering the pulling down of a house erected by the appellants within 2 feet of Hoylake Road a main road 60 feet wide. The only other building in the immediate vicinity was some 700 feet away but the area was rapidly developing. For the purposes of the act in question "street" was defined as "including any highway and any public bridge and any road, lane, footway, square, court alley or passage whether a thoroughfare or not".

Pollock M.R. observed -

"The word 'street' which is used in that section is defined by section 2 of the Act by reference to section 4 of the Public Health Act, 1875, which defines 'street' as including 'any highway and any public bridge (not being a county bridge) and any road, lane, footway, square, court, alley or passage whether a thoroughfare or not'. It is plain, therefore, that we are to read 'street' in section 3 as including a highway, and Hoylake Road is a highway. But the section does not say that all highways are streets; and the meaning of 'street' has still to be sought from a consideration of the circumstances of the case and of a number of authorities."

The first of the authorities of which he refers is R. v Fullford where notwithstanding the presence in the Act of 1961 there was by reference a definition of "street" as including a highway (not being a turn pike road) it was held that the term "street" refers to a row of houses in some degree continuous and in some degree proximate to one another.

After consideration of R. v Fullford he went on -

"One has to find a succession of houses and buildings, at least on one side, with some degree of continuity and proximity. If this is so, it becomes a question of fact whether a street has been built and that what was a mere highway has become a street."

He found support for his view in Robinson v Barton-Eccles Local Board (4) in which the Earl of Selborne said -

"I agree with an observation which was made in Baker v

(3) (1925) 1 Ch. 319
(4) 8 App. Cas. 798

Mayor of Portsmouth by Huddleson B in which he said, after reading the words of the interpretation clause of the Public Health Act 1848 which was in similar terms 'what is the meaning of 'shall apply and include' unless 'street' means something more than the road way, that is to say, the street with houses? That really seems the reasonable and proper interpretation of the word 'street' '. As I understand those words they mean this: The interpretation clause has said that (when there is nothing in the context to exclude it) the words shall be applicable to a mere highway on neither side of which there are houses. That is very true. But, he says, what is the use of saying it 'shall apply to and include,' unless in its natural scale (which there is nothing here to limit or restrain) it might be held not to apply to and not to include a mere highway without houses on each side. An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable; but to enable the word as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable. I look upon this portion of the interpretation clause as meaning neither more nor less than this, that the provisions contained in the Act as to streets, whether new streets or old streets, shall, unless there be something in the subject-matter and the context to the contrary, be read as applicable to these different things. It is perfectly consistent with that that they should be read as applicable, and should be applied, to those things to which they in their natural sense apply, and which do not require any interpretation clause to bring them in; and in the natural and popular sense of the word 'street', or the words 'new street', I should certainly understand a roadway with buildings on each side (it is not necessary to say how far they must, or may be continuous or discontinuous); and by 'new street', a place which before had not that character, but which, by the construction of buildings on each side, or possibly on one side, has acquired it."

Pollock M.R. however quotes only that passage beginning "and in the natural and popular sense of the word". He does not deal with the proceeding part which I have quoted. In Robinson v Barton-Eccles Local Board, the question for decision was whether a public authority could successfully object to the building by a developer of a row of houses fronting upon a highway on which there had already been built a considerable number of houses. If the highway was not a new street their case would fail. The highway was held to be a new street but the authority

failed on other grounds. In Laird the highway was found not to be a street. It must have been found not to be a street either on the basis that all highways were not streets notwithstanding the interpretation clause or that there was something in the context to indicate the contrary. I must confess I find the judgment of Pollock M.R. impossible to reconcile with the earlier part of the passage I have quoted from Robinson v Barton-Eccles Local Board.

Sargent L.J. proceeded on a somewhat different route. The legislation in question there seemed to him to deal with cases where there was already an existing street. The original section, he notes, was held to deal only with cases where there was an existing building in an existing street being replaced by a new building. "The requirement that the new building must be within an existing street was in no way relaxed". Counsel, he pointed out, agreed that street had to be construed in its ordinary meaning. He appeared to regard the existence of the interpretation clause as of no account for he does not allude to it. Astbury J. felt some doubt and did not discuss the first question preferring to base his judgment on whether a laundry some 700 feet away from the new building could be said to be "on one side of the house in question".

I have spent considerable time examining Laird's case not only because it is crucial to the issues before us but also because if the ratio decidendi of Pollock M.R. be followed it would result in the development of all sites abutting only on a road (as distinct from a common law street) being controlled under Regulation 19 in the discretion of the Building Authority. A developer interested in the purchase of a site would have no means of knowing the extent to which it might be developed. I cannot believe the legislation intended this result.

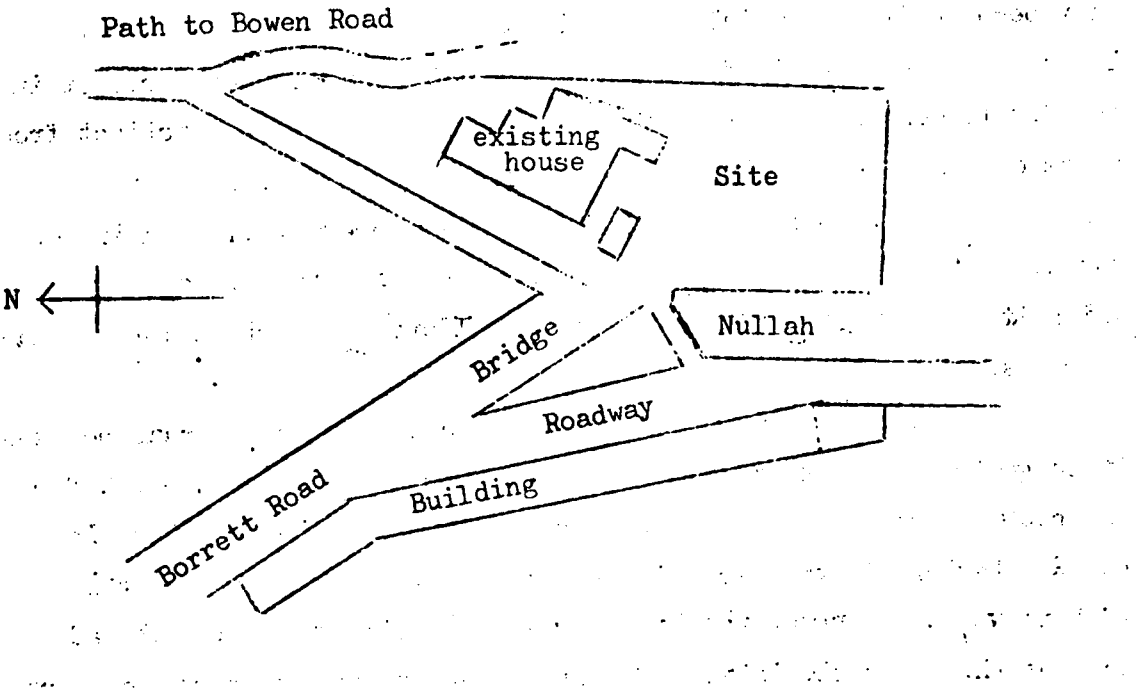
It was not argued that the bridge was an access road nor was it suggested that the site did not abut upon it. The argument before us proceeded on the basis that the relevant definition was that in the Regulations to the exclusion of that in the Ordinance but that if this was not correct the bridge was not a street because it had none of this characteristics of a street and is in any event not more than 4.5 m wide. It is correct that the carriageway of the bridge is less than 4.5 m wide but the whole of the bridge is more than 4.5 m wide and the definition of "street" in the Ordinance refers to "the whole or any part of a road bridge". I cannot find merit in these arguments and would allow the appeal.

Cons J.A.

Cons, J.A. :

The plaintiff company is the registered owner of Inland Lot No. 2232, otherwise known as No. 12 Bowen Road,

a detached house standing in its own grounds on the steep hill side some distance above the road itself. One may assume that originally the only access was by way of the steep path that leads up from Bowen Road. Now it is possible to get there by car from Borrett Road, by means of a small bridge which connects that road to the house. The bridge spans a nullah which runs downhill and separates the house from Borrett Road itself. There is at that point also a footbridge, but it is the road bridge which is at the core of these proceedings. I hope the accompanying diagram will make the situation more easy to understand.



The "building" on the west side of Bowen Road is the foundation for garages belonging to two blocks of flats standing on the hillside well above that part of Borrett Road and approached from a road that turns off from it earlier. Close to the flats is the large complex of Island School, its swimming pool and the Island Squash Courts. Further back down Borrett Road are the buildings that used to house the Military Hospital. The feature marked "roadway" is a continuation of Borrett Road to the south and appears to lead only to No. 13 Bowen Road, another house standing on land adjoining that of No. 12 but higher up. To the east the hillside is undeveloped for a long, long way.

Two questions were argued at the trial. First "whether the bridge from Borrett Road to the site is a 'street'"; secondly "does the site abut Borrett Road or its continuation to the south".

The questions are crucial, for if either is answered "yes", the maximum height, site coverage and plot ratio of the redevelopment will be automatically governed by Regulations 16, 20 and 21 of the Building (Planning) Regulations, (its having been conceded that the site abuts the bridge). It is on this basis that the plaintiff's plans have been drawn and they provide for a high quality residential complex with a swimming pool in the grounds. In all it would be 28 storeys high.

On the other hand, if the answer to both questions is "No", then it is a Regulation 19 situation, i.e. the height, site coverage and plot ratio are left entirely to the discretion of the Building Authority. The Authority has already indicated that these requirements would cut the plaintiff's plans to about half their present size.

Let me deal with the second question first, does the site abut Borrett Road or its continuation. Mr. Ogden for the plaintiff company contends that actual contiguity is not necessary. He refers us to Wakefield Local Board v Lee(1) where premises were separated from a street by a small stream crossed by two bridges, one suitable for a horse and cart or carriages, the other limited to foot passengers. It was a case heard in the Exchequer Division of the Court of Appeal. Two of three judges held that the premises did "front and abut" upon the street.

With respect I do not find any assistance in that case. It turned upon legislation which required owners of premises "fronting, adjoining or abutting" the street to meet the cost of making it up. The influence of that object is even more apparent in Lightbound v Higher Bebington Local Board (2) a case to which Mr. Ogden also draws our attention.

Fuad J. in the Court below found :

> "that in any given case it must be a question of fact, depending on the facts and the application of any rules which may have been laid down in the cases (slightly to paraphrase the words of Lord Esher, M.R. in Lightbound at p.580) whether a site abuts a street in the ordinary meaning of the word abut, in the absence of a definition. I think, too, that the court must approach the problem in a practical and common sense way, bearing in mind that it is for the authority seeking to restrict the owner's user of the land to satisfy the court that his contention cannot be right. Clearly every slight obstruction or intervention between a site and a street could not be said to prevent the former from abutting the latter.

(1) (1876) 1 Ex. 336
(2) (1885) 16 Q.B.D. 577

It will be a question of degree."

I would respectfully agree with that as a correct assessment of the position. Applying that approach the learned Judge found that the site did not abut the road. He actually went to look at the site and found the nullah to be "a very substantial natural feature". The photographs and survey plans support his view. I see no reason to interfere in this respect.

I turn then to the first question, is the bridge a street.

Street is defined in the Ordinance as including "the whole or any part of any square, court or alley, highway, lane, road, roadbridge, footpath or passage whether a thoroughfare or not".

The bridge in this instance is some 22 m long and of R.C.C. construction. The photographs show a simple carriageway flanked on either side by what might be described as castellated kerbs. No one would ever think to walk along those kerbs, except perhaps a young child who might be tempted incautiously to jump from one raised portion to another. There is no pavement.

To avoid the clutches of Regulation 19 a site must abut a street that is not less than 4.5 m wide. The carriageway of the bridge is an average of only 4.3 m, although by adding the width of the two kerbs the necessary size is reached. Mr. Kaplan, who appears for the Attorney General, argues that we should look only to the carriageway, for a street is for people either to drive or walk along and if there is something adjacent which allows them to do neither it can hardly be counted as part of the street. I must confess to a great sympathy with that argument, but I have eventually come to the conclusion that the express words of the legislature - "the whole of" - must be given meaning and that the bridge in this instance must be taken as not less than 4.5 m wide.

The Judge below did not make a decision in this respect. He did not need to, for he applied not the definition in the Ordinance that I have just set out, but a further definition contained in Regulation 2 :

> "'street' includes any footpath and private and public street".

He concluded that the two definitions were not to be read together, but that the situation was governed by the definition in the Regulations. In that case there was no extension of the natural meaning of the word to include a bridge.

The learned Judge was influenced to his conclusion

by two considerations, that "street" is the only word that is defined in both the Ordinance and the Regulations, and that the word "footpath" appeared in both definitions. With respect to him, it does not seem to me that these considerations are sufficient to displace the general presumption that a word has the same meaning throughout different parts of the same legislation, the express provision of Section 31 of the Interpretation and General Clauses Ordinance that "..... where any Ordinance confers power to make any subsidiary legislation, expressions used in the subsidiary legislation shall have the same meaning as in the Ordinance conferring the power .....", and the introductory words to Regulation 2, "that: words and expression (sic) have the meaning attributed to them by the Building Ordinance". In my view, the definition in Regulation 2 is additional to and not exclusive of the definition in Section 2 of the Ordinance.

Lord Selborne when dealing with the word "street" in Robinson v Local Board of Barton Eccles(3) said at page 801 :

> "In the natural and popular sense of the word 'street', or the words 'new street', I should certainly understand a roadway with buildings on each side."

There can be no doubt that the bridge across the nullah does not fall within that description and therefore, unless it can be brought within the statutory definition, this appeal must fail.

Mr. Kaplan argues that it cannot be brought within the statutory definition unless it first exhibit the natural characteristics of a street, that is in other words, unless it is already a street in the natural and popular sense of the word. The words of the definition, he suggests, do no more than provide that what is naturally a street shall not cease to be so merely because it also acquires the characteristics of any of the other features mentioned therein. He relies on two authorities.

The Queen v Fullford(4) was a conviction under the Local Government Amendment Act 1861, reserved to the Court of Crown Cases Reserved. The relevant definition was "the word 'street' shall apply to and include any highway not being a turnpike road". Nevertheless, Pollock, C.B. said :

> "If I had to direct the jury in this case, I should tell them that a set of detached houses, not being in a continuous line, and some facing one way and some another, and having no appearance of

(3) (1883) 8 App. Cas. 798, 801
(4) 33 L.J.M.C. 122

uniformity at all, was not a street within the meaning of this Act of Parliament".

The other four Judges of the Court gave judgments to a similar effect.

In the Attorney General v Laird(5) the definition in question was remarkably like that which we have to deal with. It defined street as including "any highway and any public bridge (not being a county-bridge) and any road, lane, footway, square, court, alley or passage whether a thoroughfare or not". Commenting thereon Pollock, M.R. said :

> "It is plain therefore that we are to read 'street' in Section 3 as including a highway, and Hoylake Road is a highway. But the section does not say that all highways are streets; and the meaning of 'street' has still to be sought from a consideration of the circumstances of the case and of a number of authorities."

He went on to quote the passage I have already set out from Fullford(4) and Barton Eccles(3) and added :

> "Now reading those passages it appears to me that what one has to find before one can determine that the highway in question is a street, is that the highway has become a street in the ordinary acceptation of that word, because by reason of the number of the houses, their continuity and their proximity to one another, what would be a road or a highway has been converted into a street. That is a question of degree."

Further support for Mr. Kaplan's proposition may perhaps be found within the Buildings Ordinance itself. Section 2 has this :

> "'Access road' means a road on land held under lease, licence or otherwise from the Crown or on land over which the Crown has granted a right of way, providing access only to buildings used or intended to be used wholly or mainly for purposes of habitation, and which is not a street."

A "road" is included in the definition of street, and if a road not having the natural characteristics of a street is, nevertheless, by virtue of that definition, a street for the purposes of Ordinance, the definition of access road is self-defeating.

On the other hand there is Regulation 5(1): "Every building shall be provided with means of obtaining access

(5) (1925) 1 Ch. 318

thereto from a street". This would create difficulties if "street" were given only its natural meaning.

Mr. Ogden argues that natural characteristics cannot in any event be a pre-requisite, for many of the features mentioned in the definition could never possibly exhibit them. He instances a court and a footpath. With respect I do not think that is so. It is not difficult to envisage a court or a footpath with houses along one side.

At first glance the authorities put forward by Mr. Kaplan seem to lead to the general principle that a provision "X shall include Y" must be taken to mean "X shall include Y, but only if Y already has the characteristics of X". That would not be easy to reconcile with an earlier passage from the same judgment of Lord Selborne:

> "An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable, but to enable the word as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable. I look upon this portion of the interpretation clause as meaning neither more nor less than this, that the provisions contained in the Act as to streets, whether new streets or old streets, shall, unless there be something in the subject-matter or the context to the contrary, be read as applicable to these different things. It is perfectly consistent with that, that they should be read as applicable, and should be applied, to those things to which they in their natural sense apply, and which do not require any interpretation clause to bring them in."(6)

However it is to be observed that both Fullford(4) and Laird(5) were concerned with particular legislation that could only apply to a street where there were already at least one or perhaps two houses and where the object of the legislation may well be thought to have been particularly relevant to a street in the natural sense of the word. The influence of these factors is I think clearly indicated in the judgment of Sargant L.J. in Laird (7). And the judges in Fullford(4) were careful to relate their comments to that particular legislation.

For these reasons I take those two authorities to lay down no general principle, which in my view is to be found instead in the words of Lord Selborne that I have just

(7) at page 333/4

quoted. Thus the bridge in question is to be treated as a street unless there is something in the subject-matter or context of the relevant regulations to the contrary. I do not find either. It follows that the Appellant is entitled to succeed. It has been agreed between Counsel that in that case the appropriate declarations are those numbered 1 and 4 in the Originating Summons.

Zimmern, J.A. :

Zimmern, J.A.

This is yet another controversy on appeal over interpretation of the Building and Planning Regulations made under the Buildings Ordinance between the Building Authority and an intending developer of property.

The appellant plaintiff developer submitted its plans to the Building Authority for the redevelopment of No. 12 Bowen Road on the basis that it is a Class A site defined in the regulations as follows :

> ""class A site" means a site, not being a Class B site or Class C site, that abuts on one street not less than 4.5 m wide or on more than one such street."

The Building Authority refused the application on the ground that it is not a Class A and that Regulation 19 applied. The consequence of that is extremely serious to the appellant.

The appellant applied by way of Originating Summons against the Attorney General for the usual declarations and the matter was heard before Fuad J. who dismissed the Summons and it now appeals.

The site is fully described in the judgment and all I need say is that the western boundary abuts on to a nullah. An "approach road" (I use the term for the purpose of description only) runs off Borrett Road on Crown land over the nullah on to the site and that is its only entry by carriage.

Mr. Ogden contented before the learned judge :-

a) the nullah should be ignored and the site in fact abuts on to Borrett Road and

b) in any event the site abuts on to the road-bridge over the nullah and it is 4.5 m wide and as defined in the Ordinance it is a street.

As to the first contention the judge having visited the locus found as a fact that the nullah which lies between Borrett Road and the site was a very substantial natural feature and that the plaintiff could not successfully maintain that the site abutted on to Borrett

Road.

As to the second point he found that the definition of "street" in the regulations was relevant to the determination of matter and accordingly decided the road-bridge was not a street.

On appeal the same contentions were advanced to us and as to the first Mr. Ogden had to admit that the learned judge had applied the right principles in his determination. The conclusion he came to was based on a finding of fact and in my view cannot be successfully challenged.

It is the second which has caused some concern and I only wish to deal with one matter on the issue and may I firstly express my respectful agreement with my brothers that the foot bridge is not less than 4.5 m wide and that the learned judge was wrong in holding that the definition of "street" in the regulations applied to the exclusion of the definition in the Ordinance.

The Ordinance defines 'street' "includes the whole or any part of any square, court or alley, highway, lane, road, road-bridge, footpath or passage whether a thoroughfare or not" under the familiar "unless the context otherwise required" clause in the section.

Neither Counsel mentioned the definition of "street and road" in the Interpretation and General Clauses Ordinance.

Mr. Kaplan for the Attorney General advanced a new argument that the word "street" in the Ordinance means a "common law street" i.e. a highway bounded by houses on one or both sides and hence the road-bridge was not a street. This was an argument which if right could have far reaching effect on the application of the regulations.

He relied on Attorney General v Laird(1) a Court of Appeal case concerning the interpretation of the word "street" under the Public Health (Buildings in Streets) Act 1888 with a similar definition to ours and the "unless the context otherwise requires" clause.

Pollock M.R. said at pages 326 to 329 :-

> "The word 'street' which is used in that section is defined by s.2 of the Act by reference to s.4 of the Public Health Act, 1875, which defines 'street' as including 'any highway and any public bridge (not being a country bridge) and any road, lane, foot-way, square, court, alley or passage whether a thoroughfare or not.' It is plain, therefore, that we are to read

(1) [1925] 1 Ch. 318

'street' in s.3 as including a highway, and Hoylake Road is a highway. But the section does not say that all highways are streets; and the meaning of 'street' has still to be sought from a consideration of the circumstances of the case and of a number of authorities.

What this Court has to decide is the question of law, whether or not MacKinnon J.'s judgment was correct. I turn, therefore, to a more careful scrutiny of the words of s.3, and find that what is forbidden without the consent of the urban authority is to erect or bring forward any house or building in any street beyond the front main wall of the house or building on either side thereof in the same street. Now first of all, what is a street? By the section it includes a highway; but turning back to Reg. v Fullford,(2) decided by the Court of Crown Cases Reserved, upon the consideration of s.28 of the Act of 1861 one finds some guidance given by the learned judges who took part in that decision. Sir William Erle C.J. there says (3): 'I was very desirous that the parties who have to carry this Act into effect should have, from those whose duty it is to interpret it, a definition of what is a street within the meaning of the Act. I think the term street, in this statute, refers to a row of houses, in some degree continuous and in some degree proximate to one another. The whole question is, whether these houses have attained that degree of continuity and proximity?' Blackburn J. says (3): 'The question is, whether the house and building of the defendants formed part of a street, and whether the adjoining houses formed part of it. It is a question of more or less, and therefore a question for the jury. Within the meaning of the Act, houses form part of a street when the houses and buildings on one side are so contiguous as substantially to form a continuous row.' He goes on: 'Had I to express an opinion respecting one part of this so-called street, I should say that it was a street; but with regard to the particular part where the defendants' house is situate, I think the jury might have well found either way. Had I been a juryman, I am not certain what way I should have found.' Pollock C.B. says (3): 'If I had to direct the jury in this case, I should tell them that a set of detached houses, not being in a continuous line, and some facing one way and some another, and having no appearance of uniformity at all, was not a street within the meaning of this Act of Parliament.'

Now I read those passages, because it appears to me that upon the predecessor of s.3 it was determined

(2) 33 L.J. (M.C.) 122.
(3) Ibid. 125

by a Court of great authority that in order to come within the term 'street' one has to find a succession of houses and buildings, at least on one side, with some degree of continuity and proximity. If this is so, it becomes a question of fact whether a street has been built, and that what was a mere highway has become a street.

In Robinson v Barton-Eccles Local Board(4) the question of by-laws made under s.157 of the Public Health Act, 1875, relating to a new street and to its width and construction was considered. Lord Selborne, dealing with the word 'street', says (5): 'In the natural and popular sense of the word 'street', or the words 'new street', I should certainly understand a roadway with buildings on each side (it is not necessary to say how far they must, or may be, continuous or discontinuous); and by 'new street', a place which before had not that character, but which, by the construction of buildings on each side, or possibly on one side, has acquired it.'

Now reading those passages it appears to me that what one has to find before one can determine that the highway in question is a street, is that the highway has become a street in the ordinary acceptation of that word, because by reason of the number of the houses, their continuity and their proximity to one another, what would be a road or a highway has been converted into a street. That is a question of degree. More than that, it appears from Reg. v Fullford,(2) and indeed it is accepted by the respondent, that there may be a road which is a street in one part and not in another. It is all, therefore, a question of fact."

He found as a matter of fact Hoylake Road was not a street.

It seems to me there are two possible explanations for his judgment. First, having said that "it is plain therefore, that we are to read 'street' in s.3 as including a highway", he was of the opinion that that the context required otherwise by reason of his conclusion expressed and contained in the first sentence of the last paragraph set out above. Secondly, he might have decided that the context otherwise required a strict construction though it was Astbury J. who said at 338 "This section is one depriving an owner of land of what apart from it would be one of his rights of dominion and I think it must be strictly construed."

