

## **Investigation report on the construction project at Alto de Coloane**

### **Introduction**

1. In March 2012, according to media reports, the Land, Public Works and Transport Bureau (hereinafter referred to as “DSSOPT”) had already issued a street alignment plan to a land parcel at Alto de Coloane adjacent to Estrada do Campo and Estrada de Seac Pai Van, where a 100-metre high composite building was to be built. Due to its location in Coloane and the need for massive hill excavation, the construction project aroused public concern over its damages to the ecological environment.
2. On 8<sup>th</sup> March 2013, the project developer said in a media interview that the land parcel, privately owned, was acquired by auction in Hong Kong many years ago, adding that a building plan had been submitted according to the street alignment plan previously issued by the government. The developer also mentioned that the construction would inevitably damage the environment, but they would try to reduce the mountain area needed to be flattened, preserve the military blockhouse on the site and take sufficient measures in order to protect the environment according to the requirements of the government.
3. In June 2013, the Director of the DSSOPT told the media that the developer had submitted a building plan according to the street alignment plan and the bureau already required the relevant departments to give advices on the project. While submissions were being received, there were still no conditions to grant final approval. The developer had yet to submit supplementary documents relating to traffic, environmental protection and the military blockhouse on the site.
4. On 3<sup>rd</sup> March 2016, the DSSOPT issued a press release pointing out that although the draft of the building proposal was previously approved, the owner had yet to submit the official building plan and technical drawings. Therefore, there were no conditions for the project to commence construction in the short run.
5. On 8<sup>th</sup> March 2016, the New Macao Association handed in a letter to the Commission Against Corruption (hereinafter referred to as “CCAC”), requesting the latter to investigate if the public works departments had involved in administrative impropriety or transfer of interest in the process of approving the project.
6. On 6<sup>th</sup> August 2016, the Choi In Tong Sam Association lodged a complaint to the CCAC, where it pointed out that in the process of producing the street alignment plan for the aforesaid parcel the DSSOPT decided the permitted maximum

building height to be 100 metres above sea level. The association queried that the bureau might have gone against its existing instructions and usual practice and therefore requested a thorough investigation into the legality of the relevant procedures.

7. Therefore, the Commissioner Against Corruption, according to Article 4 of Law no. 10/2000 on the *Organic Law of the Commission Against Corruption of the Macao Special Administrative Region*, ordered the Ombudsman Bureau to conduct an enquiry into the case, which not only targeted at the location and area of the parcel as well as the truthfulness of the title to it, but also at the legality and rationality of the relevant approval procedures.

## **Part I: The construction project at Alto de Coloane**

The working group of the CCAC responsible for the enquiry took a series of investigative measures according to the *Organic Law of the Commission Against Corruption*, including requesting information from government departments and courts, consulting historical records and approval dossiers, interviewing the people involved, making written records and site visits.

To facilitate the analysis and understanding of the background and development of the construction project and the parcel, the text below presents the information detailing the change of title of the parcel where the project is located, the land boundary surveys and the approval of the project:

### **1) The change of title of the parcel and the land boundary surveys**

1. According to the information of the Real Estate Registry, the parcel of the construction project at Alto de Coloane is located at Estrada do Campo of Coloane and has a land description number 6150. The parcel, covering an area of 56,592 m<sup>2</sup>, is privately owned and the present owner is Win Loyal Development Limited (hereinafter referred to as “Win Loyal Limited”).
2. According to the information of the Real Estate Registry, in 1903, Mac Hip Si sold a parcel at Estrada do Campo in Coloane along with three other houses at Rua dos Negociantes to Choi Lam for a total of 1,100 patacas. On 19<sup>th</sup> December 1903, Choi Lam applied to the Real Estate Registry for property registration, where the land description number of the parcel at Estrada do Campo was registered as 6150.
3. Starting from 1903, there were not any changes to the title and the relevant registration of the parcel. In July 1991, two Coloane residents, Vong Tam Seng and Vong Tak Heng, brought a suit to the court of Macao for the confirmation of their heir eligibility and requested to inherit the parcel. After the court made a judgement in April 1992, Vong Tam Seng and Vong Tak Heng obtained the title of the parcel as heirs.
4. Vong Tam Seng applied to the then Department for Cartography and Cadastre for a land boundary survey in October 1992 and September 1993 respectively, where he claimed that the parcel was located at Alto de Coloane around Estrada do Campo, Estrada de Seac Pai Van and Estrada do Alto de Coloane. However, due to a complete lack of proof of the applications and the fact that the claimed location of parcel was obviously at odds with the property registration, the then