(2) 33 L.J. (M.C.) 122
(4) (1883) 8 App. Cas. 798
(5) Ibid. 801

I am quite unable to accept that case as an authority for the proposition that where an Ordinance defines "street" as including "road" then a "road" does not mean a "street" until and unless the requisite number of houses have been built on either or both sides to satisfy a finding of fact that it has become a street. The definition prevails unless the context otherwise required. This is brought out succinctly in the House of Lords Case mentioned by Pollock M.R. namely Robinson v. The Local Board for The District of Barton-Eccles Winton and Monton. (4)

That case concerned the interpretation of s.157 of The Public Health Act 1875 which enabled an urban authority to make bye-laws with respect to the level, width and construction of new streets. The facts were simple. An old highway formerly a country lane had long been a "street" within the interpretation clause of the Act and the question was whether by the building of houses on each side of it had recently become a new street.

My Lord the Vice-President has dealt with the leading speech of the Lord Chancellor and I only wish to quote a short passage from the speech of Lord Blackburn at p.809. He said :-

> "On that question we have the facts stated in the special case, and I gather from them that New Lane (which is rather a misnomer, for it is an old lane), was an ancient highway which came within the definition of "street" in the interpretation clause, I think, originally of the Act of 1848, because it was a highway (not being a turnpike road). There have grown up within the last ten years a quantity of houses, of which I will only say that there is enough congruity to say that part has become a street in the popular and ordinary sense of the word, namely, a highway with houses on each side, and consequently that this part has become a new street."

It seems to me clear the Law Lords in that case were agreed that even though the old highway came within the definition of street long ago nevertheless the houses when built turned it into new street in the popular sense of the word.

In my view the road-bridge in instant case comes within the definition of street under the Ordinance and the sole question left is whether the site abuts on to it. If it does then the site is a Class A site and the appeal succeeds. It is a matter on which I have my doubts in respect of an approach road which runs into the site.

(4) (1883) 8 App. Cas. 798

However Mr. Ogden had throughout argued that the site for the purpose of the regulations does so abut and we have had no argument to contrary on behalf of the Attorney General. So be it. I would allow the appeal. In so saying and speaking for myself, I want to make it clear that this is not an authority for the proposition that a site necessarily abuts on to an approach road which runs into it.

(P.F.X. Leonard) Vice-President (D. Cons) Justice of Appeal (A. Zimmern) Justice of Appeal

Michael Ogden, Q.C., K.Bokhary (Woo, Kwan, Lee & Lo) for Appellant.

Kaplan, S.Y. Chan (Legal Department) for Respondent.

No. 7

ORDER OF COURT OF APPEAL GRANTING FINAL LEAVE TO APPEAL TO PRIVY COUNCIL

IN THE COURT OF APPEAL
CIVIL APPEAL NO. 122 OF 1981

(On appeal from High Court Miscellaneous Proceedings No. 586 of 1981)

B E T W E E N

Mightystream Ltd. — Appellant (Plaintiff)

10

- and -

Attorney General — Respondent (Defendant)

BEFORE THE HONOURABLE MR. JUSTICE CONS, THE HONOURABLE MR. JUSTICE ZIMMERN AND THE HONOURABLE MR. JUSTICE BARKER, JUSTICE OF APPEAL

O R D E R

UPON READING the Notice of Motion herein dated the 20 2nd day of June, 1982 on behalf of the above-named Respondent for final leave to appeal to Her Majesty in her Privy Council from the judgment of the Court of Appeal dated the 21st day of January, 1982.

AND UPON READING the affirmation of Chow Bing Chiu filed herein on the 2nd day of June, 1982 and all the exhibits therein referred to

AND UPON HEARING Counsel for the Respondent and Counsel for the Appellant.

IT IS ORDERED that the Respondent do have final leave 30 to appeal to Her Majesty in her Privy Council from the judgment of the Court of Appeal dated the 21st day of January, 1982. Costs in the appeal.

Dated the 8th day of June, 1982.

(N.J. Barnett)
Registrar

EXHIBITS

R1 - Affidavit of G.L. Lowman

R1 - AFFIDAVIT OF G.L. LOWMAN

4th July 1981

1981, No. 586

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Buildings Ordinance, Cap.123 and the Building (Planning) Regulations

and

IN THE MATTER of Inland Lot No. 2232, 12 Bowen Road, Hong Kong.

B E T W E E N

MIGHTYSTREAM LIMITED — Plaintiff

- and -

ATTORNEY GENERAL — Defendant

I, GRAHAM LEONARD LOWMAN of Flat 11B, Ridge Court, 21 Repulse Bay Road, Hong Kong, Chartered Surveyor do make oath and say :-

1. I am the Project Director of the Plaintiff. The Plaintiff has duly authorised me to make this my Affidavit on its behalf, and I do so from matters which are within my knowledge. I qualified as a Chartered Building Surveyor in 1953. I am an Associate of the Royal Institute of Chartered Building Surveyors and an Authorised Person under the Buildings Ordinance. I have experience in the field relevant to the matters dealt with in this my Affidavit in the private sector and in the employ of local authorities in Britain; in Government in Nigeria; and in Government (reaching the level of Government Building Surveyor) and in the private sector in Hong Kong. I have also lectured in this field at the Hong Kong Technical College and at the University of Hong Kong.

2. The present Inland Lot No. 2232, 12 Bowen Road (hereinafter called "the said site") consists of the original Inland Lot No. 2232 and an extension thereto granted in 1973 for garden purposes only (and not to count for site coverage purposes). The Crown Lease in respect of the said original lot and the documents pertaining to the said extension and to an R.C.C. bridge, about which I will say more below, are now shown to me in

a bundle marked "GLL-1" and exhibited hereto.

3. The Plaintiff is the registered owner of the said site. A true copy of the Assignment in question is marked "GLL-2" and exhibited hereto.

4. On April 28, 1980, Mr. Kevin Ma Ching Ngor of Planning Service International, Hong Kong, an authorised person, applied on behalf of the Plaintiff to the Building Authority for approval of plans for the redevelopment of the said site. True copies of the application for approval and the accompanying plans are together marked "GLL-3" and exhibited hereto.

5. The proposed development is one for a building comprising 24 storeys of domestic accommodation over 4 storeys of car parks. The flats will be of high quality and are intended for the upper income group. The height, site coverage and plot ratio of the proposed building are 287.5 ft (87.39 m), 33.25% and 7.71 respectively. The height complies with regulation 16 of the Building (Planning) Regulations and the site coverage and plot ratio are within the permissible limits in respect of Class A Sites under the Building (Planning) Regulations.

6. The Building Authority took the view that the said site does not abut a street and that, accordingly, the height of and the site coverage and plot ratio for any building thereon falls to be determined under regulation 19 of the Building (Planning) Regulations. Thus, in his letter of June 20, 1980, by which he purported to refuse approval of the said plans, the Building Authority said:-

> "As the site does not abut a street, the Building Authority has determined, under Building (Planning) Regulation 19, that the maximum permissible height, site coverage and plot ratio of any building to be erected on this site should be 40 m, 39% and 2.9022 respectively. Accordingly, your proposal is unacceptable in these terms - Building (Planning) Regulation 19 and s.16(1)(d) of the Building Ordinance."

A true copy of this letter is marked "GLL-4" and exhibited hereto.

7. I now produce marked "GLL-5" and exhibited hereto a plan of the said site.

8. By means of this plan, I respectfully draw this Honourable Court's attention to the following features of or relating to the said site :-

(a) the original lot referred to in paragraph 2 hereof, which lot is shown coloured pink and hatched black;

Exhibits

R1 - Affidavit of G.L. Lowman

4th July 1981

(continued)

(b) the extension referred to in the said paragraph, which extension is shown coloured pink;

(c) an R.C.C. bridge of 15 ft (or approximately 4.56 m) in width and 70 ft (or approximately 21.27 m) in length held on annual licence and connecting the said site with Borrett Road, which R.C.C. bridge is shown coloured blue;

(d) a pedestrian bridge connecting the said site with Borrett Road, which pedestrian bridge is shown coloured green; and

(e) a pedestrian path connecting the said site with Bowen Road, which path is also shown coloured green.

9. Stapled to the said plan are 6 photographs, marked A to F inclusive. The positions from which they were taken are shown on said plan. It will be seen from the said plan that the said site is separated from Borrett Road by a nullah, which is crossed by the said R.C.C. bridge.

10. I am advised and verily believe that :-

(a) The said R.C.C. bridge, which the said site abuts, is a street within t he meaning of the Buildings Ordinance, Cap.123 and the Building (Planning) Regulations.

(b) Further or alternatively, the said site abuts Borrett Road, which is a street within the meaning of such Ordinance and Regulations.

(c) Accordingly, the said site is a Class A Site within the meaning of the said Regulations.

(d) Therefore, the Plaintiff is entitled to the relief it seeks by the Originating Summons herein.

Sworn at the Court of Justice, Victoria, Hong Kong this 4th day of July, 1981.) (Sgd) Graham Leonard Lowman

Before me,

(Sgd) Commissioner for Oaths.

This affidavit is filed on behalf of the Plaintiff.

R2 - CROWN LEASE OF IL 2232
(Exhibit GLL-1)

Exhibits

R 2 - Crown Lease of IL 2232 (exhibit GLL-1) Crown Lease dated 24th December 1918 with attached letters

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1981, No. 586

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Buildings Ordinance, Cap.123 and the Building (Planning) Regulations

and

IN THE MATTER of Inland Lot No.2232, 12 Bowen Road, Hong Kong.

B E T W E E N

MIGHTYSTREAM LIMITED Plaintiff

- and -

ATTORNEY GENERAL Defendant

This is the exhibit referred to in the Affidavit of Graham Leonard Lowman filed herein on the 4th day of July, 1981.

Date	Description	Exhibit Marked	No. of Sheet
24.12.1918	Crown Lease of I.L.2232	"GLL - 1"	18

WOO, KWAN, LEE & LO,
Solicitors for Plaintiff,
Hong Kong.

This is the exhibit marked "GLL-1"referred to in the affidavit of Graham Leonard Lowman sworn before me this 4th day of July 1981.

(Sgd) Commissioner for Oaths.

THIS INDENTURE, made the Twentyfourth day of December One thousand Nine hundred and Eighteen BETWEEN OUR SOVEREIGN LORD GEORGE V by the Grace of GOD King of the United Kingdom of GREAT BRITAIN and IRELAND and of the BRITISH Dominions beyond the Seas, Defender of the Faith, Emperor of INDIA, of the one part, and Edward Newhouse of Victoria in the Colony of Hong Kong Gentleman (hereinafter referred to as 'the said Lessee') of the other part WHEREAS the Honourable Mr. Claud Severn Companion of the Most

Exhibits

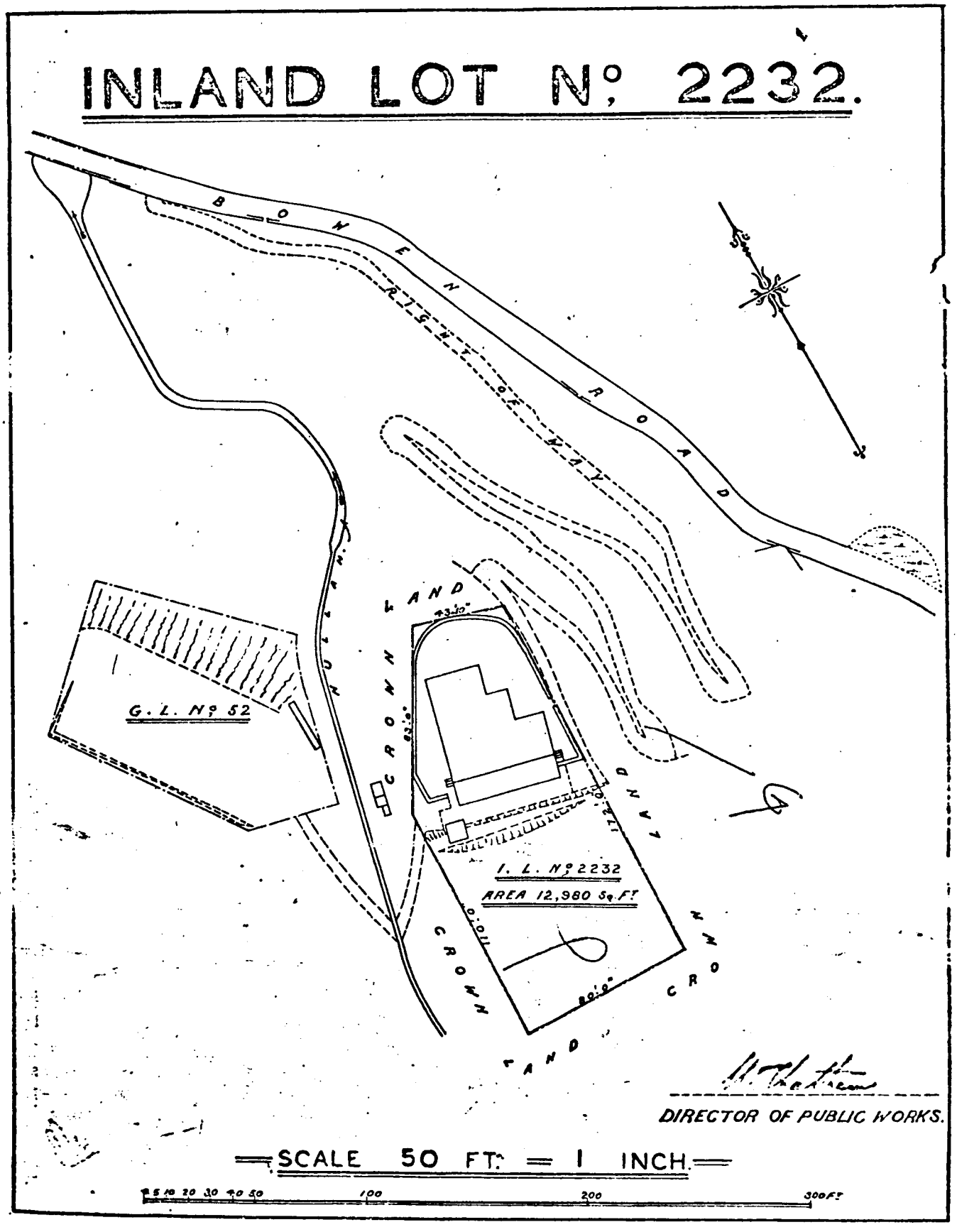
R 2 - Crown Lease of IL 2232 (exhibit GLL-1)

24th December 1918 with attached letters

(continued)

Distinguished Order of Saint Michael and Saint George is now the duly constituted and appointed Officer Administering the Government and Commander-in-Chief of the said Colony of Hongkong and its Dependencies; and is duly authorized to enter into these presents in the name and on behalf of His said Majesty; NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of One thousand five hundred and fiftyeight dollars current money of the said Colony of Hongkong, paid into the Treasury of the said Colony for the use of His said Majesty by the said Lessee (the receipt whereof is hereby acknowledged) and in consideration of the yearly rent, covenants and stipulations hereinafter reserved and contained by and on the part and behalf of the said Lessee his Executors, Administrators and Assigns, to be paid, done and performed; HIS SAID MAJESTY KING GEORGE DOTH hereby grant and demise, unto the said Lessee his Executors, Administrators and Assigns, ALL that piece or parcel of Ground situate, lying and being at or near Bowen Road in the Island of Hongkong abutting on all sides thereof on Crown Land and measuring thereon on the North side Fortythree feet and two inches on the South side Eighty feet on the East side One hundred and seventy two feet and on the West sides One hundred and ten feet and Eightythree feet which said piece or parcel of ground expressed to be hereby demised contains in the whole by admeasurement Twelve thousand nine hundred and eighty square feet and is more particularly delineated on the plan annexed hereto and thereon coloured Red and is registered in the Land Office as Inland Lot No. 2232.

And all the easements and appurtenances whatsoever to the said demised premises belonging, or in any-wise appertaining. EXCEPT AND RESERVED unto His said Majesty, His Heirs, Successors and Assigns, all Mines, Minerals, Mineral Oils and Quarries of Stone in, under and upon the said premises, and all such Earth, Soil, Marl, Clay, Chalk, Brick-earth, Gravel, Sand, Stone and Stones, and other Earths or Materials, which now are or hereafter during the continuance of this demise, shall be under or upon the said premises, or any part or parts thereof, as His said Majesty, His Heirs, Successors and Assigns may require for the Roads, Public Buildings, or other Public Purposes of the said Colony of Hongkong; with full liberty of Ingress, Egress and Regress, to and for His said Majesty, His Heirs, Successors and Assigns, and His and their Agents, servants and workmen, at reasonable times in the day during the continuance of this demise, with or without horses, carts, carriages and all other necessary things into, upon, from and out of all or any part or parts of the premises hereby expressed to be demised, to view, dig for, convert, and carry away, the said excepted Minerals, Stone, Earths and other things respectively, or any part of parts thereof respectively, thereby doing as little damage as possible to the said Lessee his Executors, Administrators or Assigns; AND ALSO SAVE AND EXCEPT full power to His said Majesty, His Heirs, Successors and Assigns to make and conduct in


INLAND LOT Nº 2232.
BONEN
RIGHT OF WAY
ROAD
CROWN LAND
CROWN LAND
CROWN LAND
CROWN LAND
G. L. Nº 52
I. L. Nº 2232
AREA 12,980 Sq. Ft.
DIRECTOR OF PUBLIC WORKS.
SCALE 50 FT. = 1 INCH.
0 5 10 20 30 40 50 100 200 300 Ft.

Exhibits

R 2 - Crown Lease of IL 2232 (exhibit GLL-1)
24th December 1918
with attached letters
(continued)

through and under the said premises, all and any public or common sewers, drains or watercourses. TO HAVE AND TO HOLD the said piece or parcel of ground and premises hereby expressed to be demised, with their and every of their appurtenances, unto the said Lessee his Executors, Administrators and Assigns, from the Twentyfirst day of May One thousand nine hundred and Seventeen for and during and unto the full end and term of Seventy-five Years from thence next ensuing and fully to be complete and ended; with such right of renewal for one further term of Seventy-five Years as is hereinafter provided. YIELDING AND PAYING therefore yearly and every year during the said term of Seventy-five years the sum of Ninety dollars in Current Money of the said Colony of Hongkong, by equal half-yearly payments, on the Twenty-fourth day of June and the Twenty-fifth day of December, in every Year, free and clear of and from all Taxes, Rates, Charges, Assessments and Deductions whatsoever, charged upon or in respect of the said premises or any part thereof, the first half-yearly payment of the said Rent becoming or having become due and to be made on the Twenty fifth day of December One thousand nine hundred and Eighteen AND the said Lessee for himself his Heirs, Executors, Administrators and Assigns doth hereby covenant with His said Majesty, His Heirs, Successors and Assigns by these presents, in manner following, that is to say, that he the said Lessee his Heirs, Executors, Administrators or Assigns shall and will yearly, and every year, during the said term hereby granted, well and truly pay or cause to be paid to His said Majesty, His Heirs, Successors and Assigns, the said yearly Rent of Ninety dollars clear of all deductions as aforesaid on the several days and times and in the manner hereinbefore reserved and made payable; AND ALSO that he the said Lessee his Executors, Administrators and Assigns shall and will during all the said term hereby granted, bear, pay and discharge all taxes, rates, charges and assessments whatsoever, which now are or shall be hereafter assessed or charged upon, or in respect of the said premises hereby expressed to be demised or any part thereof AND ALSO that the said Lessee his Executors, Administrators or Assigns, shall and will, before the expiration of Twentyfour Calendar Months of the term hereby granted, at his and their own proper costs and charges, erect, build and completely finish fit for use, in a good, substantial and workmanlike manner and with the best materials of their respective kinds, one ~~or more~~ good substantial and safe brick or stone messuage or tenement, messuages or tenements, upon some part of the ground hereby demised, with proper fences, walls, sewers, drains and all other usual or necessary appurtenances, and shall and will before the expiration of the said Twentyfour Calendar Months lay out and expend thereon the Sum of Ten thousand dollars at the least, which said messuage or tenement, messuages or tenements, shall be of the same rate of building, elevation, character and description, and shall front and range in a uniform manner with the buildings (if any) immediately adjoining in the same Street,

(sgd)

and the whole to be done to the satisfaction of the Surveyor of His said Majesty, His Heirs, Successors or Assigns, (now the Director of Public Works) AND ALSO that the said Lessee his Executors Administrators and Assigns shall not nor will without the consent of the Governor in Council previously obtained erect more than one house on the hereby demised premises AND ALSO that the said Lessee his Executors, Administrators and Assigns, shall and will, from time to time, and at all times hereafter, when, where, and as often as need or occasion shall be and require, at his and their own proper costs and charges, well and sufficiently Repair, Uphold, Support, Maintain, Pave, Purge, Scour, Cleanse, Empty, Amend and keep the messuage or tenement, messuages or tenements, and all other erections and buildings, now or at any time hereafter standing upon the said piece or parcel of ground hereby expressed to be demised, and all the Walls, Banks, Cuttings, Hedges, Ditches, Rails, Lights, Pavements, Privies, Sinks, Drains and Watercourses thereunto belonging, and which shall in any-wise belong or appertain unto the same, in, by and with all and all manner of needful and necessary reparations, cleansings and amendments whatsoever, the whole to be done to the satisfaction of the Surveyor of His said Majesty, His Heirs, Successors, or Assigns : AND THE SAID messuage or tenement, messuages or tenements, erections, buildings and premises, so being well and sufficiently repaired, sustained and amended, at the end, or sooner determination of the said term hereby granted, shall and will peaceably and quietly deliver up to His said Majesty, His Heirs, Successors or Assigns; AND ALSO that the said Lessee his Executors, Administrators and Assigns shall and will during the term hereby granted, as often as need shall require, bear, pay and allow a reasonable share and proportion for and towards the costs and charges of making, building, repairing, and amending, all or any roads, pavements, channels, fences and party-walls, draughts, private or public sewers and drains, requisite for, or in, or belonging to the said premises hereby expressed to be demised or any part thereof, in common with other premises near or adjoining thereto, and that such proportion shall be fixed and ascertained by the Surveyor of His said Majesty, His Heirs, Successors, or Assigns, and shall be recoverable in the nature of rent in arrears AND FURTHER that it shall and may be lawful to and for His said Majesty, His Heirs, Successors or Assigns, by His or their Surveyor, or other persons deputed to act for Him or them, twice or oftener in every year during the said term, at all reasonable times in the day, to enter and come into and upon the said premises hereby expressed to be demised, to view, search and see the condition of the same, and of all decays, defects and wants of reparation and amendment, which upon every such view or views shall be found, to give or leave notice or warning in writing, at or upon the said premises, or some part thereof, unto or for the said Lessee his Executors, Administrators, or Assigns, to repair and amend the same

Exhibits

R 2 - Crown Lease of IL 2232 (exhibit GLL-1) 24th December 1918 with attached letters (continued)

within Three Calendar Months then next following, within which said time or space of Three Calendar Months, after every such notice or warning shall be so given, or left as aforesaid, the said Lessee his Executors, Administrators, or Assigns will repair and amend the same accordingly: AND FURTHER that the said Lessee his Executors, Administrators, or Assigns, or any other person or persons, shall not nor will, during the continuance of this demise, use, exercise or follow, in or upon the said premises or any part thereof, the trade or business of a Brazier, Slaughterman, Soap-maker, Sugar-baker, Fellmonger, Melter of tallow, Oilman, Butcher, Distiller, Victualler, or Tavern-keeper, Blacksmith, Nightman, Scavenger, or any other noisy, noisome or offensive trade or business whatever, without the previous licence of His said Majesty, His Heirs, Successors, or Assigns, signified in writing by the Governor of the said Colony of Hongkong, or other person duly authorized in that behalf: AND ALSO that he the said Lessee his Executors, Administrators, or Assigns, shall not nor will, let, underlet, mortgage, assign, or otherwise part with, all or any part of the said premises hereby expressed to be demised, for all or any part of the said term of Seventy-five years, without at the same time registering such alienation in the Land Office, or in such other Office as may hereafter be instituted for the purposes of Registration in the said Colony of Hongkong, and paying all reasonable fees and other expenses thereon. PROVIDED ALWAYS, and it is hereby agreed and declared, that in case the said yearly rent of Ninety dollars hereinbefore reserved, or any part thereof, shall bein arrear and unpaid by the space of twenty-one days next over, or after any or either of the said days whereon the same ought to be paid as aforesaid (whether lawfully demanded or not), or in case of the breach or non-performance of any or either of the covenants and conditions herein contained, and by or on the part and behalf of the said Lessee his Executors, Administrators, or Assigns, to be kept, done and performed, then, and in either of the said cases, it shall and may be lawful to and for His said Majesty, His Heirs, Successors, or Assigns, by the Governor of Hongkong, or other person duly authorised in that behalf, into and upon the said premises, hereby expressed to be demised, or any part thereof, in the name of the whole, to re-enter, and the same to have again, retain, repossess, and enjoy, as in His or their first or former state, as if these presents had not been made; and the said Lessee his Executors, Administrators and Assigns, and all other occupiers of the said premises thereout and thence utterly to expel, put out and amove, this Indenture or anything contained herein to the contrary notwithstanding. PROVIDED also, and it is hereby further agreed and declared that His said Majesty, His Heirs, Successors and Assigns, shall have full power to resume, enter into, and re-take possession of all or any part of the premises hereby expressed to be demised, if

required for the improvement of the said Colony of Hongkong or for any other public purpose whatsoever, three Calendar Months' notice being given to the said Lessee his Executors, Administrators, and Assigns of its being so required, and a full and fair Compensation for the said Land and the Buildings thereon, being paid to the said Lessee his Executors, Administrators, or Assigns, at a valuation, to be fairly and impartially made by the Surveyor of His said Majesty, His Heirs, Successors, or Assigns, and upon the exercise of such power the term and estate hereby created shall respectively cease, determine and be void. PROVIDED also, and it is hereby further agreed and declared that the said Lessee his Executors, Administrators, or Assigns shall on the expiration of the term hereby granted, be entitled to a renewed Lease of the premises hereby expressed to be demised for a further term of Seventy-five Years without payment of any Fine or Premium therefor and at the Rent hereinafter mentioned; AND His said Majesty, His Heirs, Successors, or Assigns shall and will at the request and cost of the said Lessee his Executors, Administrators, or Assigns grant unto him or them on the expiration of the term hereby granted a new Lease of the said premises for the term of Seventy-five Years at such Rent as shall be fairly and impartially fixed by the Surveyor of His said Majesty, His Heirs, Successors, or Assigns as the fair and reasonable rental value of the ground at the date of such renewal. And in all other respects such new Lease shall be granted upon the same terms and under and subject to the same reservations, covenants, stipulations, provisoes and declarations as are contained in this present Lease with the exception of this proviso for renewal which shall not be contained in such new Lease. IN WITNESS where of the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered by the above named Edward Newhouse in the presence of MATTHEW I.D. STEPHENS Solicitors, Hong Kong.

(Signed) Edward Newhouse

Registered,

(Sgd)

Land Officer.

Exhibits

R 2 - Crown Lease of IL 2232 (exhibit GLL-1) 24th December 1918 with attached letter dated 30th June 1973

No. of Office signing: 5-95336
When replying please quote: L.O 4/584/72

The Land Office
Registrar General's Department
Central Government Offices
(West Wing) 11th Floor
Hong Kong.

30 June 1973

LAND OFFICE COPY

Registered in the Land Office by Memorial No. 1004215 on 18 July 1973
(Signed)
p. Land Officer

Mrs Irene Zigal,
No. 12 Bowen Road,
Hong Kong

Dear Madam,

Extension to Inland Lot No. 2232

With reference to your application addressed to the Director of Public Works, I have to inform you that in consideration of your payment to Government of a premium of $9,830 (the receipt whereof is hereby acknowledged), Government has approved that the area of Crown land delineated and shown coloured pink on the attached plan, containing 1,966 square feet or thereabouts, be granted as an extension to Inland Lot No. 2232 (hereinafter referred to as "the old lot") on the following terms and conditions, subject to your acceptance thereof in the manner indicated in paragraph 2 below:-

(1) Crown rent for the extension area, calculated to the nearest even dollar at the rate of $1,500 per acre per annum, viz. $68 per annum, will commence from the date on which possession of the extension area is given. This date will be notified to you in a letter from the Director of Public Works.

Possession given on 20.11.73 vide copy of P.L.& S's letter of 20.11.1973

(sgd) P.L.O 27.11.73

(2) Within one month of being required by the Land Officer so to do, you shall at your own expense surrender the old lot to the Crown to the satisfaction of the Land Officer, whereupon you will be granted a Crown Lease of a new lot (hereinafter referred to as "the new lot") comprising the old lot and the extension area. Such Crown Lease will be for the same term and commence from the same date as the Crown Lease of the old lot, and contain the terms and conditions herein contained, and all the clauses and covenants contained in the Crown Lease of the old lot except as hereby modified. Pending the issue of the new Crown Lease the old lot and the extension area shall be deemed to be held as one unit subject to the clauses and covenants

contained in the Crown Lease of the old lot except as hereby modified and the terms and conditions herein contained. Within one month of being required by the Land Officer so to do, you shall take up the Crown Lease of the new lot and pay the prescribed fees therefor.

(3) The boundaries of the new lot will be determined before the issue of the new Crown Lease and the premium and Crown rent will then be adjusted at the rates of $5 per square foot and $1,500 per acre per annum respectively.

(4) You shall pay to Government on demand the cost of providing and fixing each additional boundary stone required to define the new lot and the cost of refixing any boundary stones which through being lost, damaged or removed, require replacement.

(5) (a) The extension area shall not be used for any purpose other than garden purposes.

(b) No building shall be erected on the extension area except such as may be approved in writing by the Director of Public Works as being necessary for the proper maintenance, care and enjoyment of the extension area as a garden.

(c) The extension area shall not be taken into account in the calculation of coverage in the event of any redevelopment of the old lot.

(6) Where any cutting away, removal or setting back of adjacent or nearby hillside or banks or any building up or filling in is required for the purpose of or in connection with the formation, levelling or development of the extension area or any part thereof, you shall construct or bear the cost of the construction of such retaining walls or other support as shall or may then or at any time thereafter be necessary to protect and support such hillside and banks and the extension area itself and to obviate and prevent any falling away, landslip or subsidence occurring thereafter, and shall at all times maintain the said retaining walls or other support in good and substantial repair and condition. In the event of any landslip, subsidence or falling away occurring at any time whether in or from the adjacent hillside or banks whether the same be Crown or leased land, or in or from the extension area itself, you shall at your own expense reinstate and make good the same and shall

Exhibits

R 2 - Crown Lease of IL 2252 (exhibit GLL-1) 24th December 1918 with attached letter dated 30th June 1973 (continued)

Exhibits

R 2 - Crown Lease of IL 2232 (exhibit GLL-1) 24th December 1918 with attached letter dated 30th June 1973

(continued)

indemnify the Government from and against all costs, charges, damages, demands, and claims whatsoever which shall or may be made, suffered or incurred through or by reason thereof. In addition to any other rights or remedies herein provided for breach of any of the conditions hereof the Director of Public Works shall be entitled by a notice in writing to call upon you to carry out such construction or maintenance or both or to reinstate and make good any falling away, landslip or subsidence, and if you shall neglect or fail to comply with such notice within the period specified therein the said Director may forthwith execute and carry out the work and you shall on demand repay to the Government the cost thereof.

(7) In the event of spoil or debris from the site or from other areas affected by any development of the extension area being eroded and washed down on to public lanes or roads or into road-culverts, sewers, storm-water drains or nullahs or other Government properties, you shall be held responsible and shall pay to the Government on demand the cost of removal of the spoil and debris from or for damage to the public lanes or roads or roads-culverts, sewers, storm-water drains or nullahs or other Government properties. You shall indemnify the Government against all actions, claims and demands arising out of any damage or nuisance to private property caused by such erosion and washing down.

(8) No earth, debris, spoil of whatsoever nature, or building materials shall be dumped on any adjoining Crown land.

(9) You shall pay to the Government on demand the cost of removing, diverting and reinstating elsewhere as may be required any footpaths, drains, sewers, nullahs, water courses, pipes, cables, wires, utility services or any other works or installations on the extension area or on areas adjacent thereto which the Director of Public Works may consider it necessary to remove, divert or reinstate upon any development thereof.

(10) Space shall be provided within the old lot to the satisfaction of the Director of Public Works for the parking of not less than two motor vehicles and the space so provided shall not be used for any purpose other than for the purpose of parking private motor vehicles belonging to the residents of the building erected on the old lot.

(11) You shall pay to the Government on demand any sum which the Director of Public Works shall certify to be the cost of making good any damage done to adjoining public roads by you, your contractors or sub-contractors or his or their workmen or vehicles or by any spoil from the extension area.

(12) No materials shall be dumped or stored, nor shall any work be carried out within the boundaries of a public road or way without the prior written consent of the Director of Public Works.

(13) You shall construct and maintain at your own expense and to the satisfaction of the Director of Public Works such drains and channels, whether within the boundaries of the extension area or on Crown land, as the said Director may consider necessary to intercept and convey into the nearest stream-course, catch-pit, channel or storm-water drain all storm-water or rain-water falling or flowing on to the extension area, and you shall be solely liable for and shall indemnify the Government and its officers from and against all actions, claims and demands arising out of any damage or nuisance caused by such storm-water or rain-water.

(14) Any damage or obstruction caused by you, your servants or agents to any nullah, sewer, storm-water drain, watermain or other Government properties within or adjoining the extension area shall be made good by the Government at your cost, and the amount due in respect thereof shall be paid on demand to the Government by you.

(15) You shall pay to the Government on demand the cost of connecting any drains and sewers from the extension area to the Government storm-water drains and sewers when laid. Such works shall be carried out by the Director of Public Works, who shall incur no liability to you in respect thereof.

(16) Any foundations to be constructed near or adjoining any sewer, storm-water drain or nullah within or adjoining the extension area shall comply with the requirements of the Director of Public Works.

(17) You shall not interfere with any existing drain, waterway or nullah within or adjoining the extension area or have any right to the water therein.

Exhibits

R 1 - Crown Lease of IL 2232 (exhibit GLL-1) 24th December 1918 with attached letter dated 30th June 1973 (continued)

(18) The whole of the drainage within the extension area shall be subject to the approval of the Director of Public Works, who may require these works to be carried out with pipes and other equipment of such sizes and materials and other types as he may specify.

(19) A filtered water supply from Government mains will be given on the usual terms and subject to the provisions of the Waterworks Ordinance or any enactment amending or replacing the same, but no guarantee is given that any water that is supplied will be continuously available.

(20) You shall not interfere with any watermain or pipe within or adjoining the extension area without the prior written consent of the Water Authority. Such consent will not be given until any necessary diversion of any such water-main or pipe has been completed. Any diversion shall be carried out by the said Authority.

(21) You shall pay to the Government on demand the cost of repair and reinstatement to any Water-works installations that shall or may be necessary at any time during the term as a result of damage caused by any works or other activities carried out upon the extension area by you or others under your charge, and shall indemnify the Government against any claim, action or demand arising therefrom.

(22) You shall, if required by the Land Officer so to do and within such time as he may stipulate, execute a formal agreement incorporating the terms and conditions herein contained in such for as he may require.

(23) In the event of the breach or non-performance of any of the foregoing terms and conditions or of any of the covenants in the Crown Lease of the old lot the Crown shall be entitled to re-enter upon the old lot or the extension area or both as it shall deem fit.

2. If the foregoing terms and conditions are acceptable I shall be glad if you will signify your acceptance by signing (a) the docket endorsed below on both copies of this letter and (b) both copies of the plan. Such execution must be duly witnessed.

3. After execution please return both copies of this letter and plan to me for registration after which one copy of this letter and plan will be returned to you for

retention with the documents of title relating to the old lot until the new Crown Lease is issued.

Yours faithfully,

(Signed)

(Noel M. Gleeson)
Assistant Registrar General.

Exhibits

R 2 - Crown Lease of IL 2232 (exhibit GLL-1) 24th December 1918 with attached letter dated 30th June 1973 (continued)

I hereby agree to and accept the foregoing terms and conditions.

(Signed) IRENE ZIGAL

10 (Signature of Irene Zigal)

Witness: Signature verified

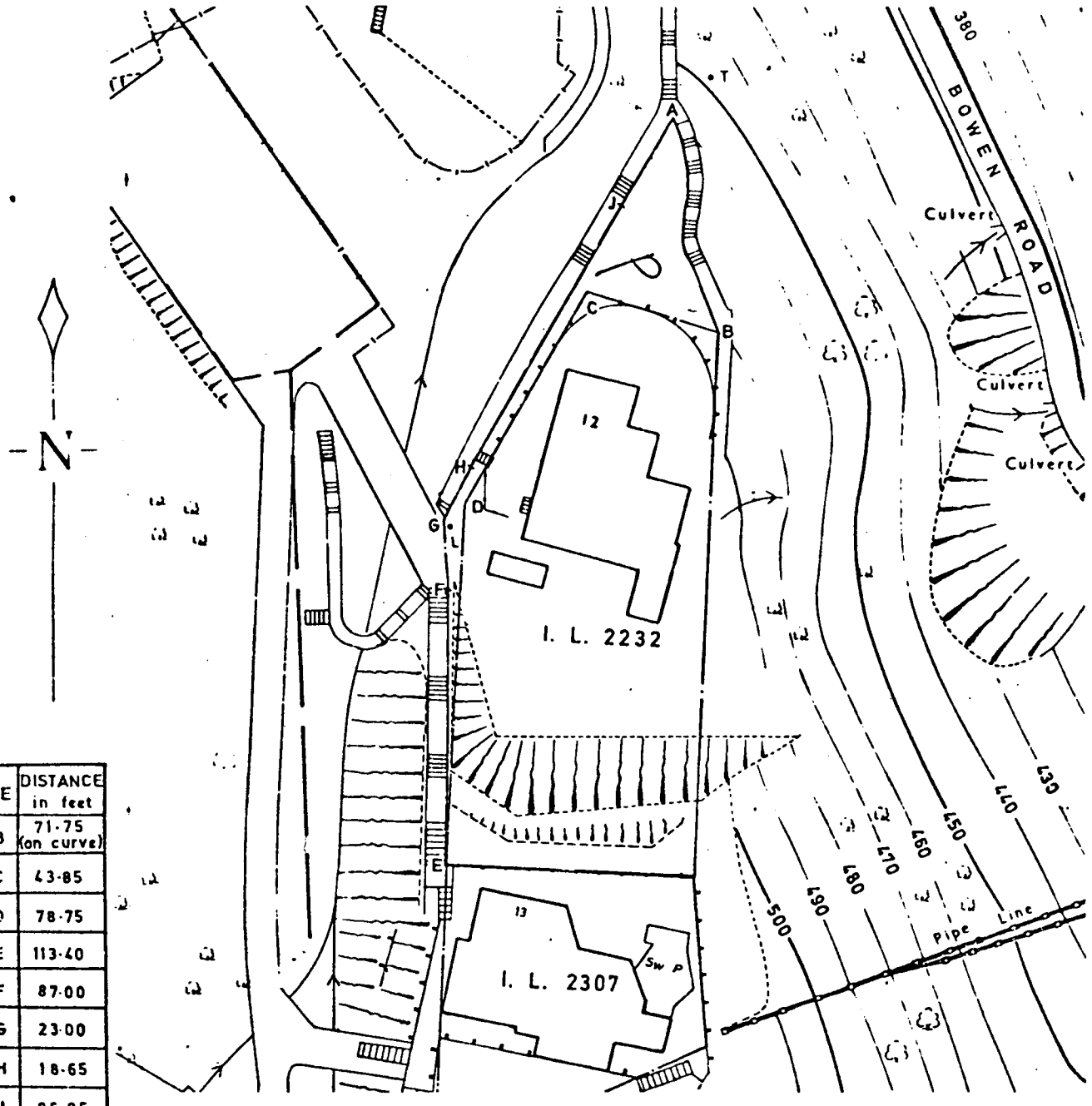
Bank of America

(Signed) Mr. H. Slimm

Address: c/o Bank of America
St. George's Building
Hong Kong

Occupation: Investment Manager

PLAN OF
EXTENSION TO I. L. No. 2232



SIDE	DISTANCE in feet
A B	71·75 (on curve)
B C	43·85
C D	78·75
D E	113·40
E F	87·00
F G	23·00
G H	18·65
H J	96·95
J A	31·70

COLOURED PINK AREA 1,966 SQ. FT.

Irene Tizzel
GRANTEE

(Noel M. Gleeson)
Assistant REGISTRAR GENERAL

SCALE 50 FEET TO ONE INCH

FEET 50 0 50 100 150 FEET

SURVEY SHEET No. 213-NW-4
PLAN No. H 3605/D

(78_) IN L.S.O. 2509/53
DATE 5-10-72

Crown Lands & Survey Office, Hong Kong.

Exhibits

R 2 - Crown Lease of IL 2232 (exhibit GLL-1) 24th December 1918 with attached letter dated 20th November 1973

(copy)

CROWN LANDS & SURVEY OFFICE
Public Works Department
Hong Kong.

20th November, 1973

Mrs. Irene Zigal,
No. 12 Bowen Road,
Hong Kong.

Dear Madam,

Extension to Inland Lot No. 2232

I refer to Registrar General's letter dated 30th June 1973 and have to inform you that possession of the above extension area is hereby given. Crown Rent for the extension area commences from the date of this letter.

One copy of the Extension Letter has already been forwarded to you by the Registrar General for your retention.

Yours faithfully,

(Sgd) G.A. Wheen
for Director of Public Works

TMW/lyy

c.c. D.C.S. (BL 6/3094/72)
R.G. (L.O. 4/584/72)

R3 - ASSIGNMENT
(Exhibit GLL-2)

1981, No.586

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Buildings Ordinance, Cap.123 and the Building (Planning) Regulations

and

IN THE MATTER of Inland Lot No. 2232, 12 Bowen Road, Hong Kong.

B E T W E E N

MIGHTYSTREAM LIMITED — Plaintiff

- and -

ATTORNEY GENERAL — Defendant

This is the exhibit referred to in the Affidavit of Graham Leonard Lowman filed herein on the 4th day of July, 1981.

Date	Description	Exhibit Marked	No.of sheet
9.7.1980	Assignment	"GLL-2"	6

WOO, KWAN, LEE & LO,
Solicitors for Plaintiff,
Hong Kong.

This is the exhibit marked "GLL-2"
referred to in the affidavit of Graham
Leonard Lowman sworn before me
this 4th day of July 1981

(Signed) Commissioner for Oaths.

THIS INDENTURE made the 4th day of July One thousand nine hundred and eighty BETWEEN IRENE ZIGAL of No. 12 Bowen Road, Victoria, Hong Kong, Widow (who and whose executors and administrators are where not inapplicable hereinafter included under the designation "the Vendor") of the one part and MIGHTYSTREAM LIMITED whose registered office is situate at Room 1007 Realty Building, No. 71 Des Voeux Road Central, Victoria, Hong Kong (which Company and its successors and assigns are where not inapplicable hereinafter included under the designation "the Purchaser") of the other part.

WHEREAS by an Indenture of Crown Lease dated the 24th day of December 1918 and made between His late Majesty King George V of the one part and Edward Newhouse of the other part All That piece or parcel of ground situate lying and being at Victoria Hong Kong therein more particularly described and known and registered in the Land Office as Inland Lot No. 2232 together with the appurtenances thereto except and reserved as was therein excepted and reserved was demised unto the said Edward Newhouse his executors administrators and assigns from the 21st day of May 1917 for the term of 75 years with a right of renewal for one further term of 75 years subject to the payment of the rent and the performance and observance of the covenants on the part of the lessee and conditions therein reserved and contained.

AND WHEREAS by a Letter of Extension dated the 30th day of June 1973 (hereinafter called "the said Letter of Extension") addressed by the Assistant Registrar General to the Vendor and registered in the Land Office by Memorial No. 1004215 an extention of area to the said Inland Lot No. 2232 was granted to the Vendor on the terms and conditions contained in the said Letter of Extension.

ANDC WHEREAS the said Inland Lot No. 2232 and the Extension thereto together with the respective appurtenances thereto (hereinafter called "the said premises") are now vested in the Vendor for the residue of the said term of 75 years with such right of renewal as aforesaid.

AND WHEREAS the Vendor has agreed with the Purchaser for the sale of the said premises to the Purchaser for the price of HK$20,000,000:00 Hong Kong Currency.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of DOLLARS TWENTY MILLION (HK$20,000,000:00) Hong Kong Currency to the Vendor paid by the Purchaser on or before the execution of these presents (the receipt whereof the Vendor doth hereby acknowledge) the Vendor DOTH hereby assign unto the Purchaser ALL THAT piece or parcel of ground situate lying and being at Victoria aforesaid and known and registered in the Land Office as INLAND LOT

Exhibits

R3 - Assignment (exhibit GLL-2)

9th July 1980

(continued)

NO. 2232 AND THE EXTENSION THERETO TOGETHER with the messuage erections and buildings thereon known at the date hereof as No. 12 Bowen Road And all rights rights of way (if any) privileges easements and appurtenances thereto belonging or appertaining And all the estate right title interest property claim and demand whatsoever of the Vendor therein and thereto except and reserved as in the said Indenture of Crown Lease and the said Letter of Extension are respectively excepted and reserved TO HOLD the said premises hereinbefore assigned or expressed or intended so to be with their and every of their appurtenances unto the Purchaser hence forth for all the residue now to come and unexpired of the said term of 75 years created by the said Indenture of Crown Lease as aforesaid with such right of renewal as aforesaid Subject to the payment of the Crown rent and the performance and observance of the covenants on the part of the lessee and conditions by and in the said Indenture of Crown Lease reserved and contained and absolutely subject to the terms and conditions contained in the said Letter of Extension AND the Vendor doth hereby covenant with the Purchaser that notwithstanding anything by the Vendor done omitted or knowingly suffered the said Indenture of Crown Lease and the said Letter of Extension are now good valid and subsisting and in no way become voidable and that the rent and covenants by the lessee and conditions by and in the said Indenture of Crown Lease and the said Letter of Extension respectively reserved and contained have hitherto been paid observed and performed AND that notwithstanding any such thing as aforesaid the Vendor now has good right and full power to assign the said premises unto the Purchaser for the residue of the said term and in manner aforesaid free from all incumbrances And that the said premises may be quietly entered into and during the residue of the said term held and enjoyed and the rents and profits thereof received by the Purchaser without any interruption by the Vendor or any person claiming through or in trust for the Vendor AND that the Vendor will at all times hereafter during the residue of the said term at the request and cost of the Purchaser execute and do all such assurances and things for further or better assuring all or any of the said premises unto the Purchaser for the then residue of the said term as by the Purchaser shall be reasonably required AND the Purchaser doth hereby covenant with the Vendor that the Purchaser will henceforth during the residue of the said term pay the Crown rent and perform and observe all the covenants by the lessee and conditions by and in the said Indenture of Crown Lease and the said Letter of Extension respectively reserved and contained and will keep the Vendor indemnified against all actions suits expenses and claims on account of the non-payment of the said Crown rent or the breach or non-performance of the said covenants and conditions of any of them.

IN WITNESS whereof the Vendor has hereunto set her hand

and seal and the Purchaser has caused its Common Seal to be hereunto affixed the day and year first above written.

SIGNED SEALED AND DELIVERED by the above named Irene Zigal (she having been previously identified by PETER ALAN LEE VINE Solicitor Hong Kong in the presence of :) (Signed) IRENE ZIGAL

(Signed)

Solicitor, Hong Kong.

SEALED with the Common Seal of the Purchaser and SIGNED by FRANK CHIL whose signature is verified by :) (Signed) FRANK CHIL

(Signed)

Solicitor, Hong Kong.

RECEIVED on or before the day and year first above written of and from the Purchaser the sum of DOLLARS TWENTY MILLION Hong Kong Currency being the consideration money hereinbefore mentioned to be paid by the Purchaser to the Vendor.) HK$20,000,000:00 (Signed) IRENE ZIGAL

WITNESS :-

(Signed) (P.A.L. VINE)

Solicitor, Hong Kong.

Exhibits

R4 - Application and Accompanying Plans (exhibit GLL-3)

28th April 1980

R4 - APPLICATION AND ACCOMPANYING PLANS (EXHIBIT GLL-3)

1981, No. 586

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Buildings Ordinance, Cap.123 and the Building (Planning) Regulations

and

IN THE MATTER of Inland Lot No. 2232, 12 Bowen Road, Hong Kong.

B E T W E E N

MIGHTYSTREAM LIMITED — Plaintiff

- and -

ATTORNEY GENERAL — Defendant

This is the exhibit referred to in the Affidavit of Graham Leonard Lowman filed herein on the 4th day of July 1981.

Date	Description	Exhibit Marked	No. of sheet
-	Application & accompanying plans	"GLL - 3"	15

WOO, KWAN, LEE & LO,
Solicitors for Plaintiff,
Hong Kong.

This is the exhibit marked "GLL-3" referred to in the affidavit of Graham Leonard Lowman sworn before me this 4th day of July 1981.

(Sgd) Commissioner for Oaths.

Exhibits

R4 - Application and Accompanying Plans (exhibit GLL-3)

28th April 1980

(continued)

GOVERNMENT OF HONG KONG

FORM 11A

BUILDING (ADMINISTRATION) REGULATIONS

Regulation 18A

CERTIFICATE OF AUTHORIZED PERSON

28th April 1980

To the Building Authority,

In accordance with the provisions of regulation 18A of the Building (Administration) Regulations, I hereby certify that -

(1) The plans attached hereto relating to building works and/or street works* at -

(a) number and name of street and locality - No. 12 Bowen Road, Midlevels, Hong Kong.

(b) lot number with details of any section or subsection of the lot I.L. 2232 Hong Kong have been prepared by me or under my supervision or direction and have been signed by me as required by regulation 12 of the said Regulations.