Department for Cartography and Cadastre refused to issue a cadastral map.

5. In October 1993, Vong Tam Seng and Vong Tak Heng sold the parcel to Chong Fai Properties Investment Company Limited (hereinafter referred to as “Chong Fai Limited”) for 150,000,000 patacas. As the location of the parcel as well as its boundaries and area had not been confirmed by the then Public Administration, the sale and purchase agreement set out that only when a cadastral map was issued by the then Department for Cartography and Cadastre would the purchaser make the payment.
6. In August 1994, Chong Fai Limited applied to the then Department for Cartography and Cadastre for a land boundary survey again. The documents submitted by the company included the sale and purchase agreement on the parcel, a property registration certificate with an added remark on the parcel’s area and a transcription certificate of a Miscellaneous Notification Form of Property Tax (M/10) issued by the Branch Office of the Financial Services of the Islands.
7. In October 1994, as the then Department for Cartography and Cadastre believed that the documents submitted by the party concerned could prove the area and location of the parcel, its previous doubts had been resolved. It therefore confirmed the boundaries and area of the parcel and issued a cadastral map to Chong Fai Limited.
8. In May 2004, Chong Fai Limited entered into a sale and purchase deed with Win Loyal Limited in Macao. The former sold the parcel to the latter for HKD88,000,000. Later on, the latter also registered its purchase of the parcel with the Real Estate Registry. Therefore, Win Loyal Limited is the present owner of the parcel.
9. For more than ten years - from 1992 when Vong Tam Seng and Vong Tak Heng obtained the title of the parcel as heirs until 2004 when Win Loyal Limited purchased the parcel - a few lawsuits involving the parcel were filed. However, the registration relevant to the lawsuits was successively cancelled due to expiration or revocation by the plaintiffs.

## **2) Parcel planning and project approval processes**

1. In June 1999, Chong Fai Limited applied for a street alignment plan from the then Department for Land, Public Works and Transport (former DSSOPT) for the parcel with a description no. 6150. According to the analysis of the public works departments, given that the parcel fell within the scope of the *Remediation Planning for Coloane*, approval should be subject to the compliance with the

relevant planning terms.

2. In August 1999, the public works departments issued a street alignment plan and decided the permitted maximum building height to be 20.5 m (33.4 m above sea level). They also decided that an area covering some 20,000 m<sup>2</sup> and adjacent to Estrada do Alto de Coloane and Estrada Militar should be construction-free. In addition, they requested a part of the parcel be transferred to the government so that road construction could be undertaken by the owner.
3. In March 2009, Win Loyal Limited submitted an application to the DSSOPT and requested the latter to issue a new street alignment plan. It also submitted a preliminary development proposal for the land parcel concerned. According to the proposal, Win Loyal Limited planned to construct nine 22-metre high independent villas and nine 115-metre high (37 storeys) residential buildings.
4. In December 2009, the DSSOPT issued a street alignment plan, where it stipulated that the plot ratio of the parcel concerned should be 5 and the parcel should be divided into three sections for planning: 80 m above sea level should be the permitted maximum building height for the section adjacent to Estrada de Seac Pai Van, 8.9 m for the section adjacent to Estrada do Campo and 9 m for the section adjacent to Estrada do Alto de Coloane and Estrada Militar respectively.
5. In June 2010, Win Loyal Limited applied for a new street alignment plan for the relevant parcel from the DSSOPT again. In the application, Win Loyal Limited requested the DSSOPT to relax the planning terms. For instance, it applied for increasing the permitted maximum building height from 80 m above sea level to 198 m above sea level (63 storeys) and changing the plot ratio of 5 to a net plot ratio of 9.
6. In April 2011, the DSSOPT issued a new street alignment plan, where it stipulated that the permitted maximum net plot ratio should be 8, the permitted maximum building height should be 100 m above sea level and the distance between the towers should not be less than 1/6 of the tower height. It also requested that assessment reports about the impacts on the environment, traffic and landscape be submitted along with the draft of the building proposal for the relevant departments for approval.
7. In January 2012, Win Loyal Limited once again applied for a street alignment plan from the DSSOPT, who then issued it on 2<sup>nd</sup> March 2012. After analysis the bureau believed that there was no change in the planning terms of the parcel concerned, so this street alignment plan remained the same as the one issued in April 2011.
8. In February 2013, Win Loyal Limited submitted a draft of the building proposal to

the DSSOPT. According to the proposal, the project, occupying 48,868 m<sup>2</sup> and having a total gross floor area of 668, 741 m<sup>2</sup>, was slated to develop 13 towers comprising not more than 33 storeys. The assessment reports written by Environmental Impact Assessment Consultancy Macau Co. Ltd. about the impacts on the environment, traffic and landscape were submitted along with it.

9. The DSSOPT forwarded the aforesaid draft of the building proposal and assessment reports to the Civic and Municipal Affairs Bureau (hereinafter referred to as “IACM”), the Transport Bureau, the Environmental Protection Bureau (hereinafter referred to as “DSPA”) and the Cultural Affairs Bureau for giving opinions. The relevant functional departments put forward a number of amendment advices relating to the project’s impacts on the landscape, greening and traffic, and the Cultural Affairs Bureau requested that the military blockhouse located within the project area be preserved.
10. In January 2014, Win Loyal Limited submitted to the DSSOPT an amended draft of the building proposal as well as the assessment reports written by Aecom Macau Company Limited about the impacts on the environment, traffic, air flow, etc. It also decided not to construct any building at the site of the military blockhouse and to reduce the total number of towers of the project from 13 to 12.
11. In October 2015, after the environmental and landscape assessment reports were accepted by the relevant departments, the DSSOPT approved the amended draft of the building proposal and the relevant assessment reports. Between April and June in 2016, Win Loyal Limited applied for approval from the DSSOPT for the official building plan and a series of technical plans for piling works, water supply and drainage, electricity supply and the like. However, as the applications have yet to be approved by the bureau, the relevant project has not commenced construction to this day.

## **Part II: The doubts existing in the process of obtaining the title**

The CCAC discovered in the investigation that there were many doubts existing in the process of transferring the title of the parcel at Alto de Coloane where the construction project is located to Vong Tam Seng and Vong Tak Heng by inheritance in the 1990s. One cannot rule out the possibility that some people had illegally obtained the title by falsely claiming to be the owner's descendants and making use of judicial proceedings. The doubts found in the investigation are listed below:

1. According to the data of the Real Estate Registry, the description number of the parcel where Alto de Coloane project is located is 6150. The first registration made in 1903 showed that the parcel owner was "Chui Lan". Since then, there had not been any changes to the property registration data such as the parcel owner for nearly 90 years.
2. In July 1991, Vong Tam Seng and Vong Tak Heng, represented by lawyer Paulo dos Remédios, brought a suit of confirming their eligibility as the heirs to the court. They requested the court to confirm that Vong Tam Kuong was also named "Choi Lan" and was their grandfather and requested to inherit the title of the parcel with a description no. 6150.
3. According to the indictment submitted to the court, Vong Tam Seng and Vong Tak Heng claimed that their grandfather Vong Tam Kuong was also named "Choi Lan" and their grandparents deceased soon after the World War II. Their father Vong Lam Tai was their only offspring. Their parents deceased 40 years before and so they were the only heirs.
4. According to the schedule of property to be inherited submitted to the court, Vong Tam Seng and Vong Tak Heng requested for inheriting the title of the parcel with a description no. 6150 registered under the name of "Choi Lan", claiming that it was located at Estrada do Campo with a value of 57,000 patacas. The then real estate registration certification of the parcel was also submitted.
5. In October 1991, the lawyer representing Vong Tam Seng and Vong Tak Heng, in accordance with the litigation law, submitted to the court the notice about the suit of heir eligibility confirmation published in Chinese and Portuguese newspapers, which informed all unknown interest parties that they might claim their right within the certain period.
6. On 2<sup>nd</sup> April 1992, the court heard the case. After hearing the testimony from Ho Vai On and Wong Sai, who were the witnesses designated by Vong Tam Seng and Vong Tak Heng, the judge ruled that the content of the indictment was true and