(2) To the best of my knowledge and belief such plans comply in all respects with the provisions of the Buildings Ordinance and the regulations made thereunder.

(Signed)

Signature of authorized person

* Delete whichever is inapplicable.

Exhibits

R4 - Application and Accompanying Plans (exhibit GLL-3)

28th April 1980

(continued)

FORM 9

BUILDINGS ORDINANCE
(Chapter 123)
Section 4(1)

BUILDING (ADMINISTRATION) REGULATIONS
Regulation 29

Application for approval of plans of building works and/or street works * and

Notice of appointment of authorized person (architect/engineer/surveyor) as co-ordinator;

Notice of appointment of registered structural engineer as consultant to appointed authorized person.

28th April 1980

To the Building Authority

1. We MIGHTYSTREAM LIMITED in accordance with the provisions of regulation 29 of the Building (Administration) Regulations -

(a) apply for your approval of the General plans submitted herewith;

(b) certify that the said plans have been prepared by Mr. KEVIN C.N.MA authorized person of Planning Services International (Hong Kong)

(c) give you notice that we have appointed the said Mr. Kevin C.N. Ma authorized person to be the co-ordinator in respect of these works;

(d) certify that the structural elements*have been/will be designed and the details prepared by registered structural engineer to be appointed

(e) give you notice that we have appointed the said Mr ..... as consultant to the appointed authorized person in respect of the above described works.

2. Particulars of the* building works and/or street works (To be completed as appropriate).

GENERAL

(a) Number and name of street and locality - 12 Bowen Road, Midlevels, Hong Kong.

(b) Lot number with details of any section or subsection of the lot I.L. 2232 Hong Kong.

Exhibits

R4 - Application and Accompanying Plans (exhibit GLL-3)

28th April 1980

(continued)

(c) Name and address of the owner - Mightystream Limited 1007-11 Realty Building, 71 Des Voeux Road C., Hong Kong.

(d) Name and address of any duly authorized agent of the owner .....

(e) Number of any licence or permit relating to the proposed building works or site .....

(f) The date on which the tenure of the lot will expire in any case in which the unexpired portion of the lease is less than 10 years .....

*BUILDING WORKS

(a) Width of street or streets upon which the building abuts or fronts 5 metre

(b) The intended use of the building or parts thereof on completion of the building works Residential

(c) Details of any conditions of sale, any particular lease covenants affecting the height, design, type or use of the building which may be erected on the lot or permit area

Note: The architects have been instructed by their client to submit drawings based on a gross plot ratio of 8

*STREET WORKS

(a) Width of street or streets from which access is to be obtained .....

(b) Whether the street works are for construction of an access road or a private street ....

(c) If an access road, state the number of separate buildings or flats (with total floor areas) for which it is intended to provide access .....

(d) Details of any conditions of sale and any particular lease covenants affecting the street works .....

(Signed)
Signature of applicant
28th April 1980

Exhibits

R4 - Application and Accompanying Plans (exhibit GLL-3)

28th April 1980

(continued)

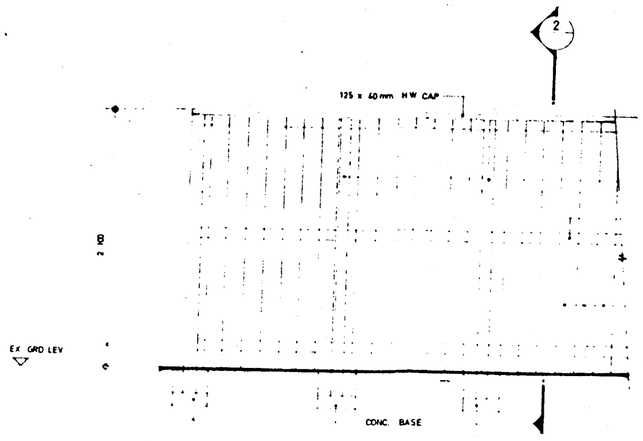
I confirm that I have been appointed as the authorized person to be the co-ordinator in respect of the above described works.

(Signed)
Signature of authorized person

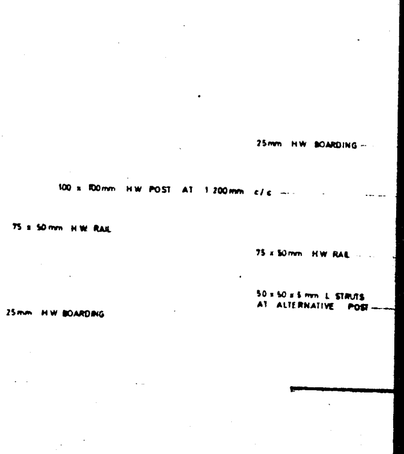
28th April 1980

I confirm that I have been appointed as the registered structural engineer to be the consultant to the appointed authorized person in respect of the above described works.

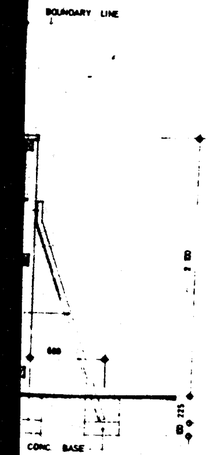
to be appointed
Signature of registered structural engineer

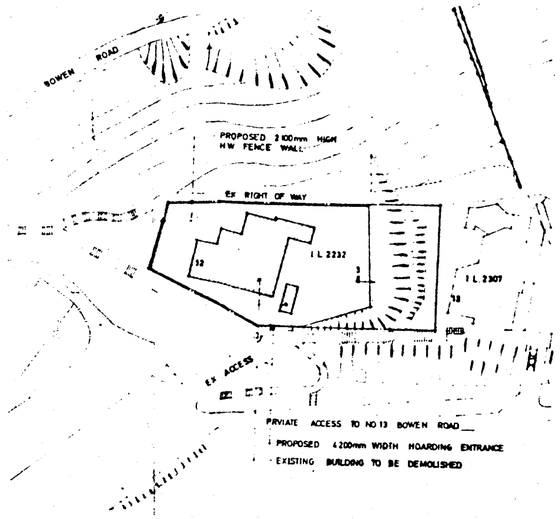


1 TYPICAL FENCE WALL ELEVATION



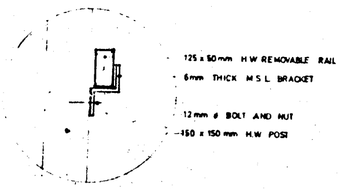
2 SECTION



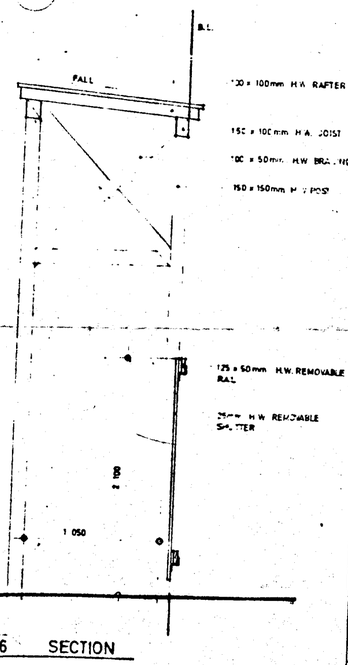


N

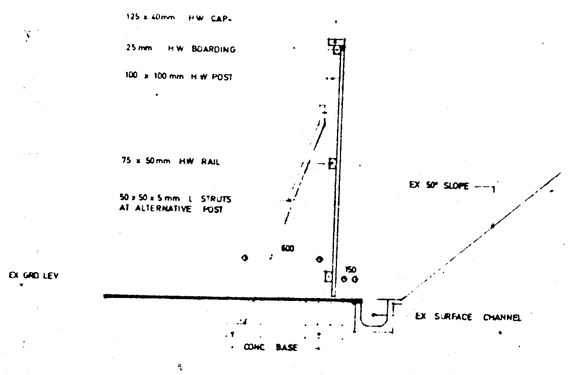
BLOCK PLAN SCALE 1:600



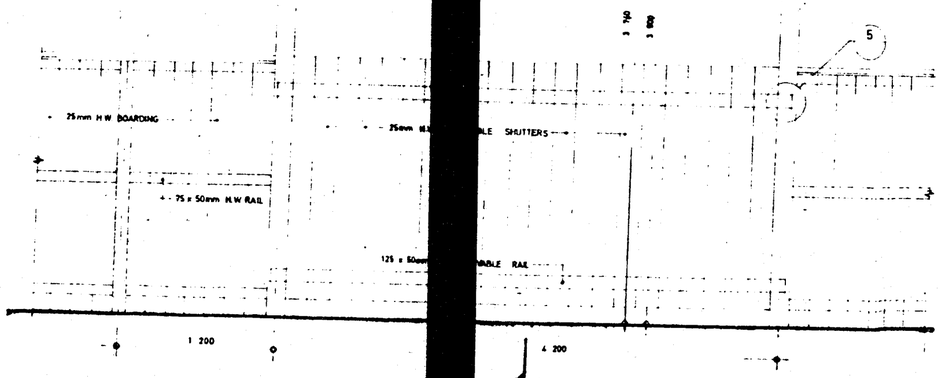
5 SIDE VIEW SCALE 1:10



6 SECTION



3 SECTION ALONG EXTG. SLOPE



4 ELEVATION OF HOARDING ENTRANCE

MA & FONG & ASSOCIATES
IN ASSOCIATION WITH
PLANNING SERVICES INTERNATIONAL
ARCHITECTS (CONSULTANTS)
10TH HARBOUR VIEW COMMERCIAL BLDG.
2-4 PEROVAL STREET, HONG KONG.
TEL.: 5-7951244

MONTY SACK
B. ARCH. (S.A.) M.I.A. (P.S.I.)

KEVIN C.N. MA
DIP. ARCH. (C.I.T.) A.R.A.I.A. R.I.B.A. H.K.I.A.

JOSEPH T.H. FONG
B. ARCH. (MELB.) A.R.A.I.A. R.I.B.A. H.K.I.A.

SIGNATURE FOR SUBMISSION/CONSTRUCTION

DATE

PROJECT

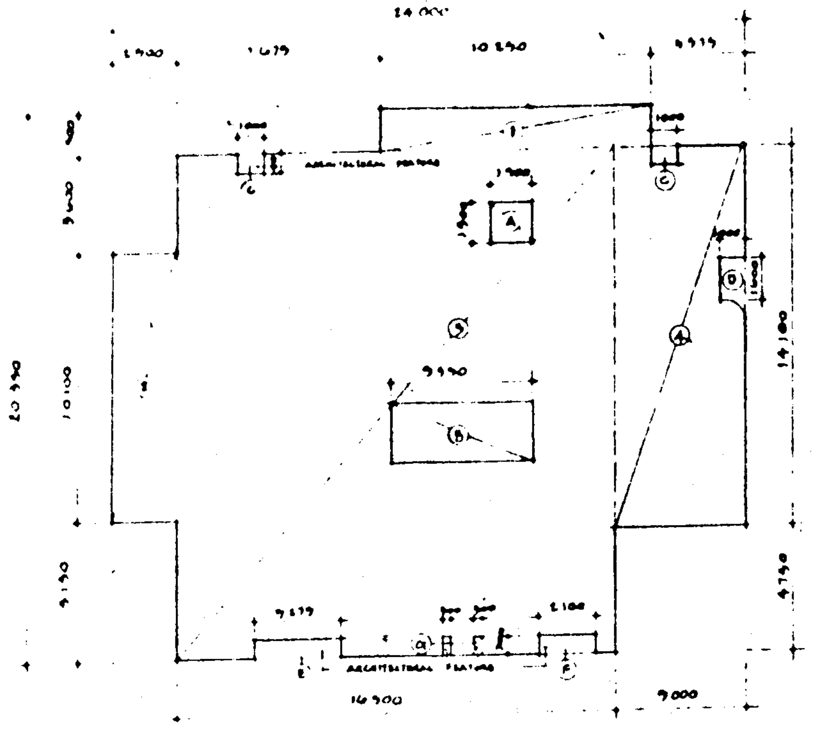
PROPOSED APARTMENT BLDG. AT NO.12 BOWEN RD. I.L. 2232, HONG KONG.

DRAWING TITLE

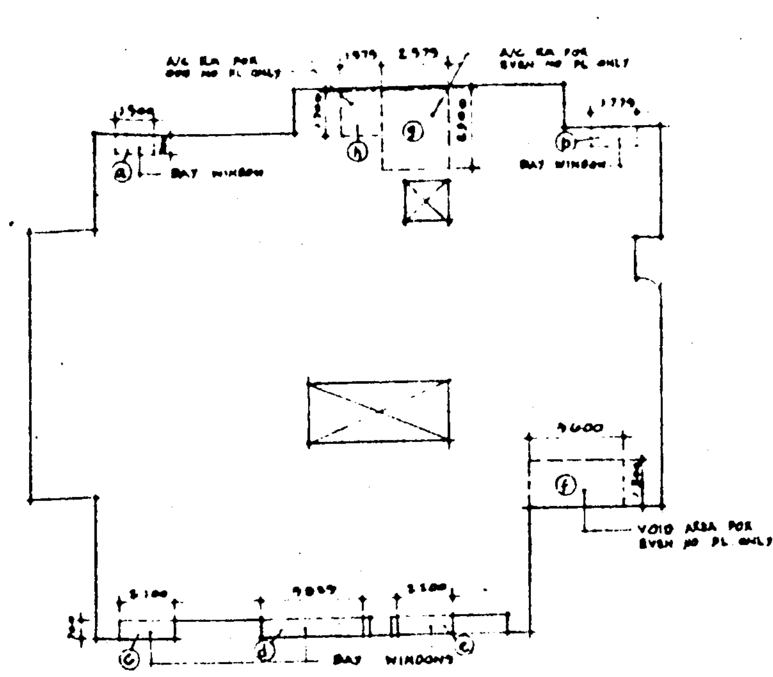
HOARDING AND FENCE WALL DETAILS FOR DEMOLITION

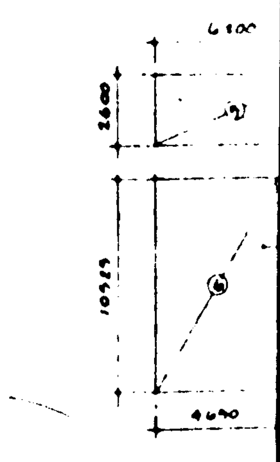
DRAWN BY MW	JOB NO. ATP8
CHECKED BY	DRAWING NO.
SCALE 1:600, 1:20	101

SITE COVERAGE DIAGRAM



GROSS FLOOR AREA DIAGRAM





SITE COVERAGE CALCULATION

(1)	10 290 x 1 500	—	15 435	M²
(2)	10 100 x 2 500	—	25 250	
(3)	[illegible] 500 x 18 850	—	311 025	"
(4)	14 100 x 5 000	—	70 500	"
DUCT (A)	1 500 x 1 500	—	2 250	"
(B)	5 350 x 2 200	—	11 770	
2 (C)	1 000 x 0 700 x 2	—	1 400	
(D)	1 000 x 1 600		1 600	"
(E)	3 275 x 0 700	–	2 293	
(F)	2 100 x 0 700	—	1 470	"
2 (G)	0 300 x 0 700 x 2	—	0 420	"
	TOTAL	—	400 947	M²

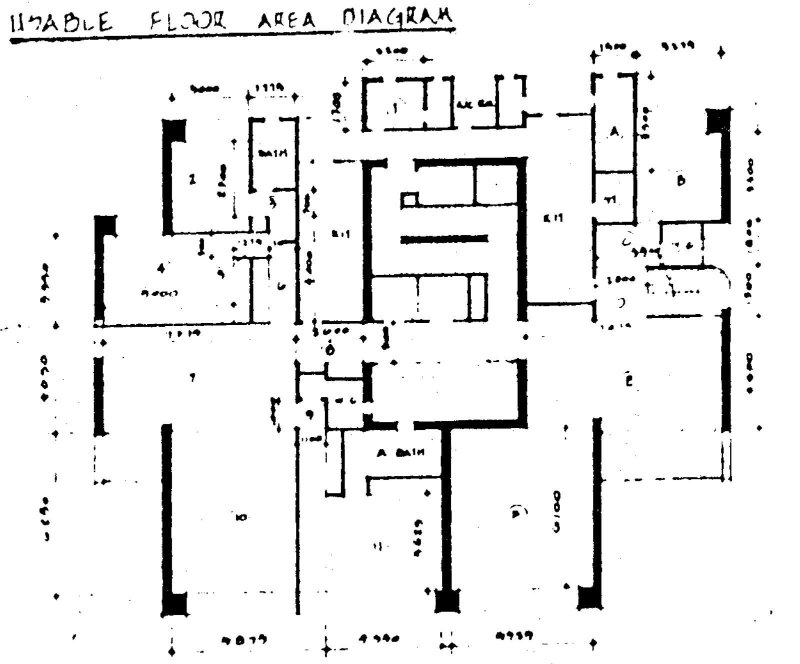
GROSS FLOOR AREA CALCULATION

SITE COVERAGE		—	400 947	M²
LESS BAY WINDOWS				
(a)	1 500 x 0 700	—	1 050	M²
(b)	1 775 x 0 700	—	1 243	
(c)	2 100 x 0 700	—	1 470	"
(d)	3 825 x 0 700	—	2 677	"
(e)	2 200 x 0 700	—	1 540	"
	SUB-TOTAL	—	392 967	M²
DEDUCT (f)	4 000 x 1 600	—	6 400	M²
(g)	2 900 x 2 575	—	7 467	"
			379 020	M² (FOR EVEN NO FL)
DEDUCT (h)	1 700 x 1 575	—	2 677	M²
		—	390 290	M² (FOR ODD NO FL)

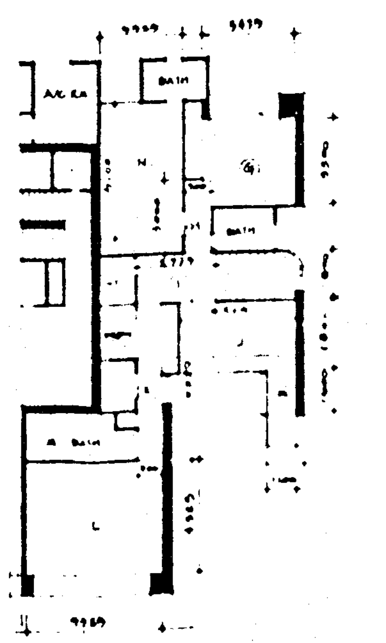
PLOT RATIO CALCULATION

SITE AREA	—	1205 84 M²
CLASS OF SITE	—	'A'
BUILDING HEIGHT	—	OVER 61 M
NO OF STOREY	—	24 STOREYS ABOVE PODIUM FL
PLOT RATIO	—	8
PERMITTED SITE COVERAGE	—	33 333 %
ACTUAL SITE COVERAGE: 400 947 M² / 1205 84 M²	—	33 250 %
ACTUAL TOTAL GROSS FL AREA (379 020 x 12) + (390 290 x 12) + 69 091	—	9300 811 M²
ACTUAL PLOT RATIO: 9300 811 M² / 1205 84 M²	—	7 71

USABLE FLOOR AREA DIAGRAM



TYPICAL ODD NO FLOOR



TYPICAL EVEN NO FLOOR

USABLE FLOOR AREA CALCULATION

	[illegible] x [illegible]	—	5 140	M²
	5 001 x [illegible] 300	—	8 100	"
	[illegible] x 3 300	—	1 597	"
	5 000 x 5 350	—	16 750	"
	1 375 x [illegible] 330	—	1 141	"
	4 000 x 1 000	—	4 000	"
	7 275 x 4 050	—	29 464	"
	3 600 x 1 500	—	5 900	"
	1 100 x 1 000	—	1 100	"
	6 350 x 5 875	—	36 719	"
	4 [illegible] x 5 675	—	15 769	"
	TOTAL	—	122 886	M²

A	5 900 x 500	—	5 350	M²
B	5 900 x 5 215	—	10 907	"
C	2 900 x 1 800	—	4 500	"
D	3 000 x 1 500	—	5 000	"
E	7 415 x 4 450	—	33 090	"
F	6 100 x 5 515	—	33 483	"
G	5 415 x 5 900	—	11 467	"
H	9 000 x 0 900	—	2 700	"
I	3 925 x 1 800	—	5 165	"
J	4 225 x 3 000	—	12 110	"
K	6 090 x 0 900	—	5 481	"
L	5 925 x 4 715	—	35 091	"
M	1 600 x 1 100	—	1 760	"
N	5 100 x 5 715	—	16 997	"

SANITARY FITMENTS SCHEDULE

FLOOR		USE	USABLE FL AREA (M²)	CAPACITY 9 M²/PER	SANITARY FIT'S REQ'D W C	BASIN	URINAL
TYPICAL ODD NO & EVEN NO 5TH TO 28 TH FL	SIMPLEX	DOMESTIC	122 886	14	2	2	
	DUPLEX		168 500	19	2	2	
TOTAL NO OF PERSON (14 x 24) + (19 x 12) — 564							

EXIT REQUIREMENTS SCHEDULE

FLOOR		CAPACITY (STOREY)	MIN NO OF EXIT POINTS OR DOOR REQ'D	PROD	MIN TOTAL WIDTH OF (MM) EXIT ROUTE REQ'D	PROD	EXIT DOOR REQ'D	PROD	MIN ... EXIT REQ'D	... EXIT DOOR PROD
TYPICAL ODD NO & EVEN NO 5TH TO 28 TH FL	SIMPLEX	14	2	2					1050	850
	DUPLEX	19	2	2					1050	850

FIRE RESISTANCE REQUIREMENTS FOR ELEMENTS OF CONSTRUCTIONS

FLOOR	USE	CLASS	COMPARTMENT OF BUILDING VOLUME M³	AREA M²	F R P REQ'D (HOUR)	MIN DIMENSION ... R C SLAB T H	COVER	... BEAM COVER
ROOF	MACH RM	6	141 475	47 492	2	125	15	50
5TH TO 28TH FL	DOMESTIC	5	1161 113	390 29	1	100	15	25
ENTRANCE FL TO PODIUM FL	CAR PARK	7	2938 236	1030 96	2	125	15	[illegible]
	TRANSFORMER RM	6	108 093	27 893	2	125	15	50

DISCHARGE VALUE CALCULATION

NOS OF STOREY —
TOTAL CAPACITY OF THE BUILDING ABOVE PODIUM —
WIDTH OF STAIRCASE —
DISCHARGE VALUE (FROM TABLE 5) 1075 + (60 x 14) —

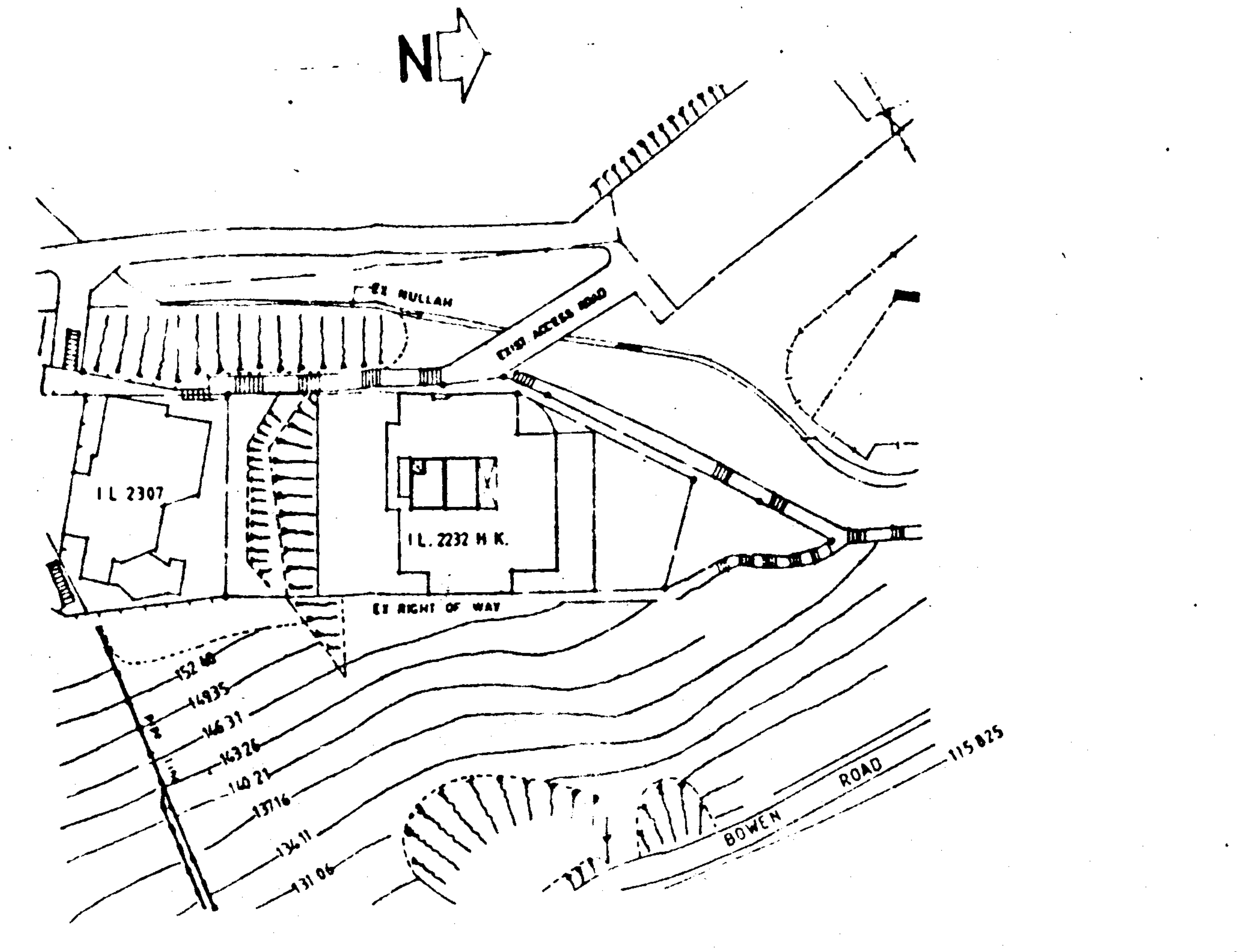
TOTAL NOS OF CAR PARK —

LEGENDS:

- R.C. WORKS
- BRICK WORKS
- HOLLOW BRICK WORKS
- HARDCORE
- ILLUMINATED EXIT SIGN

MARKS

- EXISTING LEVEL
- PROPOSED LEVEL
- D1 50 MM H W S C DOOR WITH WIRED GLASS PA
- D2 50 MM H W S C DOOR
- D3 50 MM H W S C DOOR WITH SHEET GLASS PA
- D4 50 MM H W DOOR WITH PANIC BOLT
- 1 910 LITRES FIBRE-GLASS WATER SUMP TANK ... E SERVICE
- 2 680 LITRES FIBRE-GLASS WATER SUMP TANK ... TABLE
- 3 680 LITRES FIBRE-GLASS WATER SUMP TANK ... SHING



BLOCK PLAN SCALE 1 600

GENERAL NOTES:-

1. No work to be started until the consent for the commencement of works have been obtained from the Building Authority.
2. All brick works to be built in 1:3 cement mortar.
3. All foundations to be carried down to rest on solid ground or piles.
4. Treads of staircase not less than 225 mm and riser not more than 175 mm.
5. Minimum clear height from floor to underside of beam to be 2.3 m.
6. Clear height of staircase to be not less than 2 m.
7. Fixed handrail to be provided on bothsides of staircase.
8. All kitchens, bath rooms and lavatories to have glazed tiles dado not less than 1.2 m.
9. Structural calculation and details to be submitted separately.
10. Drainage plans to be submitted separately.
11. All staircase windows to be glazed with wire glass.
12. Lift pits where carried below ground level to be built of w[illegible]r-proof construction.