Vong Tam Seng and Vong Tak Heng were the only heirs of Vong Tam Kuong, who also named “Choi Lan”.

7. On 7<sup>th</sup> December 1992, Vong Tam Seng and Vong Tak Heng, based on the court judgment, of which the status had already been changed as verified, submitted an application to the Real Estate Registry for transferring the title of the parcel with a description no. 6150 to them. After that, Vong Tam Seng and Vong Tak Heng inherited the title of the parcel which was originally owned by “Chui Lan”.
8. The CCAC found that although the abovementioned legal proceedings of the heir eligibility confirmation went in accordance with the *Code of Civil Procedure*, there was lack of evidence for the verification of what they claimed. Therefore, it is difficult to rule out the possibility that some people made use of judicial procedure to illegally obtain the title.
9. Their purpose for bringing the suit was to obtain the title of the parcel with a description no. 6150 as heirs. Therefore, they claimed in the indictment that their grandfather was Vong Tam Kuong who also named “Choi Lan”, hoping the court would confirm that they were the only legitimate heirs of “Choi Lan”.
10. However, in the suit, Vong Tam Seng and Vong Tak Heng did not submit any documents proving that Vong Tam Kuong also named “Choi Lan”, while the two witnesses only stated in the hearing that although they knew their parents, they did not know their grandfather. Whether Vong Tam Kuong and “Choi Lan” were the same person or not was never proved.
11. Vong Tam Seng and Vong Tak Heng registered their birth respectively in 1958 and 1977. Both of their registrations indicated that their grandfather was “Vong Tang Kong”, but there were no registration showing that their grandfather also name “Choi Lan”. In addition, no relevant documentary record was found.
12. From the notarial certificates and the private documents (“*Sá-Chi-Kai*”) long time ago, the CCAC found that the Chinese name of “Vong Tang Kong” was 黃譚光 and that of “Chui Lan” was 崔霖. Vong Tam Seng and Vong Tak Heng claimed that their grandfather 黃譚光 also named 崔霖. In fact, not only there were no evidence proving this statement but also the fact that a person surname Vong has an alternative surname Choidoes not fit in Chinese naming customs.
13. Even if Vong Tam Seng and Vong Tak Heng’s grandfather really also named “Choi Lan”, his Chinese name was not necessarily 崔霖 and he was even not necessarily the title owner shown in the property registration. Moreover, in fact, the property registration showed that the owner of the parcel was “Chui Lan”, but Vong Tam Seng and Vong Tak Heng claimed that their grandfather also named “Choi Lan”. There was no explanation of the difference between “Chui”



and “Choi”.