NOTES: FIRE SERVICES DEPARTMENT REQUIREMENTS

1. A fire alarm system to be provided throughout the building and to be incorporated in the FH/HR installation.
2. Lift "A" to be "Fireman's Lift" of size not less than that of 8 person lift as defined by lift manufacturers and standards requirements for Fireman's lift to be complied with.
3. All exists to be clearly indicated by illuminated EXIT signs in 125 mm English and Chinese characters.
4. No storage of Dangerous Goods without the authority of the Director of Fire Services.
5. All internal linings for Acoustic, Thermal, Insulation or Decorative purposes to be of class 1 or 2 rate of Surface flame spread as laid down by B.S.S. No. 476 of 1971 (Part 7).
6. Electric circuits to be protected by miniature circuit breakers in lieu of conventional re-wireable fuses.
7. The standard requirements for transformer room, generator room and covered carpark to be complied with.
8. Parity valves to be provided for any hydrant point to maintain a pressure not exceeding 0.7 N/mm² not less than 0.42 N/mm².
9. A permanent prominent notice to be placed adjacent to the firemen's lift switch on car park level No. 6 to indicate floors served.
10. Pipe duct to be of substantial fire and mechanical resistand construction, such protection to be also provided where service wiring running off to individual consumers, pipe duct to be sealed up at point, they pass through floors and Compartment Walls and all inspection door to be 50 mm hardwood selfclosing.
11. The fire service inlets to be connected into the same through non-return valve.
12. All F.S. protected rolling shutters at car park levels to be operated at the temperature of 55°c.

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MONTY SACK
B. ARCH. (S.A.) M.I.A.

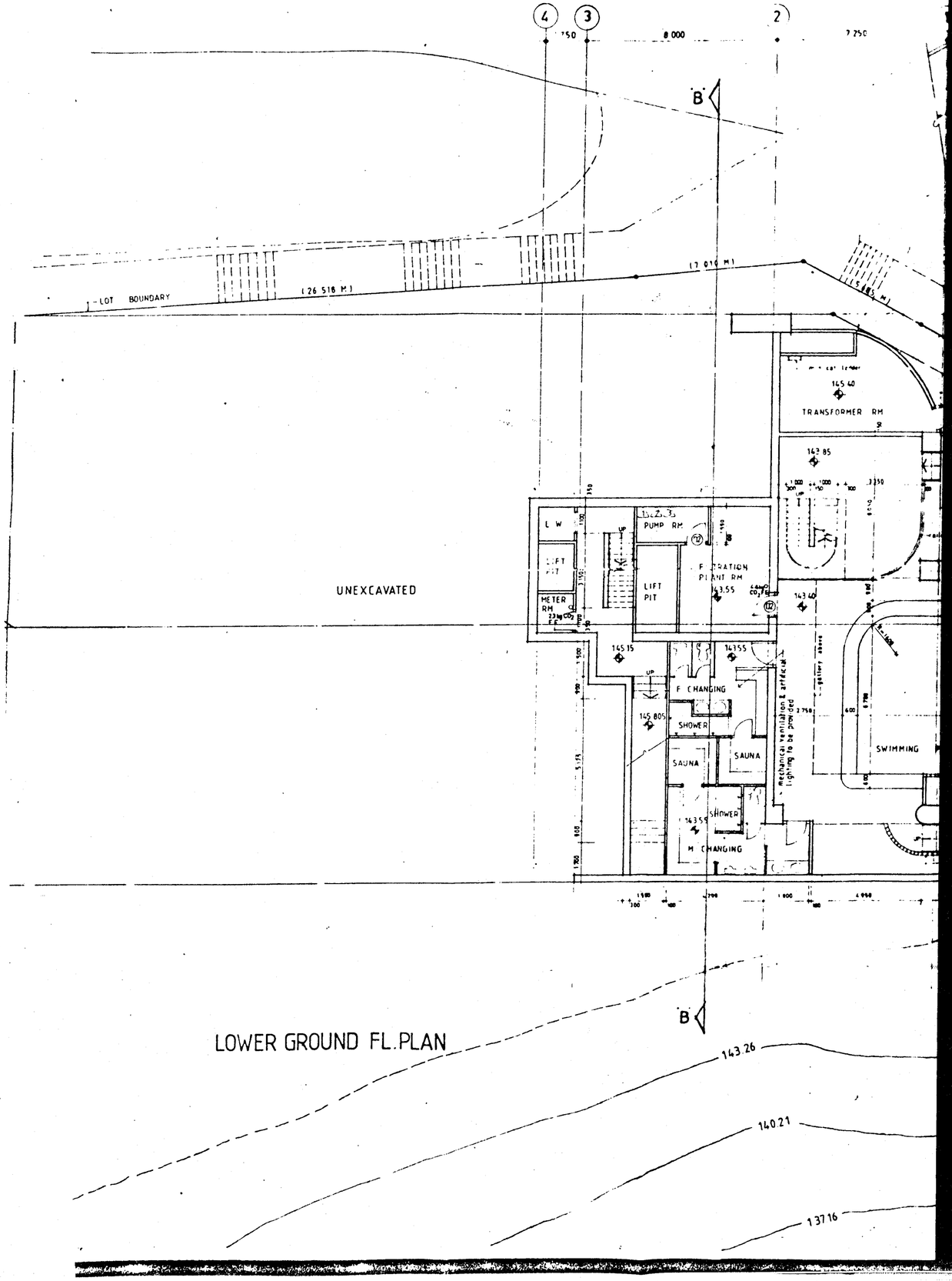
SIGNATURE FOR SUBMISSION/CONSTRUCTION

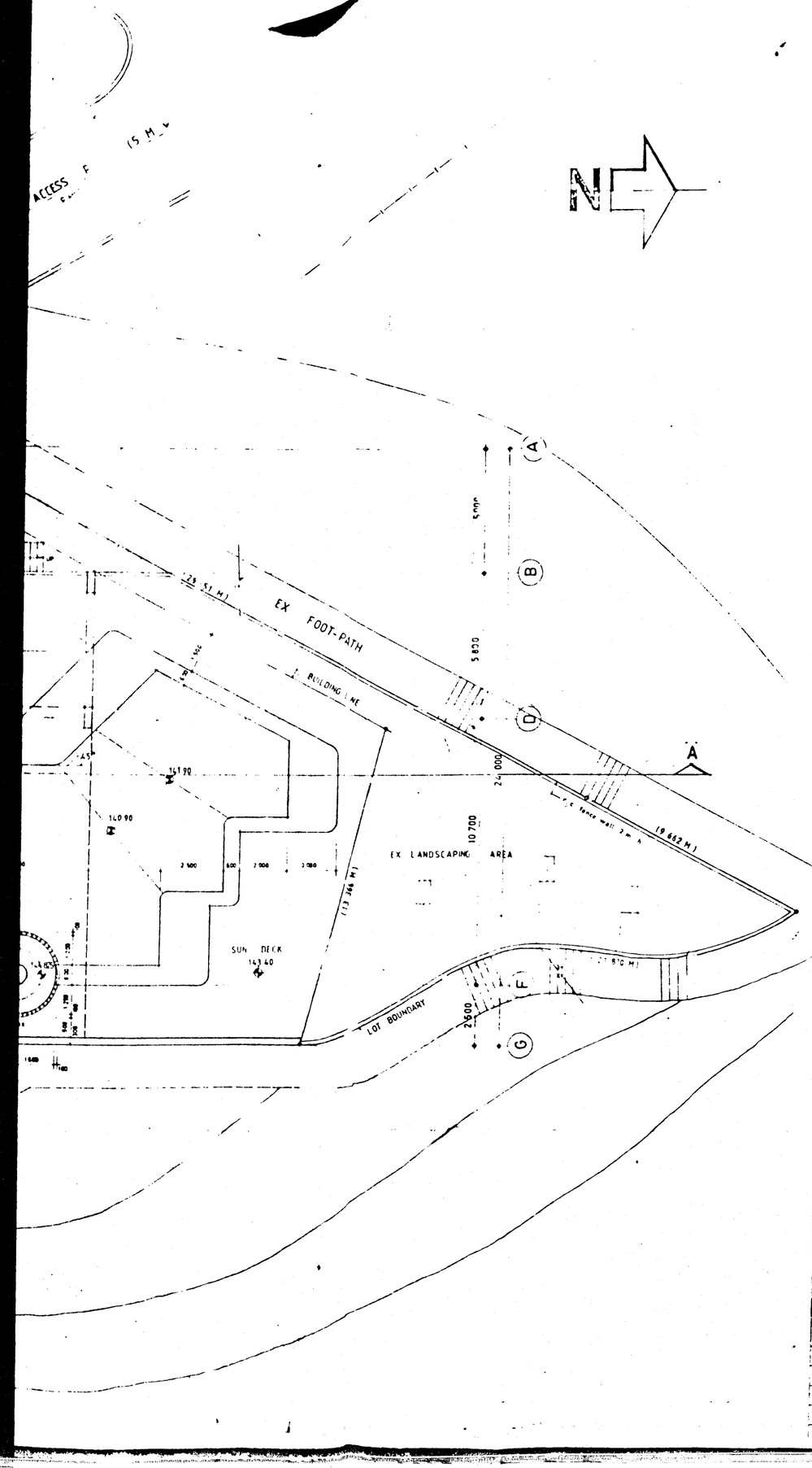
DATE

PROJECT
PROPOSED APARTMENT BLDG. AT 12 BOWEN RD. I.L. 2232 H.K.

DRAWING TITLE
BLOCK PLAN, NOTES CALCULATION & SCHEDULE

DRAWN BY L.S.C	JOB NO. A176
CHECKED BY	DRAWING NO.
SCALE N T S	201
DATE 13-2-80	
CLASSIFICATION	





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KEVIN C.N. MA
M. ARCH (CITY) F.R.A.I.A. RIBA, H.K.I.A.

MONTY SACK
B. ARCH (SA) M.I.A.

SIGNATURE FOR SUBMISSION/CONSTRUCTION

DATE

PROJECT

PROPOSED APARTMENT BLDG. AT 12 BOWEN RD. I.L. 2232 H.K.

DRAWING TITLE

LOWER GROUND FL. PLAN (SWIMMING POOL)

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SCALE: 1:50	202
DATE: 13-2-85	
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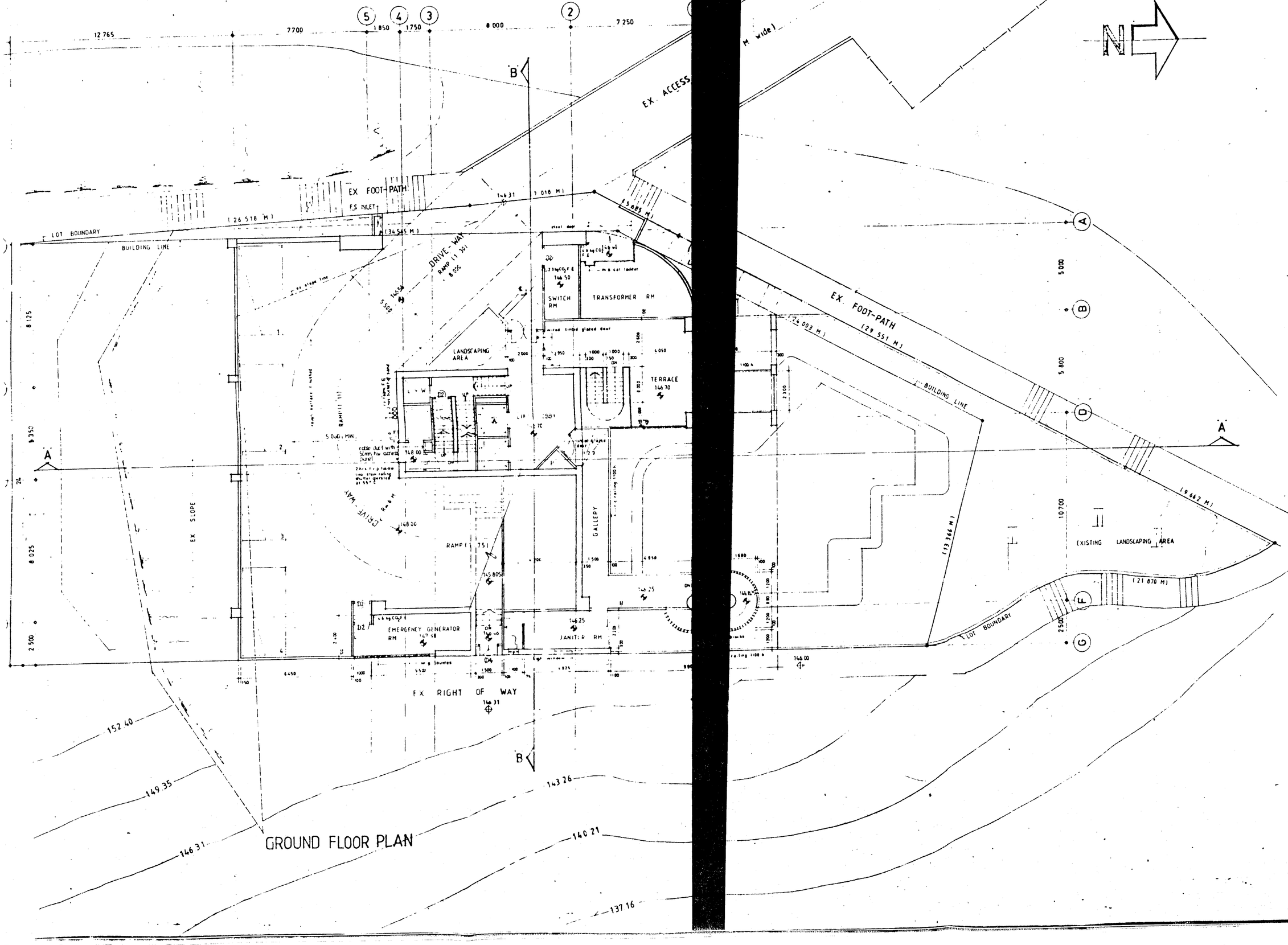

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DATE

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PROPOSED APARTMENT BLDG. AT 12 BOWEN RD.
I.L. 2232 H.K.$

DRAWING TITLE

GROUND FLOOR PLAN (ENTRANCE)

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DATE 13 2 80	
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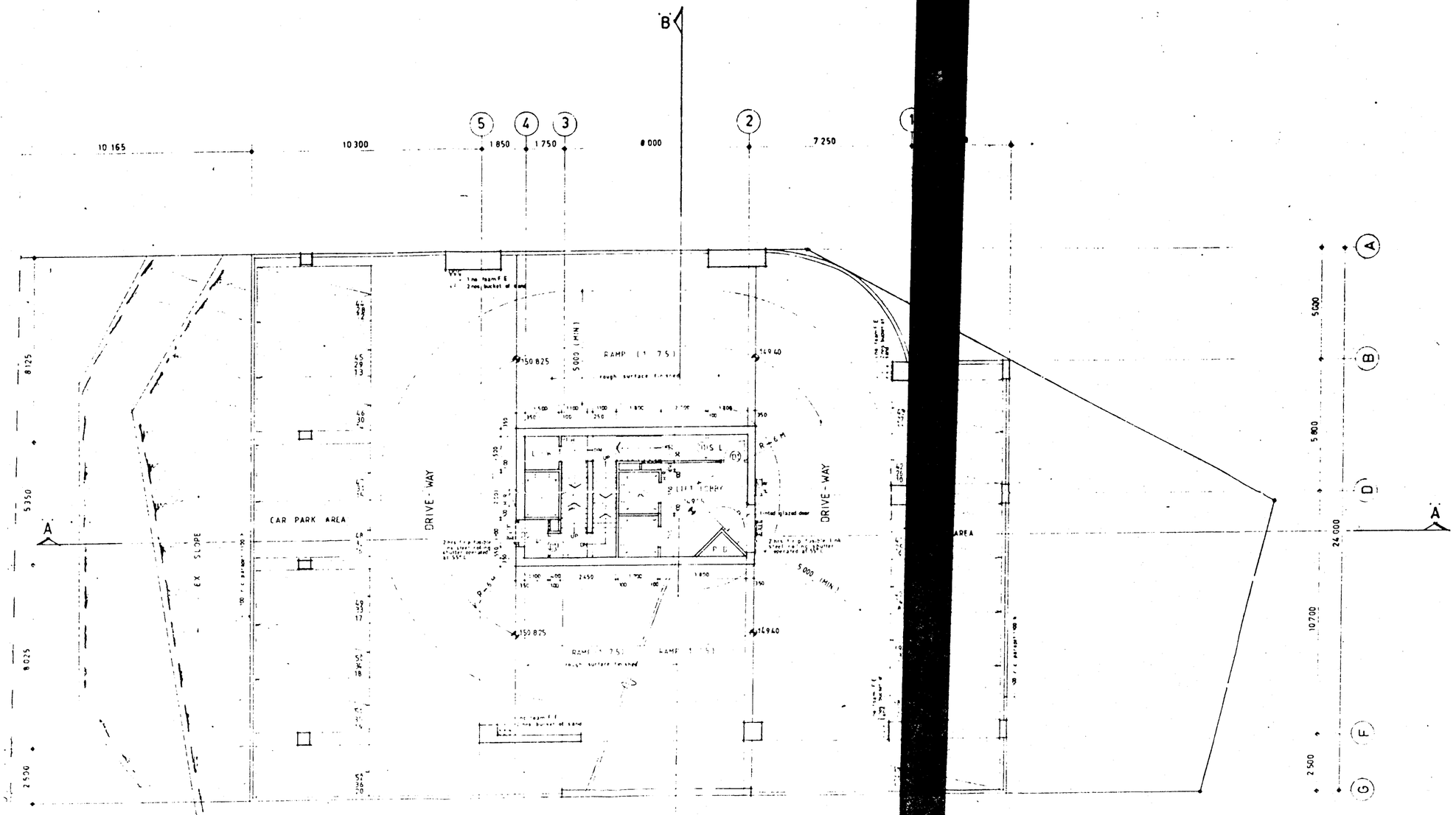

CAR PARK LEVEL 1-3 PLAN

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M.C. ARCH. (C.I.T.) F.R.A.I.A. R.I.B.A. H.K.I.A.

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SIGNATURE FOR SUBMISSION/CONSTRUCTION

DATE

PROJECT
PROPOSED APARTMENT BLDG. AT 12 BOWEN RD. I.L. 2232 H.K.

DRAWING TITLE
CAR PARK LEVEL 1-3, PLAN

DRAWN BY L.S.C.	JOB NO. A176
CHECKED BY	DRAWING NO.
SCALE 1 100	204
DATE 13-2-80	
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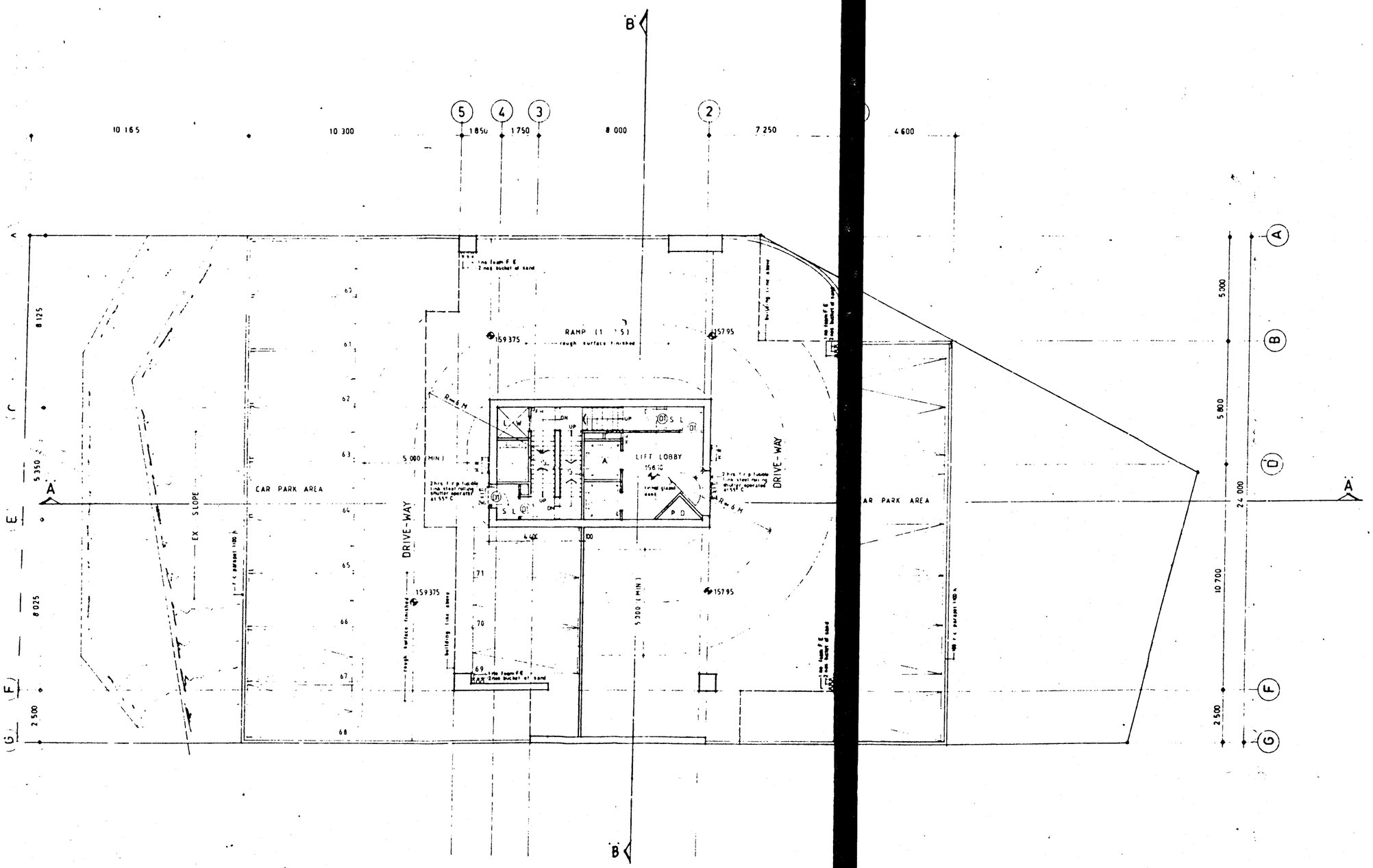

CAR PARK LEVEL 4 PLAN

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DATE

PROJECT

PROPOSED APARTMENT BLDG. AT 12 BOWEN R...
I.L. 2232 H.K.

DRAWING TITLE

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LEVEL 4 PLAN

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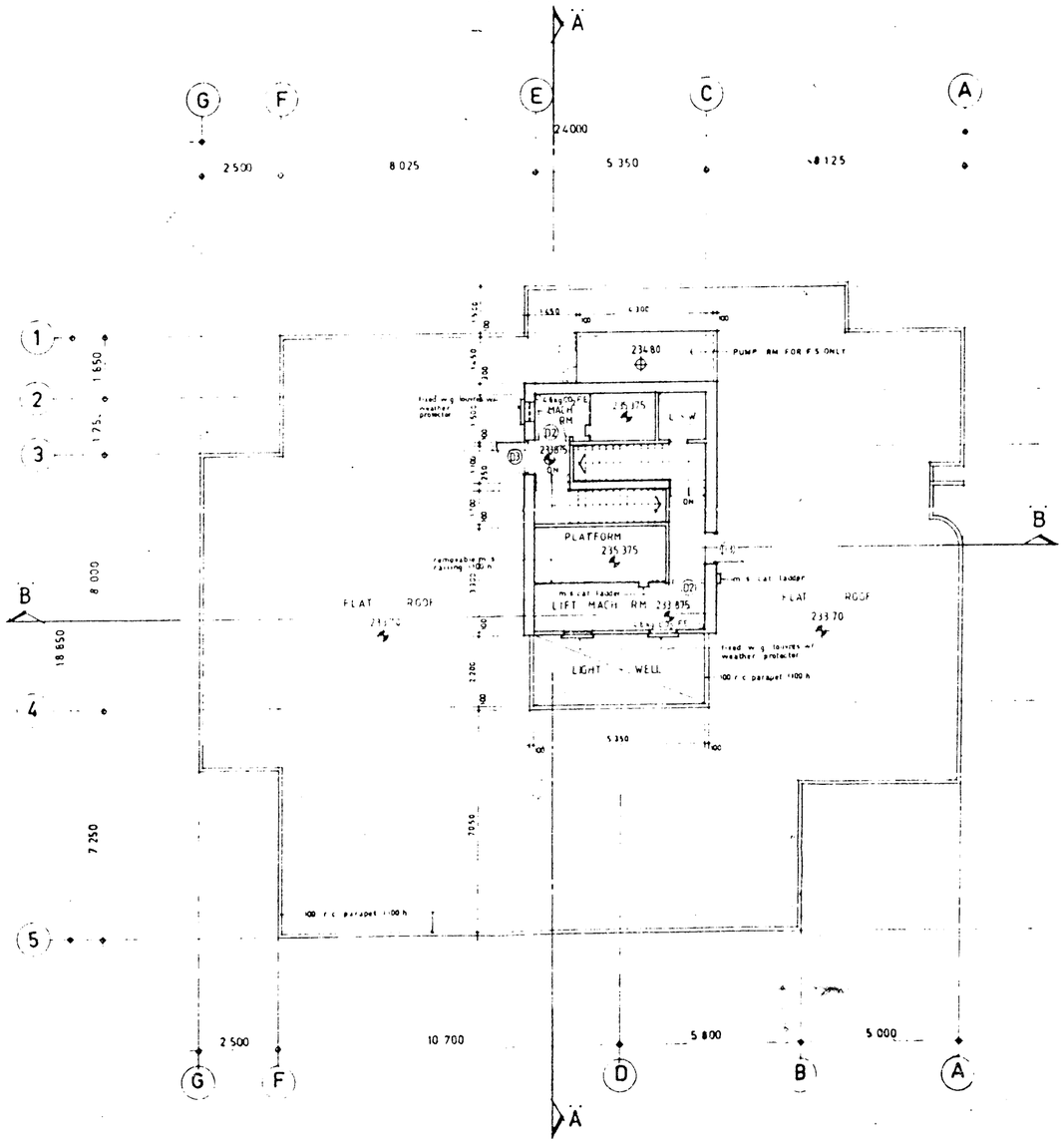
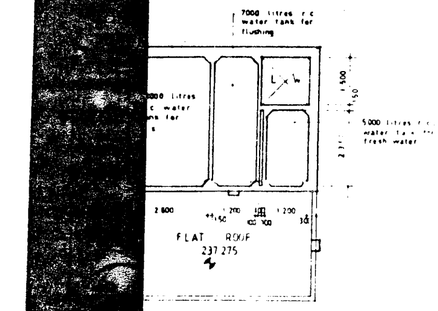


ROOF PLAN



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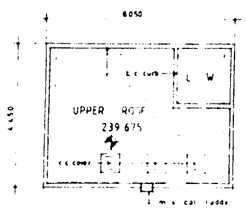

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PROPOSED APARTMENT BLDG. AT 12 BOWEN RD I.L. 2232 H.K.

DRAWING TITLE

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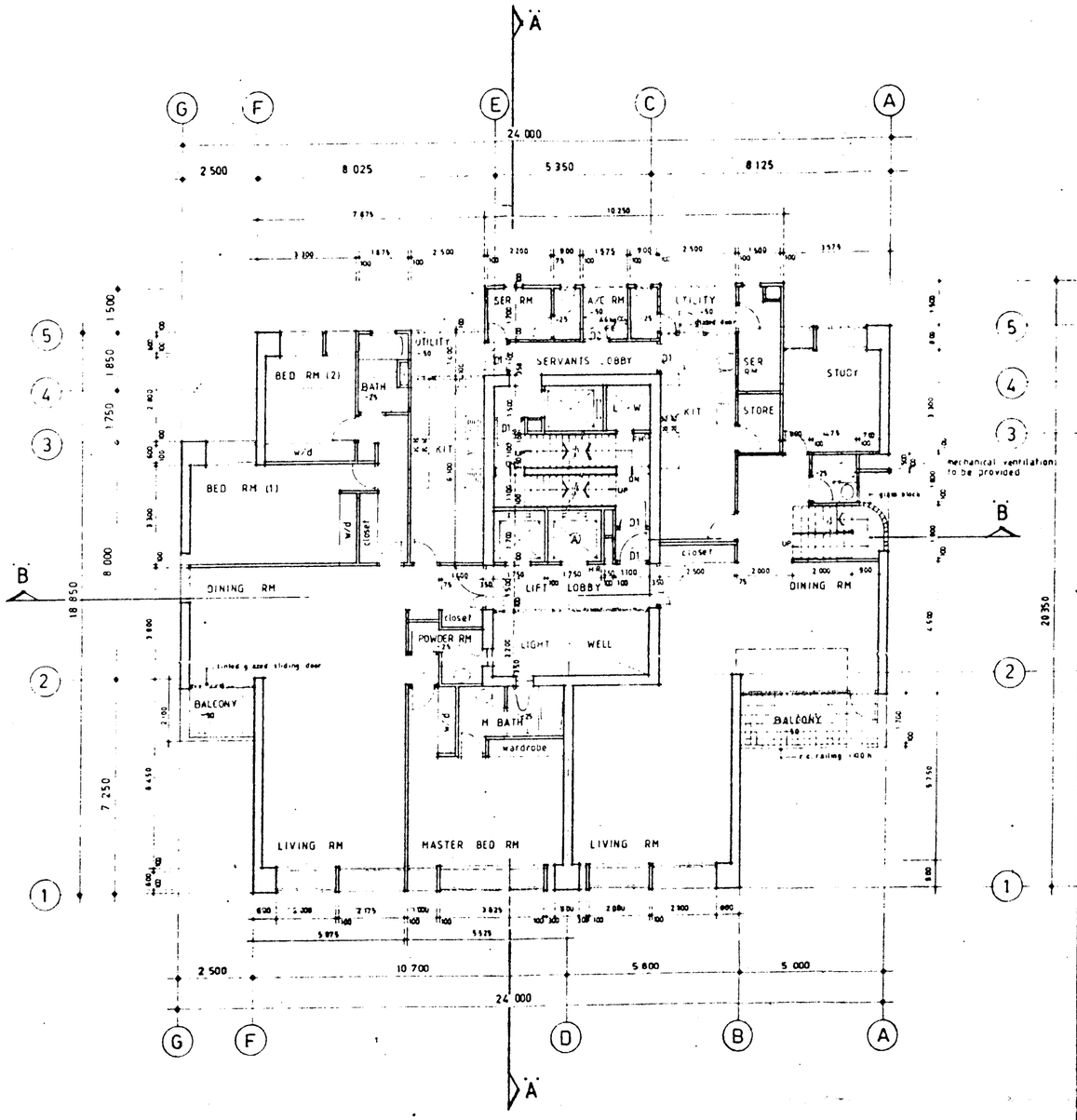
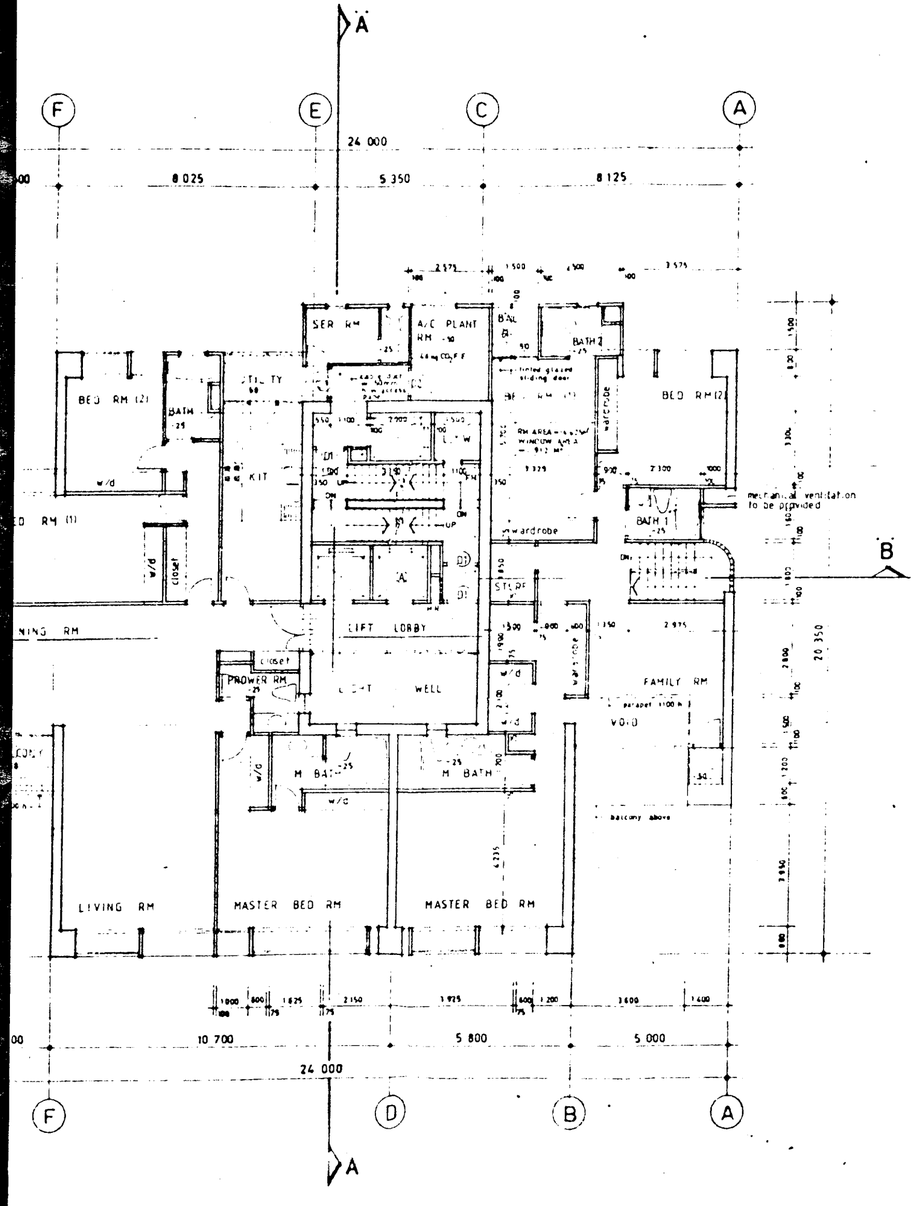


TYPICAL 5 th - 27 th ODD NO. FLOOR PLANS



TYPICAL 6 th - 28 th EVEN NO. FLOOR PLANS

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TEL 5 7951244 7

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SIGNATURE FOR SUBMISSION/CONSTRUCTION

DATE

PROJECT

PROPOSED APARTMEN...
BLDG. AT 12 BOWEN RI...
I.L. 2232 H.K.

DRAWING TITLE

TYPICAL ODD NO. AND EVEN NO. FL. PL...
(5th TO 28th FL.)

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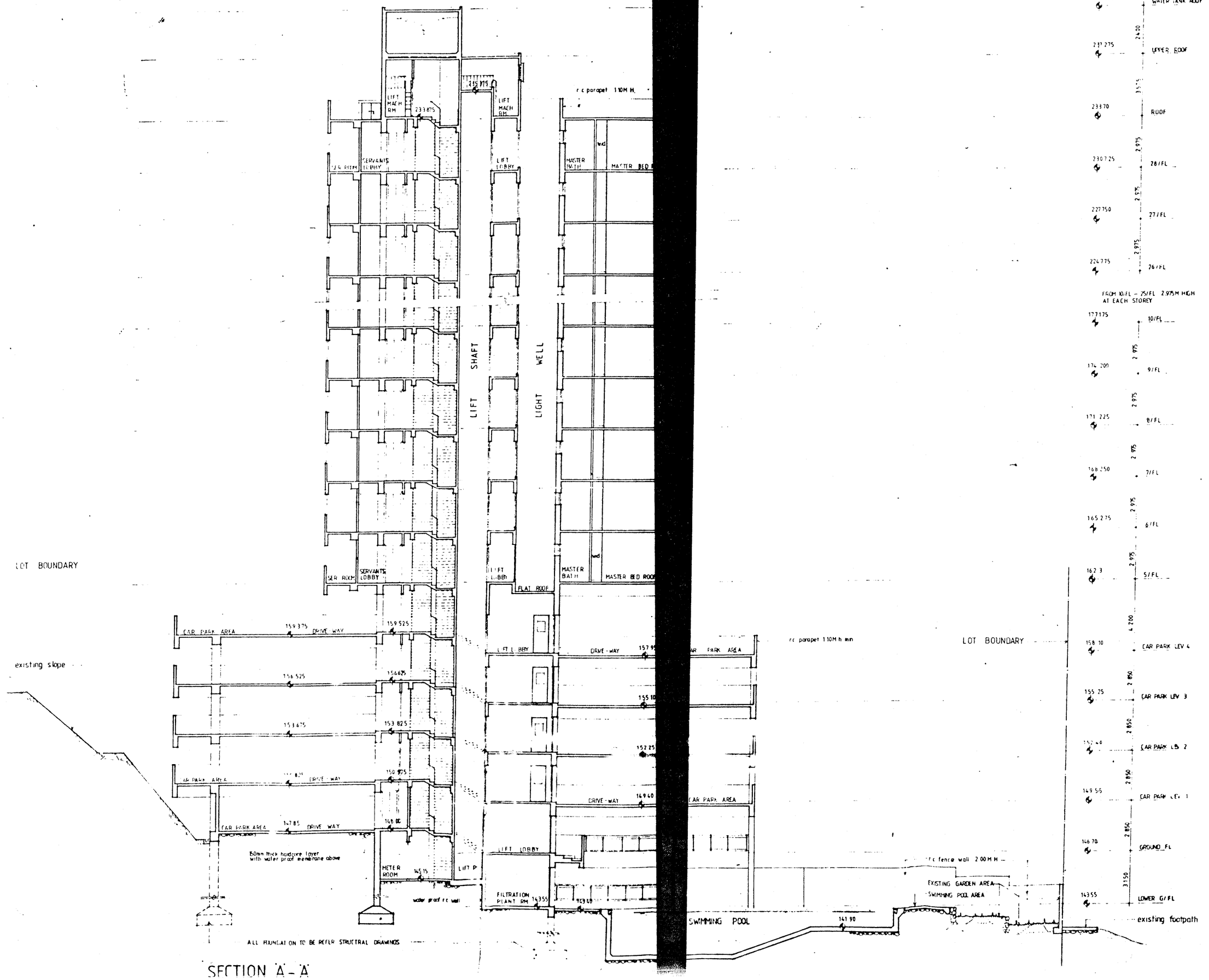
DATE 13-2-80	



SECTION A - A

ALL MEASUREMENTS MUST BE CHECKED AT THE SITE DO NOT SCALE DRAWINGS- FIGURED DIMENSIONS TO BE OBSERVED- READ THIS DRAWING IN CONNECTION WITH GENERAL ARCHITECTURAL PLANS, AND OTHER RELATED DOCUMENTS- THE ARCHITECT TO BE NOTIFIED IMMEDIATELY OF ANY DISCREPANCY FOUND THEREIN

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TEL. 5-7951244-7

JOSEPH T.H. FONG
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PROJECT

PROPOSED APARTMENT BLDG. AT 12 BOWEN RD. I.L. 2232 H.K.

DRAWING TITLE

SECTION A - A

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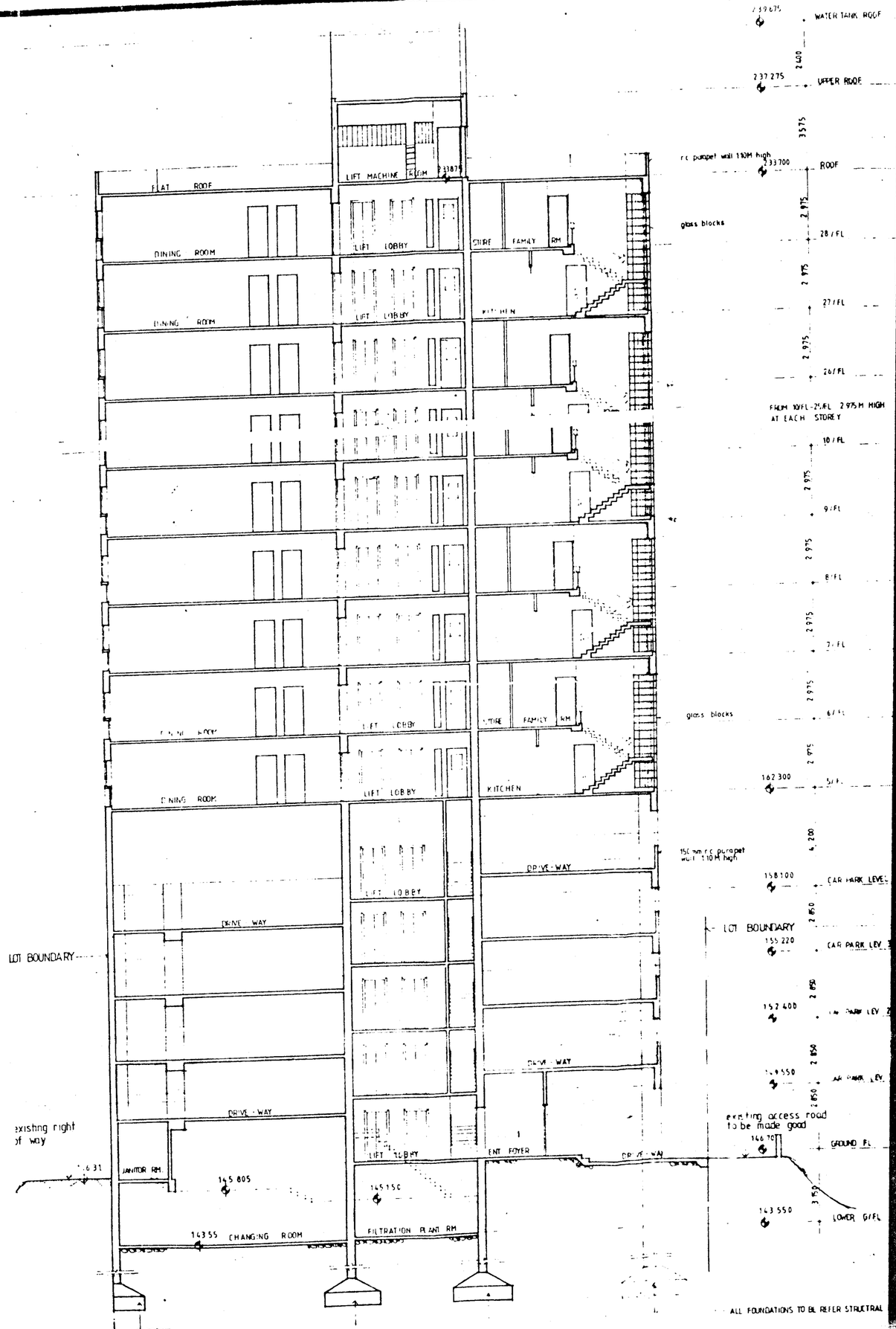

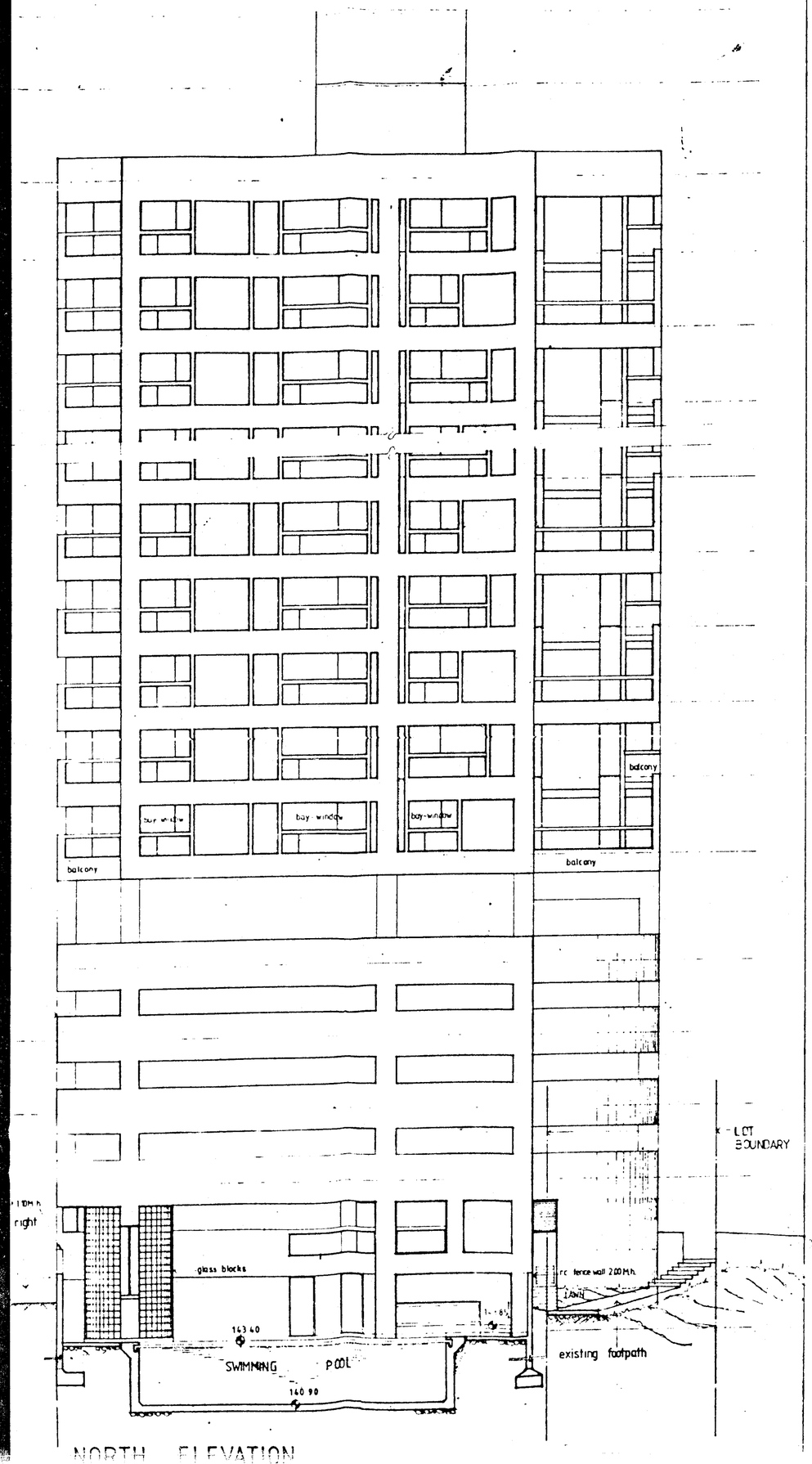

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PROJECT

PROPOSED APARTMENT BLDG. AT 12 BOWEN RD. I.L. 2232 H.K.