14. In May 1995, Chau Chu brought a suit to the court to request for cancellation of the transaction of the parcel with a description no. 6150 and the reason was that Vong Tam Seng declared that his wife was Ho Fong Meng in the suit of heir eligibility confirmation. However, the marital registration data showed that Chau Chu was his legal spouse and she had not yet given her consent on the relevant transaction.
15. In the indictment submitted to the court, Vong Tam Seng and Vong Tak Heng claimed that their grandfather and grandmother were Vong Tam Kuong and Chan Si, but Vong Tam Seng’s birth registration showed that his grandfather was “Vong Tang Kong” and his grandmother was Ho Si. However, according to the court’s verdict, it finally ruled that their grandmother was Choi Si.
16. In fact, these doubts on one’s identity could be found from the viewing of the data such as the birth and marital registrations of the interest party. However, the interest party did not present the relevant civil registration certificates in the suit, violating the stipulation about registered civil identity under the *Code of Civil Registration*, which states that any fact related to civil registration of a person can only be proved based on the official Civil Registry and cannot be contradicted by any other evidence..
17. As a result, Vong Tam Seng and Vong Tak Heng obtained the title of the parcel with a description no. 6150, which was originally owned by Chui Lan, through the legal proceedings of heir eligibility confirmation. Although Vong Tam Seng and Vong Tak Heng deceased in 1995 and 1999 respectively, they already sold the parcel to Chong Fai Limited at 150,000,000 patacas in October 1993.

### **Part III: Doubts about the location and area of the parcel**

During the investigation, the CCAC found that the parcel with a description no. 6150 was not located at Alto de Coloane. Moreover, the parcel did not cover an area of 56,592 m<sup>2</sup> as claimed. There were obvious mistakes and even frauds in the land boundary survey and the cadastral map issuance process. Below are the summaries of the development of the incident as well as the doubts found in the investigation:

#### **1) Rejection of the two applications for a cadastral map**

1. When the parcel with a description no. 6150 was first registered in 1903, the property registration did not indicate the area or the plot number of the parcel, yet its location (four boundaries) was indicated as follows: north and east on Estrada do Campo, south on House no. 2 and west on Beco da Porta.
2. After obtaining the title of the parcel as an heir, in October 1992, Vong Tam Seng applied to the then Department for Cartography and Cadastre for a land boundary survey and the issuance of a cadastral map. On 16<sup>th</sup> October 1992, Vong Tam Seng told the workers in charge of the survey that the parcel was located at Alto de Coloane adjacent to Estrada do Campo and Estrada de Seac Pai Van and covered an area of 111,848 m<sup>2</sup>.
3. On 2<sup>nd</sup> September 1993, in its reply to Vong Tam Seng, the then Department for Cartography and Cadastre pointed out that there was a lack of information indicating the boundaries and area of the parcel and the location of Beco da Porta could not be ascertained, adding that the maps in the 1930s could not show the present locations of Estrada do Campo and Estrada de Seac Pai Van and the parcel claimed to be owned by him also comprised a few plots of granted land by the government. Given the above reasons, the department refused to issue a cadastral map.
4. The then Department for Cartography and Cadastre also pointed out in the reply that, according to the “four directions” of the parcel indicated in the property registration, the parcel with a description no. 6150 could not be the one mentioned by Vong Tam Seng. The reason was that, according to the property registration, the east of the parcel was on Estrada do Campo, while Vong Tam Seng claimed that the west of it was on Estrada do Campo - an exactly opposite direction to that indicated in the registration.
5. On 16<sup>th</sup> September 1993, Vong Tam Seng made an application for a land boundary survey again, this time claiming that the location of the parcel was basically the

same as before but the area shrank to 57,300 m<sup>2</sup>. The reduction was mainly because that Aldeia da Esperança managed by the then Social Welfare Bureau, a few plots of granted land by the government and a large area of Alto de Coloane were not taken into account.

6. On 27<sup>th</sup> October 1993, the then Department for Cartography and Cadastre made a reply to Vong Tam Seng again, where it pointed out that the relevant property registration did not indicate the area of the parcel. Moreover, as there was not any actual boundary or any proof of it, the boundaries of the parcel could not be ascertained. Furthermore, the location of the parcel was obviously at odds with the “four boundaries” recorded in the property registration. The department therefore refused to issue a cadastral map.

## **2) Ascertaining the area and location and issuing a cadastral map**

1. In December 1993, the Branch Office of the Financial Services of the Islands issued a transcription certificate, where it declared that Vong Tam Seng had submitted an M/10 form. For the purpose of land valuation, Vong Tam Seng declared in the M/10 form that the area of the parcel with a description no. 6150 was approximately 56,592 m<sup>2</sup>.
2. In January 1994, lawyer Paulo dos Remédios, on behalf of Vong Tam Seng and Vong Tak Heng, submitted the aforesaid transcription certificate to the court and used it as a basis for requesting the schedule of property in the relevant heir eligibility confirmation dossier to be amended by adding an expression “the approximate area is 56,592 m<sup>2</sup>”. On 26<sup>th</sup> January 1994, the court approved the relevant application.
3. In February 1994, after the aforesaid expression was added to the schedule of property, lawyer Paulo dos Remédios applied for a dossier certificate and used it as a basis for requesting the Real Estate Registry to add a remark to the registration of the parcel indicating that the area of the parcel was 56,592 m<sup>2</sup>. The application was accepted in the end.
4. Despite the lack of proof of the parcel’s area, a string of actions, including the amendment of the schedule of property in the heir eligibility confirmation dossier and the application for adding the aforesaid remark, were “recognised” by official documents simply through the declarations made by Vong Tam Seng on the M/10 forms.
5. In July 1994, the Branch Office of the Financial Services of the Islands issued a transcription certificate again where it declared that lawyer Paulo dos Remédios

had submitted an M/10 form. For the purpose of land valuation and payment of the difference of property transfer tax, lawyer Paulo dos Remédios updated the location (four boundaries) of the parcel with a description no. 6150 in the M/10 form.

6. According to the transcription certificate, lawyer Paulo dos Remédios declared that the original location of the parcel was: northwest on Estrada do Campo, south on House no. 2 and east on Beco da Porta, and the updated location was: northwest on Estrada do Campo and Estrada de Seac Pai Van, southeast on Estrada Militar and a house with no house number and northeast on Seac Pai Van Park and Aldeia da Esperança.
7. With this transcription certificate, which had no effect on identifying and proving the real property and contained content utterly claimed by the parties concerned as well as information at odds with the property registration, Chong Fai Limited once again applied for a land boundary survey in August 1994. As the then Department for Cartography and Cadastre believed its previous doubts had been resolved, it issued a cadastral map for the parcel in October 1994.
8. According to the cadastral map issued by the then Department for Cartography and Cadastre, the parcel with a description no. 6150 was located at Alto de Coloane adjacent to Estrada do Campo and Estrada de Seac Pai Van and covered an area of 53,866 m<sup>2</sup>. The present street alignment plan for the Alto de Coloane project and the draft of the building proposal were issued and approved by the DSSOPT basing on the location and area of the parcel confirmed by this cadastral map.

### **3) The certificates issued by the Branch Office of the Financial Services of the Islands**

1. In September and October 1993, the then Department for Cartography and Cadastre refused to issue the cadastral map twice mainly because the interest party failed to provide any proofs of the area and location of the parcel with a description no. 6150 and the claimed location was obviously at odds with the “four boundaries” shown in the property registration.
2. Of the documents that Chong Fai Limited submitted for the application for a land boundary survey for the third time in August 1994, the one proving the area of the parcel was the remark added in the property registration, while the one proving the location was one of the transcription certificates issued by the Branch Office of the Financial Services of the Islands. In particular, the basis for the remark was the schedule of property amended by the court according to

another certificate issued by the Branch Office of the Financial Services of the Islands.