DRAWING TITLE

SECTION B - B
NORTH ELEVATION

DRAWN BY T.S.C	JOB NO. A176
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SCALE 1 : 100	209
DATE 13-2-80	
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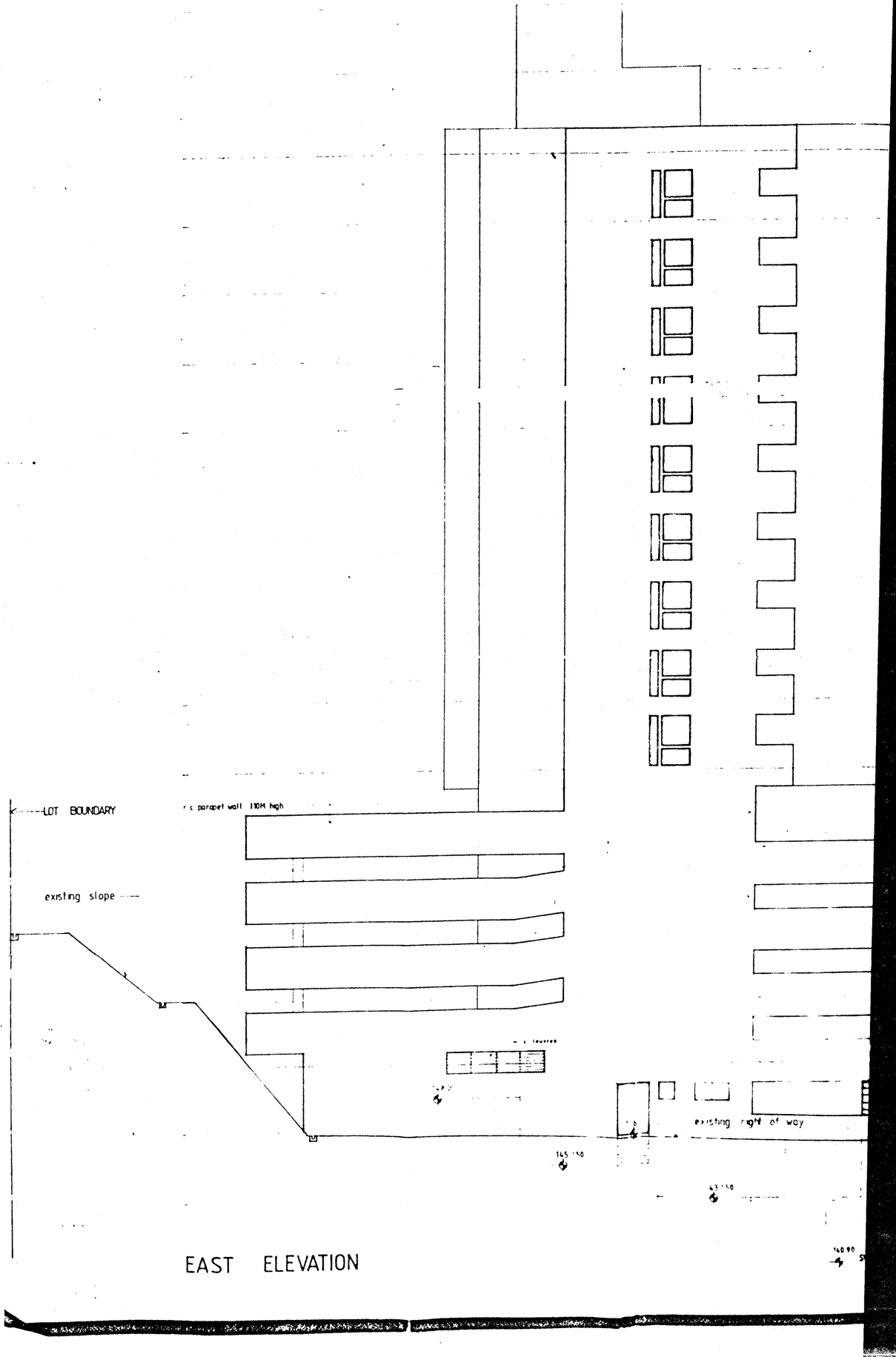

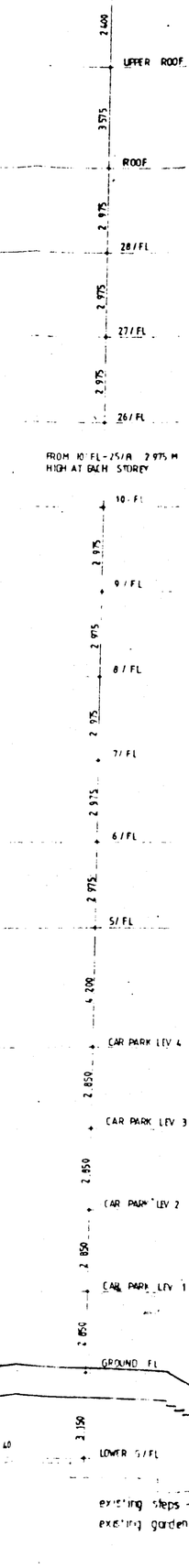

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MONTY SACK
B. ARCH (S.A.) M.I.A.

SIGNATURE FOR SUBMISSION/CONSTRUCTION

DATE

PROJECT

PROPOSED APARTMENT BULD. AT 12 BOWEN RD. I.L. 2232 H.K.

DRAWING TITLE

EAST ELEVATION

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DATE 13-2-80	
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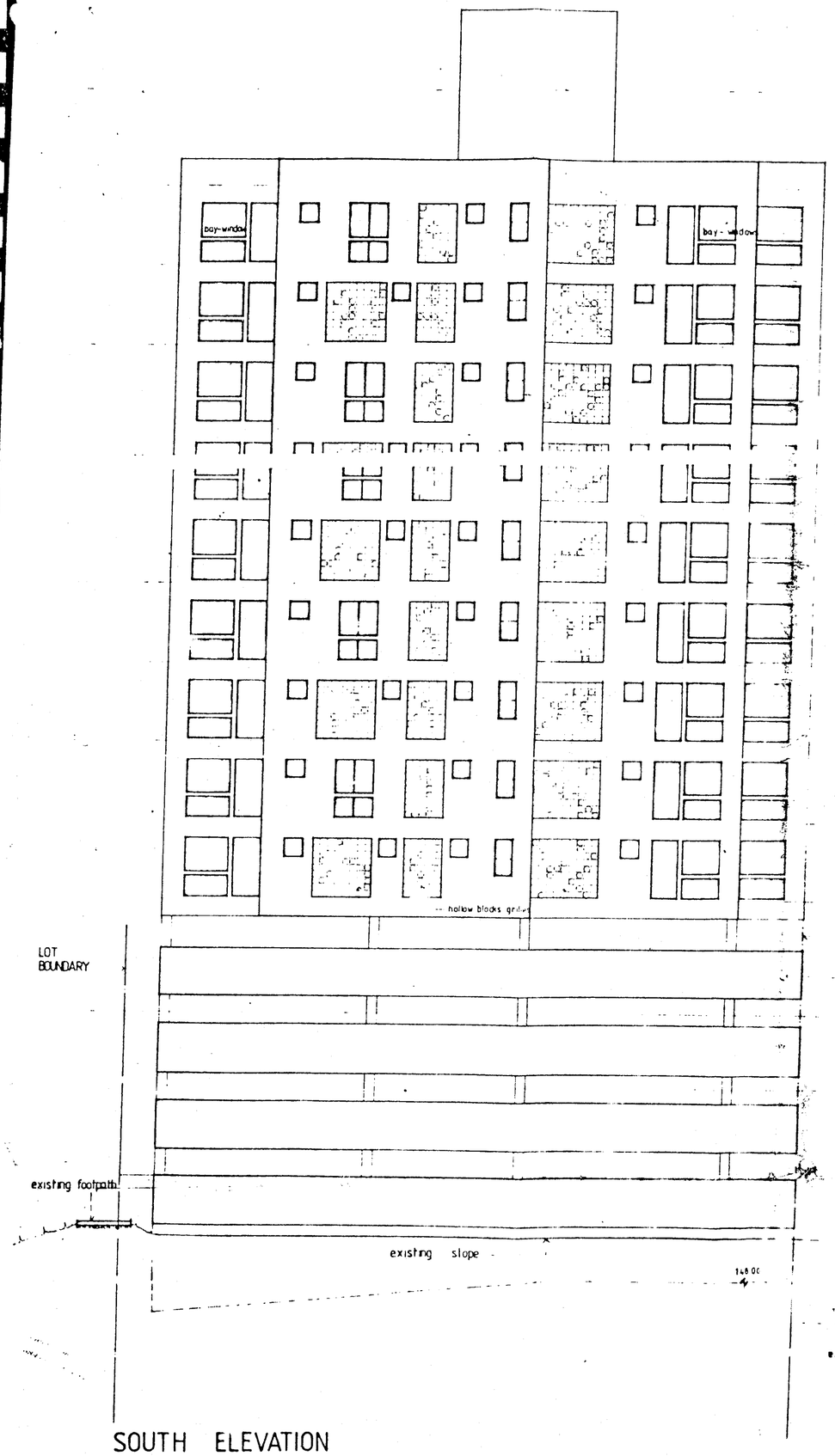
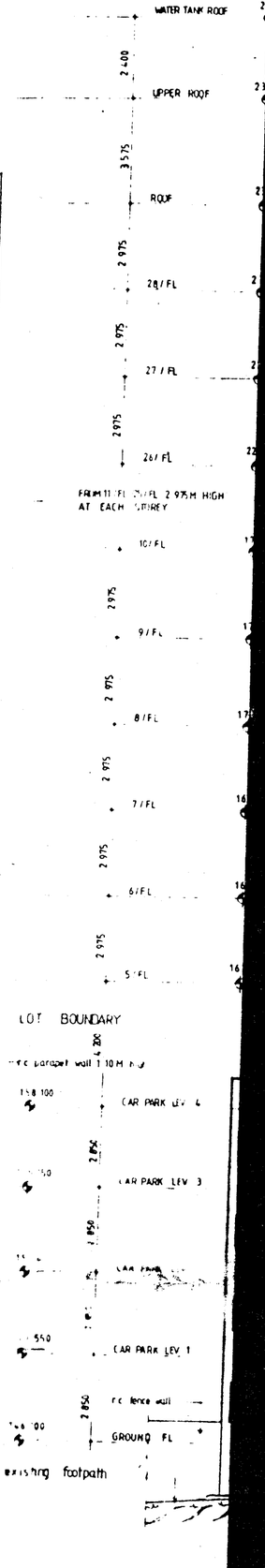
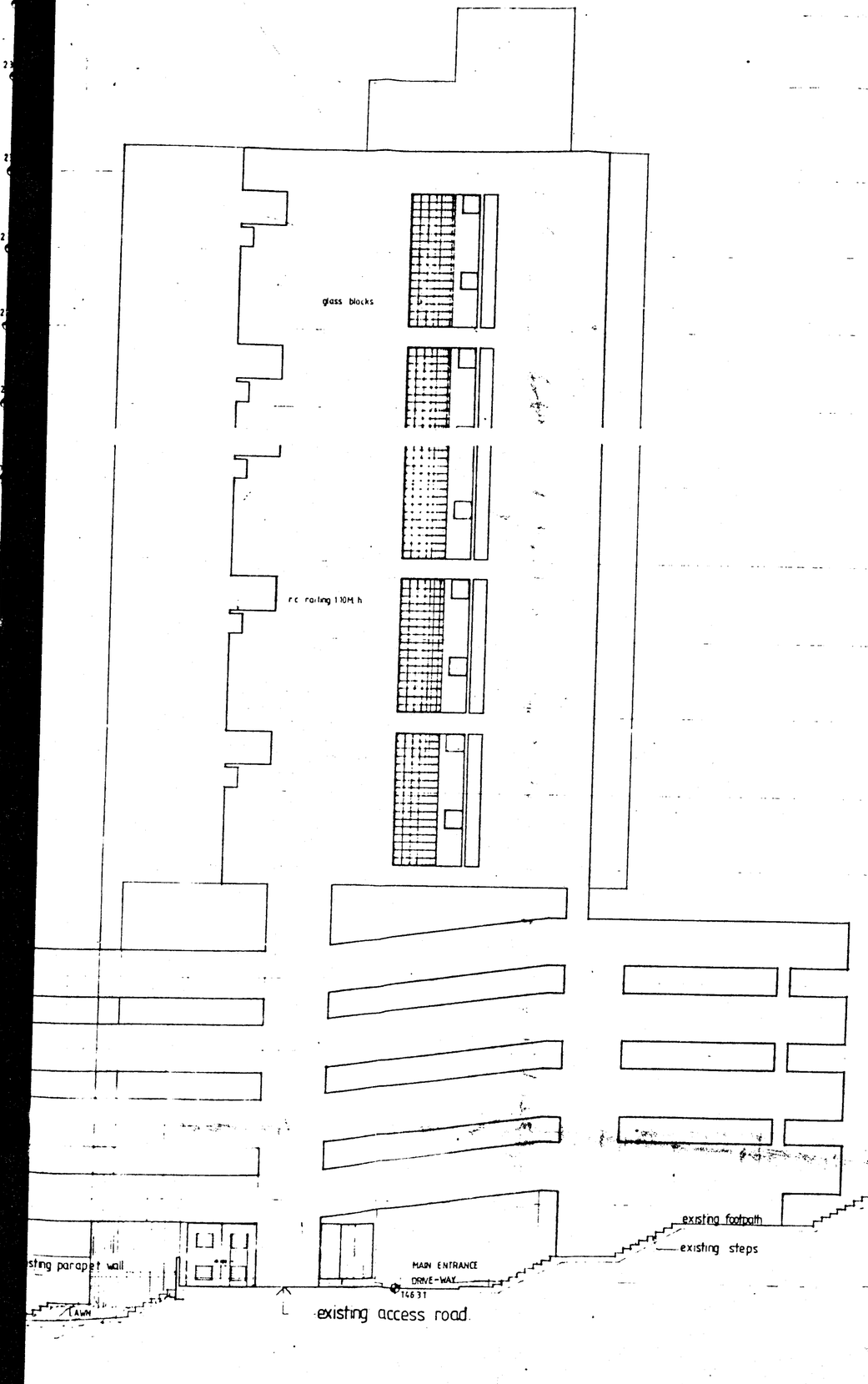


SOUTH ELEVATION





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MONTY SACK
B. ARCH. (S.A.) M.I.A.

SIGNATURE FOR SUBMISSION/CONSTRUCTION

DATE

PROJECT

PROPOSED APARTMEN
BLDG. AT 12 BOWEN R
I.L. 2232 H.K.

DRAWING TITLE

SOUTH ELEVATION
WEST ELEVATION

DRAWN BY T.S.C.	JOB NO. A176
CHECKED BY	DRAWING NO.
SCALE 1 : 100	211
DATE 13-2-80	

R5 - LETTER
(Exhibit GLL-4)

1981, No. 586

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Buildings Ordinance, Cap.123 and the Building (Planning) Regulations

and

IN THE MATTER of Inland Lot No. 2232, 12 Bowen Road, Hong Kong

B E T W E E N

MIGHTYSTREAM LIMITED — Plaintiff

- and -

ATTORNEY GENERAL — Defendant

This is the exhibit referred to in the Affidavit of Graham Leonard Lowman filed herein on the 4th day of July, 1981.

Date	Description	Exhibit Marked	No. of sheet
20.6.1980	letter	"GLL-4"	8

WOO, KWAN, LEE & LO,
Solicitors for Plaintiff,
Hong Kong.

This is the exhibit marked "GLL-4"
referred to in the affidavit of Graham Leonard Lowman
sworn before me this 4th day of July 1981

(Sgd)

Commissioner for Oaths

Exhibits

R5 - Letter
(Exhibit GLL4)

25th June 1980

(continued)

Public Works Department
Murray Building, 8th-10th Floors,
Garden Road, Hong Kong.

Tel. No. 5-2670-2320

Mr. Kevin C.N. MA,
10/F Harbour View Commercial Building
2-4 Percival Street
Hong Kong

20th June 1980

Dear Sir,

12 Bowen Road - I.L. 2232

I refer to your application dated 28th April 1980 for approval of proposals.

It is the usual practice in the Buildings Ordinance Office for all submissions to be checked carefully to ensure that contraventions of the Buildings Ordinance and Regulations are not present and that from other aspects where the public interest is involved, the proposals are viable. However, the pressure of work in the Buildings Ordinance Office is such that this usual practice cannot be followed without most serious delay continuing to affect all submissions to the B.O.O. Therefore, your application has been checked on the basis of certain elementary checks only but this elementary checking has disclosed that

(Please see overleaf)

and your proposal therefore is disapproved.

This curtailment of the usual range of checks emphasizes your duties and responsibilities as Authorised Person and I must stress the importance the Building Authority attaches to the proper assumption of responsibility by Authorised Persons. It is self-evident that any alteration to a building during erection or on completion, costs money and causes delays. Where the Building Authority is of the opinion that an Authorised Person has failed in his duty appropriate action will be taken.

Please ensure, therefore, that a re-submission complies fully with the Buildings Ordinance and Regulations, and that all relevant information is attached.

Yours faithfully

(Signed) Patrick An

pro Building Authority

Exhibits

R5 - Letter (exhibit GLL4)

25th June 1980

(continued)

2. a) As the site does not abut a street, the Building Authority has determined, under Building (Planning) Regulation 19, that the maximum permissible height, site coverage and plot ratio of any building to be erected on this site should be 40m, 39% and 2.9022 respectively. Accordingly, your proposal is unacceptable in these terms. - Building (Planning) Regulation 19 and Section 16(1)(d) of the Buildings Ordinance.

b) A certificate from the Director of Fire Services has not been issued. His comment dated 21st May 1980 is enclosed herewith for your necessary action. - Section 16(1)(b) of the Buildings Ordinance.

5. In view of the fact that your proposal would need to be revised substantially as a result of para.2(a) above, your submitted plans have not been otherwise examined under the Buildings Ordinance.

6. Please be advised that the site formation/excavation submission must contain the following information failing which approval of the site formation/excavation plans may be refused under Section 16(1)(i) of the Buildings Ordinance:-

a) GCB Standard Appendix I items Aa, b, c, d, e, Ba, b, c, d.

b) GCB Standard Appendix III (rainfall precautions)

c) GCB Standard Appendix VI (dewatering).

Copies are enclosed for your information.

7. For your information, the Government Landslide Study of 1977 and 1978 has provided the enclosed unverified information on slope No. 11SW/D/C417. It is recommended that you check the accuracy of this information and carry out a stability investigation.

8. The Chief Engineer Highways has commented as follows:-

a) The existing access road is under a permit which is only for a width of 4.5 m and not 5.0 m as stated on the submitted plans.

b) The internal access is not adequate for two way traffic. The inner circle of the driveway, at the corners, should be widened.

9. Your plans are returned herewith, one set being retained for reference purposes.

R5 - Letter (exhibit GLL4)

25th June 1980

(continued)

A Site formation plans showing details of :

(a) all proposed site formation works

(b) the present nature and conditions of the site and its neighbourhood (including ground conditions, water conditions, structures, foundations, water services, sewers and drains)

(c) safety precautions to be taken during construction during periods of heavy rainfall

(d) the works sequence where appropriate

and containing

(e) a schedule of the critical geotechnical design assumptions to be checked during the course of the works and an outline of the measures to be adopted should a critical geotechnical design assumption be found to be invalid.

(f) workmanship and materials specifications for

(g)

B Documents including :

(a) an explanatory guide to the submission

(b) a report of a study including site geology and ground and surface water, pertinant site history, utilities, sewers and drains and other services, local geotechnical records; the report of the results of site investigation and laboratory testing including comprehensive details of equipment and procedures used; the results of site monitoring of groundwater conditions

(c) a report including critical examination and interpretation of (b) and including geotechnical recommendations for the design and construction of site formation works and including a schedule of the critical geotechnical design assumptions to be checked during the course of the works.

(d) stability analyses for the site and neighbourhood during and after construction and design calculations for site formation works, calculations of the effect of site formation and foundation works on groundwater conditions and property and land, and calculations for all

other relevant geotechnical matters; calculations and analyses are to be paginated, and are to be prefaced by a comprehensive index.

C A report of an investigation of the stability of existing retaining walls and/or slopes including consideration of the effects of intended works both during construction and in the long term and the need for support, strengthening or replacement. Plans showing the proposed site formation works including support and strengthening of existing slopes and/or retaining walls.

GCB Standard Appendix III
Heavy rainfall precautions
PN 1979.56

Evidence on the site formation plans to show that the following minimum measures will be employed to safeguard works against heavy rainfall :

1. Surface water flowing into the site from uphill shall be intercepted and conducted from the site to an indicated safe discharge point. At each intersection and abrupt change in direction of surface drainage channels an accessible catchpit shall be provided. All drainage works shall be kept clear of debris.

2. Where partially completed drainage works discharge within the site a temporary conduit shall be provided to the discharge point.

3. All earthworks shall be graded and sealed to ensure run-off and to avoid ponding.

4. A method of working shall be adopted in which the minimum of bare soil is exposed at any time. Earthwork to form the final face shall be followed up immediately with surface protection and drainage works and the face panel size shall be small enough to permit this.

5. Where temporary bare earth slope faces are unavoidable they shall be protected with sheeting well-secured against the wind. Where slope faces are to be temporarily exposed for more than two weeks temporary hard surfacing shall be provided and temporary drains shall be installed.

6. Excavations shall not be left open on or adjacent to a slope.

7. If trenches on or adjacent to slopes have to be

Exhibits

R5 - Letter (exhibit GLL4)

25th June 1980

(continued)

excavated during the wet season this shall be done with extreme care in short sections at a time. Precautions shall always be taken to prevent water entering and collecting in the trench.

GCB Standard Appendix VI
Dewatering

(a) a plan showing the proposed dewatering installation relative to any of the following which are within the area of water table draw-down caused by the dewatering installation : buildings, structures, foundations, retaining works, slopes, roads, footpaths etc.; whether inside or outside the lot;

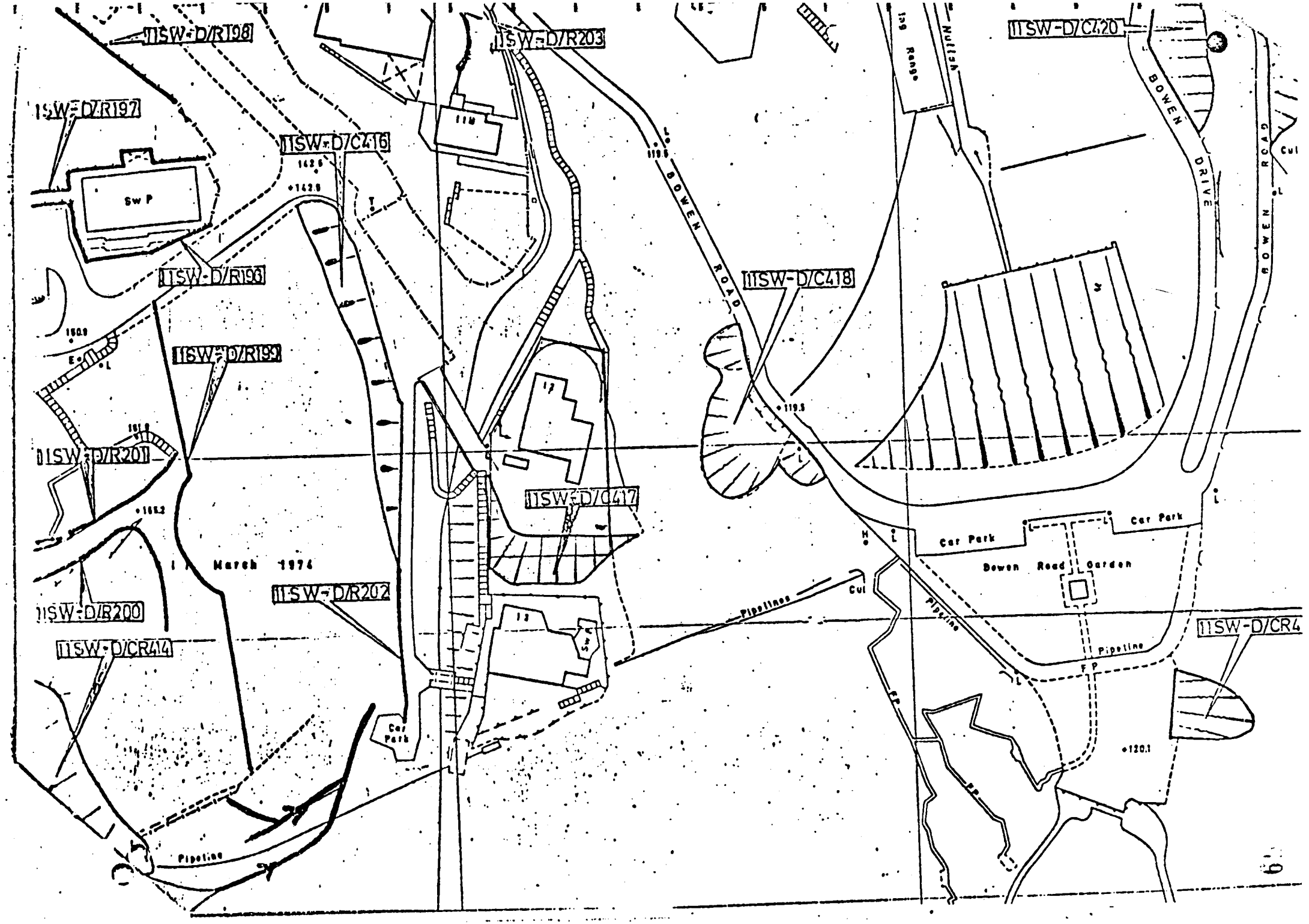
(b) a statement of proposed rates and frequency of abstraction of water;

(c) a site investigation report with bore-hole logs embracing the site area, including measurements of groundwater levels;

(d) a report on the condition and stability of adjoining and nearby buildings and structures which may be affected by the dewatering;

(e) a geotechnical assessment, supported by calculations, of the effect of the proposed dewatering, in both the short and long term, on affected buildings, structures, foundations, retaining works, slopes, roads, footpaths, etc. The assessment should include groundwater table changes, ground movement, damage to buildings and structures and slope stability.