3. This shows that the sources of both the documents submitted by the interest party for proving the area and location of the parcel for the application for the cadastral map were the certificates issued by the Branch Office of the Financial Services of the Islands, while these two certificates were made with the transcription of the content filled in by Vong Tam Seng and Paulo dos Remédios in the M/10 forms.
4. M/10 form is filled in by the interest party only and its purpose was merely to declare the matters such as change of address. The matters declared in the M/10 form will not be automatically substantiated upon the submission and it has no other effects. The Branch Office of the Financial Services of the Islands had neither the capability to confirm the authenticity of the matters declared by Vong Tam Seng and Paulo dos Remédios in the M/10 forms nor the power to issue any certificates related to the identification of a real property.
5. In fact, the issuance of the transcription certificates relevant to the M/10 forms by the Branch Office of the Financial Services of the Islands was a weird and rare action. The purpose of turning the transcription of the content filled in by the interest party into a certificate was to have the content declared by the interest party “packaged” as a certificate issued by the public department without any documentary evidence and investigation.
6. The court approved the amendment of the schedule of property based on one of the certificates issued by the Branch Office of the Financial Services of the Islands, while the Real Estate Registry added the remark in the property registration based on the document with amendment by the court. Through these acts of “packaging”, the area of the parcel, which was not proved by any documents, was openly added in the property registration.
7. The certificate issued by the Branch Office of the Financial Services of the Islands even specified that “For the purpose of valuation of the parcel, the cadastral map issued by the Department for Cartography and Cadastre shall be submitted”, which means that if the interest party failed to submit the cadastral map, this certificate did not even have any “effect for valuation of the parcel”. However, it was finally accepted as the basis for the amendment of the suit document and application for property registration.
8. When the court allowed adding the statement that “the approximate area is 56,592 m<sup>2</sup>” in the schedule of property, the value of the parcel declared by the interest party in the dossier was 57,000 patacas. In this sense, the area of the

parcel claimed by the interest party might be fake. If not, the declared value might be wrong because it was impossible that the land price in Coloane would be as cheap as 1 pataca per square metre at that time.

9. When the Department for Cartography and Cadastre refused to issue the cadastral map for the first and second times, it pointed out that the location of the parcel that Vong Tam Seng claimed to possess was obviously at odds with the “four boundaries” in the property registration because the latter showed that the east and north of the parcel were on Estrada do Campo. However, the west of the parcel at Alto de Coloane was on Estrada do Campo, while the north was on Estrada de Seac Pai Van and Seac Pai Van Park.
10. When lawyer Paulo dos Remédios filled in the original “four boundaries” in the M/10 form in July 1994, he replaced “northeast on Estrada do Campo” with “northwest on Estrada do Campo”. Whether he did it intentionally or unintentionally was unknown, but the change of only one word has resulted in a “switch” of the location of the parcel from one side of Estrada do Campo to another side which is at Alto de Coloane.
11. The declaration of “mixing up east and west” made by Paulo dos Remédios in the M/10 form were turned into a certificate by the Branch Office of the Financial Services of the Islands, thus ignoring the error in the declaration. At the same time, the Department for Cartography and Cadastre changed its stance, and “calmly” accepted such “certificate” issued by the tax affairs department with the content inconsistent with the information in the relevant property registration as the document for confirming the location of the parcel and finally issued the cadastral map.

#### **4) Fake location and area of the parcel indicated in the cadastral map**

1. According to the “four boundaries” indicated in the property registration, the east and north of the parcel with a description no. 6150 were on Estrada do Campo, reflecting that the parcel should be located near the current Health Station of Coloane and the Academy of Public Security Forces of Macao at Estrada do Campo and thus it was definitely not at Alto de Coloane, because Estrada do Campo is actually on the west and the south of the site of the Alto de Coloane project.
2. The earliest property registration of the parcel in 1903 indicated that the “four boundaries” was north and east on Estrada do Campo, south on House no. 2 and west on Beco da Porta. If we want to confirm the true location of the parcel, we have to locate House no. 2 and Beco da Porta first apart from Estrada do Campo.