(f) Monitoring details.


IISW-D/R198
IISW-D/R203
IISW-D/C420
IISW-D/R197
IISW-D/C416
IISW-D/R196
IISW-D/C418
IISW-D/R199
IISW-D/R201
IISW-D/C417
March 1974
IISW-D/R202
IISW-D/R200
IISW-D/CR414
IISW-D/CR4
BOWEN ROAD
BOWEN DRIVE
Nullah
Car Park
Bowen Road Garden
Pipeline
Cul
SW P
SW R

Cut Slope Location	Above and at south of no. 12 Bowen Road			CUT SLOPE REFERENCE NO.	11SW-D/C417
Map	Scale	Aerial Photo.	Date	Risk	Low to moderate
11-SW-14C	1:1000	12646	28.1.76	Type of slope	Cut
Nearest rainfall station	Peak Police Station			Coordinates	E 35020 N 14880
Elevation	155 m PD			Inspected/Date	DS/31.3.78 Weather Fine

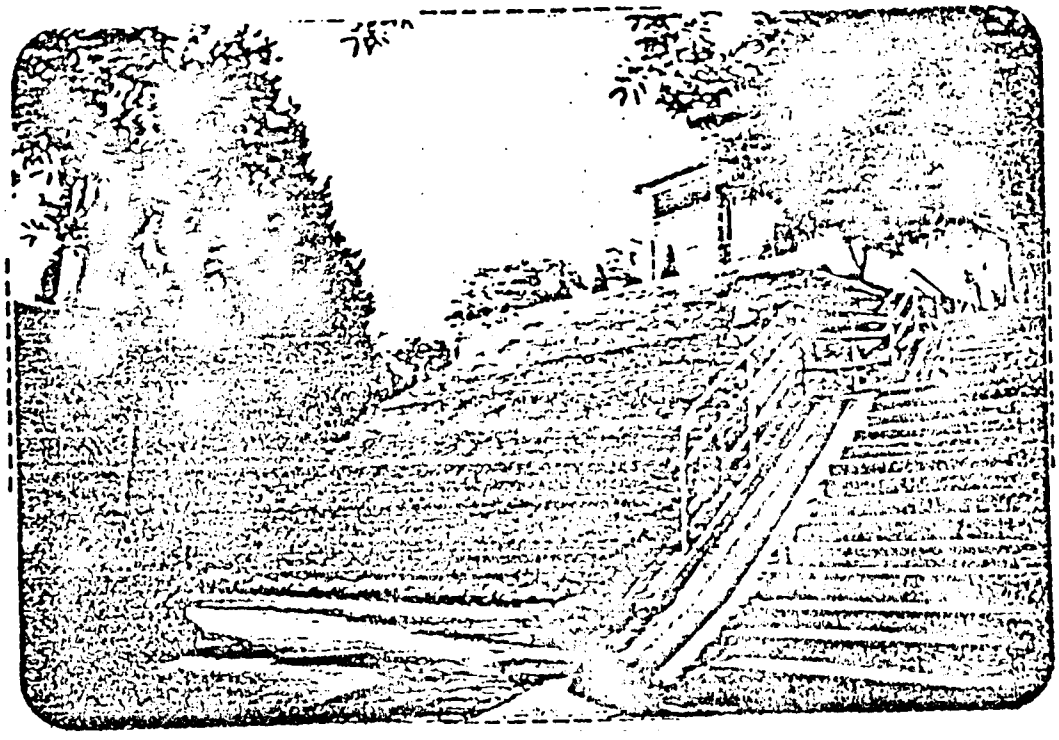
DESCRIPTION	SLOPE	ASSOCIATED STRUCTURE None
	☐ soil ☒ soil & rock ☐ rock	☐ retaining wall ☐ buttress ☐ other
Material / Construction	Decomposed volcanics	
Condition	Satisfactory	
Height/Length	H 10 m L 35 m	H m L m
Angle	50°	
Berms	No. 1 Width 1.5 m	Associated walls
Covering	Chunam	

Drainage:		Size (mm)	Spacing(m)	Condition	Flow		Size (mm)	Spacing(m)	Condition	Flow
Weepholes		25	Occ.	Blocked	Dry					
U Channels: on slope	On berm	225	—	Good	Dry	—	—	—	—	—
at top		225	—	Cracked	Dry			—		
at toe		225	—	Good	Dry			—		
Comments										

Seepage:	None apparent	
Location		
Amount		
Sign of distress:	None	
Location		
Form		
SERVICE CONDUITS	On slope 25 mm pipe down slope	Elsewhere None visible
NEAREST STRUCTURE		
Distance from toe	10 m to house	m to
Distance from top	3 m to house	m to
HISTORY & DOCUMENTS		Date of construction
Previous instability	None apparent	
Site investigation		
Drawings		
B & P reports	None	
Other reports		

Negative No. 791/12 Taken on 31.3.78 Slope No. 11SW-D/C417

P1



LANDSLIDE STUDIES
PHASE I RE-APPRAISAL
CUT & NATURAL SLOPES & RETAINING WALLS

BINNIE & PARTNERS(HK)
Consulting Engineers

R6 - PLAN AND PHOTOGRAPHS
(EXHIBIT GLL5)

1981, No. 586

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Buildings Ordinance, Cap.123 and the Building (Planning) Regulations

and

IN THE MATTER of Inland Lot No. 2232, 12 Bowen Road, Hong Kong

B E T W E E N

MIGHTYSTREAM LIMITED — Plaintiff

- and -

ATTORNEY GENERAL — Defendant

This is the exhibit referred to in the Affidavit of Graham Leonard Lowman filed herein on the 4th day of July, 1981.

Date	Description	Exhibit Marked	No. of sheet
* -	Plan	"GLL-5"	1

WOO, KWAN, LEE & LO,
Solicitors for Plaintiff
Hong Kong.

This is the exhibit marked "GLL-5" referred to in the affidavit of Graham Leonard Lowman sworn before me this 4th day of July 1981.

(Sgd) Commissioner for Oaths

* Plan and photographs separately reproduced

A1
Affidavit
of C G
Holgate
18th August
1981

A1

AFFIDAVIT OF C G HOLGATE

1981, No. 586

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Buildings Ordinance, Cap. 123 and the Building (Planning) Regulations

and

IN THE MATTER of Inland Lot No. 2232, 12 Bowen Road Hong Kong.

B E T W E E N

MIGHTYSTREAM LIMITED — Plaintiff

- and -

ATTORNEY GENERAL — Defendant

I, Clive George Holgate of Hong Kong a Chief Building Surveyor in the employ of the Government of Hong Kong for twelve years, Associate Member of the Royal Institution of Chartered Surveyors make oath and say.

1. I refer to the Affidavit of Graham Leonard Lowman filed herein and the paragraphs in the Affidavit follow the same numbering in that Affidavit.

2. The documents discovered in GLL-1 do not refer to "an RCC Bridge" at all.

3. The assertion is not disputed.

4. The assertion is not disputed.

5. I say that the site is not a class A site and that as it does not abut a street Regulation 16 as referred to does not apply in this instance, and the alleged "permissible limits" of plot ratio and site coverage are not relevant because the site referred to is one to which Regulation 19 Building (Planning) Regulations applies.

6. The assertions are not disputed but I say the Building Authority did refuse approval of the said plans.

7. The plan is accepted.

8. In regard to the matters referred to in paragraph 8 I say -

(a) agreed

(b) agreed

(c) that the RCC bridge referred to is on or over Crown land in respect of which no Licence or Permit is current at this time and that the Plaintiffs herein have no rights whatsoever in respect thereof. The carriageway of this temporary RCC bridge has an average width of 4.403 metres only.

(d) the said pedestrian bridge is on unleased Crown land and the Plaintiffs have no rights whatsoever in respect thereof.

(e) the said pedestrian path is on unleased Crown land and the Plaintiffs have no rights whatsoever in respect thereof.

9. The photographs are not disputed.

10. I say that (a) the said RCC bridge is not a street within the meaning the Buildings Ordinance or the Building (Planning) Regulations and that the average width thereof is also less than 4.5 metres.

(b) the said site does not abut Borrett Road.

(c) the said site is not a class A site.

(d) the Plaintiff is not entitled to the relief it seeks.

11. Now shown to me marked "CGH 1" is a copy of Crown Land Permit No. H3163 and such is now produced.

SWORN AT COURTS OF JUSTICE,
HONG KONG
this
18th day of August 1981

(Signed)CLIVE G HOLGATE

Before me (Sgd) R D Biala
Commissioner for Oaths

JUDICIARY

A2
Crown Land
Permit
No. H3163
(exhibit
CGH 1)

CROWN LAND PERMIT No. H3163
(EXHIBIT CGH 1)

1981, NO. 586

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Buildings Ordinance, Cap. 123 and the Building (Planning) Regulations

and

IN THE MATTER of Inland Lot No. 2232, 12 Bowen Road, Hong Kong.

B E T W E E N

MIGHTYSTREAM LIMITED — Plaintiff

- and -

ATTORNEY GENERAL — Defendant

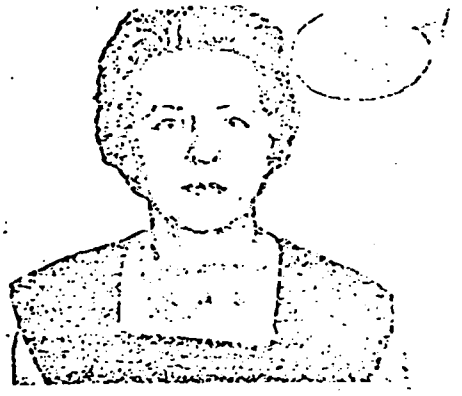
Exhibit

referred to in the

Affidavit of George Holgate

Filed herein on the 20th day of August 1981

Exhibit Marked	Description	Date	No. of sheets
CGH 1	Crown Land Permit No. H3163		3



CROWN LAND PERMIT No. H 3163
(Supercedes H-1845)

A2
Crown Land Permit No. H3163 (exhibit CGh 1)
(continued)

Permission is hereby given to the Permittee whose name appears below to occupy Crown Land (hereinafter called "the Permit Area") for a temporary period and for the purpose hereinafter set forth subject to the General and Special Conditions hereunder written:

Location of Land: No. 12 Bowen Road as delineated and coloured Red on Plan annexed.

Area: -

Permittee - Mrs. Irene Zigal Address: 12 Bowen Road Hong Kong

Commences on - 1.4.1962 Period: one year

Expires on - 31.3.1963 Fee: $ 20.00 p.a.

Purpose for which land may be used: a R.C.C. bridge

Structures permitted on the Permit Area: a R.C.C. bridge 15' wide

In accepting this permit I, the undersigned permittee, fully understand, acknowledge and agree that -

(1) Neither this document nor any occupation of the permit area nor the payment of any fees in respect thereof shall be construed as creating the relationship of landlord and tenant.

(2) The acceptance of fees paid in respect of this permit shall not constitute a waiver of any breach of any of the conditions, hereof existing at the date of such acceptance.

(3) No permit, approval or agreement from or with any other department of Government shall constitute a waiver.

(4) Any occupation of the permit area or the erection or maintenance of any structure thereon otherwise than in accordance with the terms and conditions of this permit shall be an offence under section 9 of the Summary Offences Ordinance, Cap. 228.

(5) The Director of Public Works may in his absolute discretion cancel this permit on giving three months' notice thereof of his intention so to do.

A2
Crown Land
Permit
No. H3163
(exhibit
CGH 1)
(continued)

(6) This permit is granted subject to the General and Special Conditions to be found on pages 2, 3 and 4 hereof.

Signature of Permittee

(Sgd) IRENE ZIGAL

(Signed) D.H.A. MOORE
for Director of Public Works

This is the exhibit marked "CGH1"
referred to the Affidavit of
Clive George Holgate sworn on
this 18th August 1981
before me,

(Sgd) R. D. BIALA

Commissioner for Oaths.

GENERAL CONDITIONS

1. This permit is the property of Government and must be produced for inspection on demand.

2. This permit is not transferable.

3. In the event of any contravention of any of these General or the Special Conditions hereto, this permit may be cancelled forthwith, without compensation or refund of any sum paid.

4. On expiry or cancellation of this permit the permit area shall be cleared to the satisfaction of the Superintendent of Crown Lands & Surveys. In default of compliance with this condition such cost as may be incurred by Government in clearing the permit area may be deducted from any deposit held; should any structure or other thing whatsoever be left on the permit area, it shall become the property of Government.

5. Any notice required to be given to the permittee may be given by leaving it at his last known address or by sending it thereto by post or by leaving it on the permit area.

6. The permit area shall be adequately drained to the satisfaction of the Superintendent of Crown Lands & Surveys.

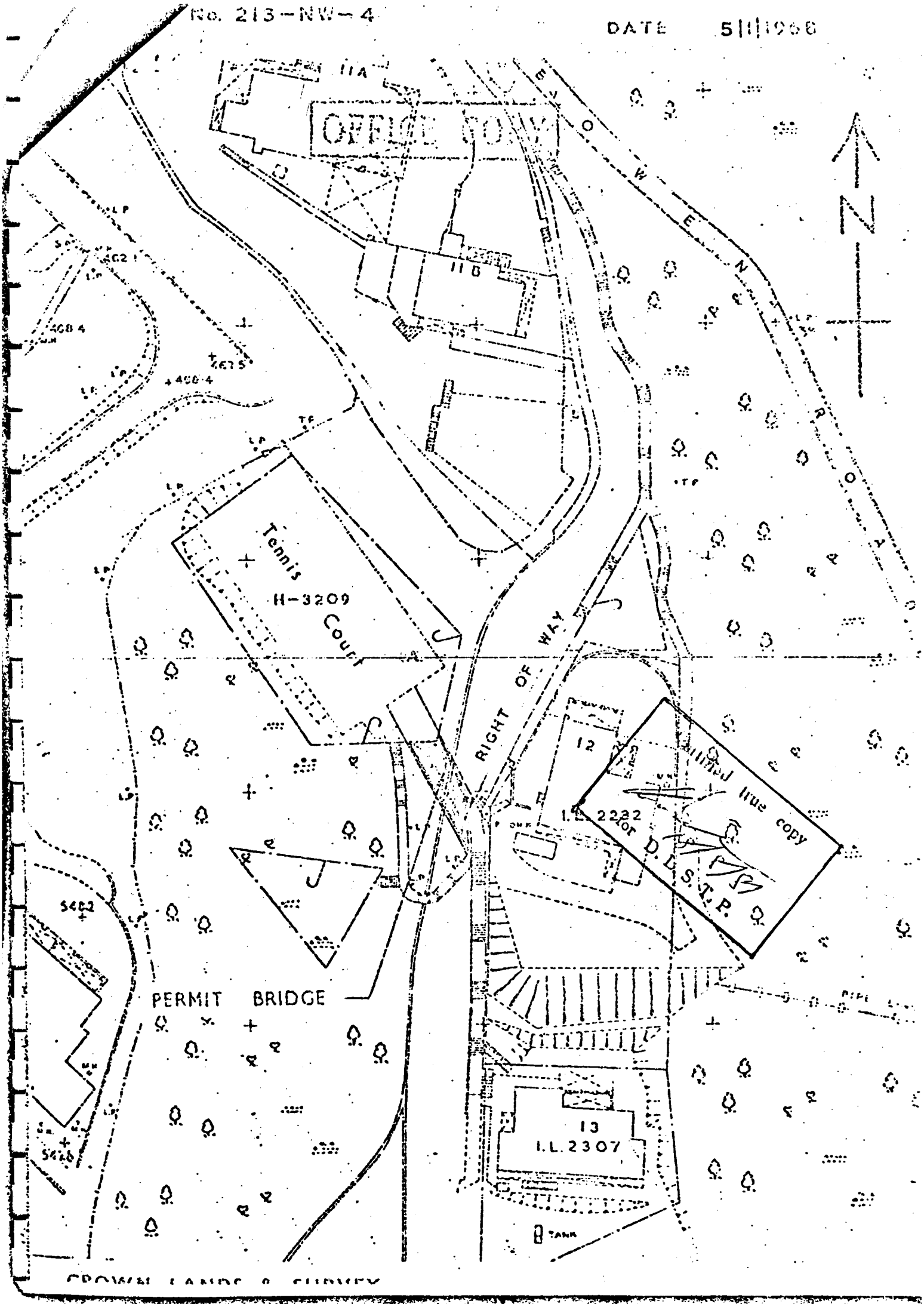
7. In the event of the permittee being a registered company, no photograph need be affixed to this

permit. In all other cases a photograph of the permittee must be affixed overleaf.

8. The permittee shall comply with any Ordinance or regulation made thereunder insofar as may be applicable to this permit. The provisions of the Rating Ordinance (Cap. 116) shall in any event apply.

9. No structures other than those specified on page 1 shall be erected and the permittee shall comply with the provisions of Part VII of the Building (Planning) Regulations 1956. Such structures must be maintained by the permittee in a good state of repair to the satisfaction of the Superintendent of Crown Lands & Surveys.

10. In the absolute discretion of the Director of Public Works, this permit may be renewed after the date stated overleaf, but such renewal shall be subject to the conditions herein stated and any further conditions which the Director of Public Works may impose, to payment of the prescribed fee for such renewal period and to the attachment hereto of the receipted Demand Note for such fee.


No. 213-NW-4
DATE 5|1|1968
11A
OFFICE COVE
11B
Tennis Court
H-3209
RIGHT OF WAY
12
I.L. 2222
13
I.L. 2307
PERMIT BRIDGE
TANK
CROWN LANDS & SURVEY

A3

A3
Affidavit of
C G Holgate
22nd
September
1981

AFFIDAVIT OF C. G. HOLGATE

1981, No. 586

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Buildings Ordinance, Cap. 123 and the Building (Planning) Regulations

and

IN THE MATTER of Inland Lot No. 2232, 12 Bowen Road, Hong Kong.

B E T W E E N

MIGHTYSTREAM LIMITED Plaintiff

- and -

ATTORNEY GENERAL Defendant

I, Clive George Holgate of Hong Kong a Chief Building Surveyor in the employ of the Government of Hong Kong for twelve years, Associate Member of the Royal Institution of Chartered Surveyors make oath and say as follows:

1. I crave leave to refer to my Affidavit sworn herein on the 18th August 1981.

2. I would like to amplify paragraph 8(c) thereof.

3. I first visited this site on the 31st July 1981. I measured the overall width of the RCC bridge at the top, middle and bottom of it taking the Borrett Road end as the bottom. I also measured the internal clear width of the RCC bridge at the same positions. Clear width means the clear unobstructed width of the bridge i.e. excluding the Kerbstones. These Kerbstones can be seen on Exhibit Marked "GLL-4".

A3
Affidavit of
C G Holgate

22nd September
1981

(continued)

	Top	Middle	Bottom
Overall	4.64 m	4.54 m	5.05 m
Unobstructed	4.34 m	4.24 m	4.74 m

4. Further on the 6th August 1981 I returned to the RCC bridge and proceeded to measure the unobstructed width at 1 metre intervals along the whole length of the bridge. There is now produced and shown to me and marked "CGH 2" my original drawing with measurements thereon. As can be seen from this document, the average measurement is the figure referred to in paragraph 8(c) of my first Affidavit, mainly 4.430 metres. 10

SWORN at the Court of Justice, Hong Kong This 2nd day of Sept., 1981 (Sgd)

Before me

(Signed) Antony Ng Ming

Commissioner for Oaths

A4

DRAWING
(EXHIBIT CGH-2)

A4
Drawing
(exhibit
CGH - 2)

1981, No. 586

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Buildings Ordinance, Cap. 123 and the Building (Planning) Regulations

and

IN THE MATTER of Inland Lot No. 2232, 12 Bowen Road, Hong Kong.

B E T W E E N

MIGHTYSTREAM LIMITED — Plaintiff

- and -

ATTORNEY GENERAL — Defendant

Exhibit

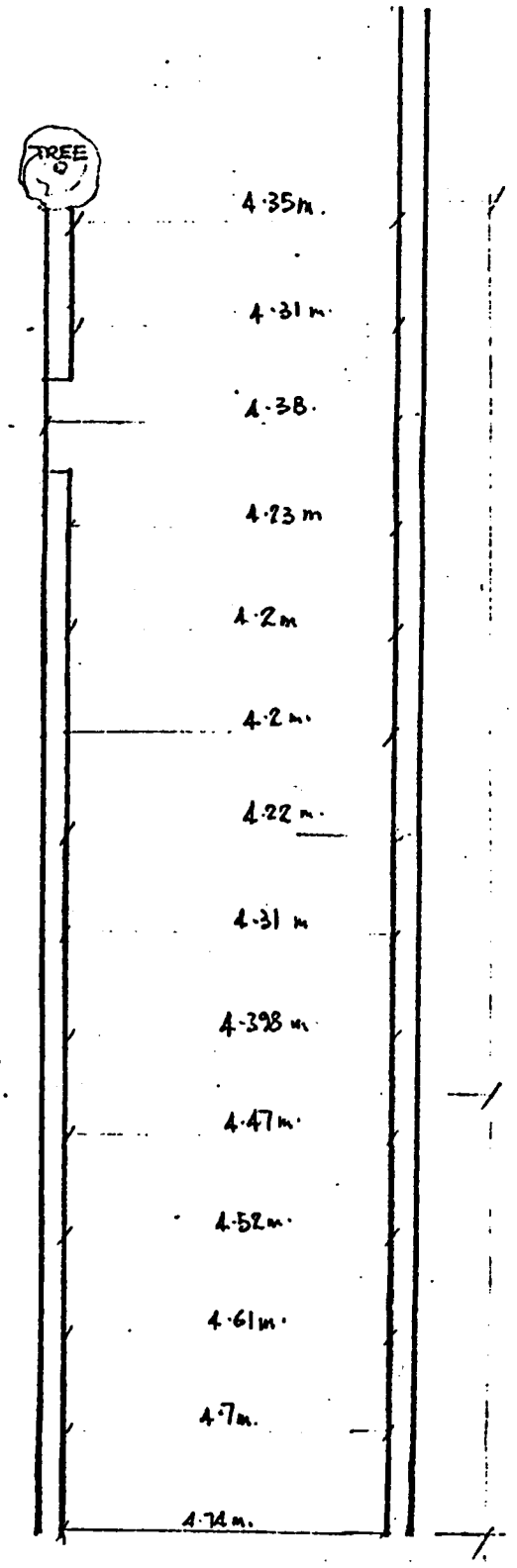
referred to in the

Affidavit of Clive George Holgate

Filed herein on the 23rd day of September 1981

Exhibit Marked	Description	Date	No. of sheets
CGH 2	Drawing	6th August 1981	1

"CGH2"



This is the exhibit marked "CGH2"
referred to in the affidavit of
George Hedgate
this 22nd day September 81

Commissioner for Oaths
Antony NG Ming
Senior Judicial Clerk
SUPREME COURT

Supplementary measurements taken on 6.8.81 (at 1m intervals)

C.G. Hedgate

AVERAGE : 4.403 m.

about 35%. of the "road" exceeds 4.5 m wide.

No. 31 of 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN:

ATTORNEY GENERAL — Appellant (Defendant)

- and -

MIGHTYSTREAM LIMITED — Respondent (Plaintiff)

RECORD OF PROCEEDINGS

Macfarlanes
Dowgate Hill House
London EC4R 2SY

Solicitors for the Appellant

Simmonds Church Rackham
13 Bedford Row
London WC1R 4BU

Solicitors for the Respondent