3. Since the property registration only indicated that the south was on House no. 2 without specifying which road or street the house was exactly located at, this is not very useful for finding out the true location of the parcel. However, if we can locate Beco da Porta, we can find it out through locating the intersection of Estrada do Campo and Beco da Porta.
4. Although the location of Beco da Porta is not found in the existing maps and information, the data of the population census conducted on 31<sup>st</sup> December 1878 published on the *Official Gazette* of the former Portuguese government of Macao shows that there were houses and residents on Beco da Porta, which reveals that when Choi Lam purchased the parcel and houses in 1903, Beco da Porta still existed.
5. When Choi Lam purchased the parcel located at Estrada do Campo in 1903, he also purchased three houses located at Rua dos Negociantes at the same time. In fact, Rua dos Negociantes is located near Largo do Presidente António Ramalho Eanes in the old Coloane Village. According to the then sale and purchase deed, the north of one of the houses, which was located at no. 40 of Rua dos Negociantes, was on Beco da Porta, while the south of it was a house located at no. 38 of Rua dos Negociantes. The east was on Estrada do Campo, while the west was on Rua dos Negociantes.
6. This shows that Beco da Porta lied to the south of Estrada do Campo near Rua dos Negociantes. Since the north and the east of the parcel with a description no. 6150 were on Estrada do Campo and the west was on Beco da Porta, the parcel should be located near Largo do Presidente António Ramalho Eanes in the old Coloane Village but not at Alto de Coloane adjacent to Estrada do Campo and Estrada de Seac Pai Van.
7. The “four boundaries” updated by lawyer Paulo dos Remédios updated in the M/10 form was northwest on Estrada do Campo and Estrada de Seac Pai Van, southeast on Estrada Militar and the house with no house number, northeast on Seac Pai Van Park and Aldeia da Esperança. He not only mixed the east up with the west but also omitted “House no. 2” and “Beco da Porta”, which were actually shown in the property registration.
8. The “switch” and “omission” should not be unintended mistakes. Since the parcel at Alto de Coloane is still a wilderness nowadays, it is impossible that House no. 2 and Beco da Porta were around there. In addition, Estrada de Seac Pai Van, Estrada Militar on the hill, Seac Pai Van Park and Aldeia da Esperança did not exist in 1903.
9. There is a military blockhouse located within the project site. According to the

information provided by the Cultural Affairs Bureau, built in 1884 and served as a supplementary military facility of the fortress of Coloane, the blockhouse was a part of the overall military system of Coloane. In other words, when Choi Lam purchased the parcel at Estrada do Campo in 1903, the military blockhouse should already existed.

10. If the parcel purchased by Choi Lam was really located at Alto de Coloane, this means he purchased not only a large parcel but also the military blockhouse in use at that time. Having in consideration the historic context at the time, it is hard to imagine the situation. If the military blockhouse did not exist at that time, it does not make any sense that the military blockhouse was built later on the private parcel but the parcel owner never raised any objection.
11. The property registration in 1903 did not indicate the area of the parcel with a description no. 6150. However, from the information of other properties purchased and registered by Choi Lam at the same time, we can roughly estimate the area of the parcel. Choi Lam purchased the parcel at Estrada do Campo at 300 patacas, while the prices of the three houses located at Rua dos Negociantes were around 200 or 300 patacas for each.
12. The price of the house at no. 32-34 of Rua dos Negociantes purchased by Choi Lam was 300 patacas. It was sold in 1923 and the relevant property registration indicated that its area was 252 m<sup>2</sup>. In this sense, it is not difficult to estimate that the area of the parcel located at Estrada do Campo that he purchased at the same time was similar. Therefore, it sounds unusual and illogical that the area of the parcel was as large as 56,592 m<sup>2</sup>.
13. After investigation, the CCAC considered that obviously there were mistakes and even frauds existed in the process of the land boundary survey and the issuance of the cadastral map of the parcel with a description no. 6150. The parcel was actually located near Largo do Presidente António Ramalho Eanes in the old Coloane Village instead of being at Alto de Coloane adjacent to Estrada do Campo and Estrada de Seac Pai Van, while the actual area of the parcel was, at the most, only a few hundred square metres instead of 53,866 m<sup>2</sup>.
14. The information that the land boundary survey was based on was obviously at odds with the facts. There was lack of basis for the confirmation of the land boundary, which was the essential factor of the relevant administrative acts. Therefore, in accordance with Paragraph 1 of Article 122 of the *Code of Administrative Procedure*, the cadastral document of the parcel with a description no. 6150 issued by the Department for Cartography and Cadastre in 1994 is invalid. In addition, the street alignment plan and the draft of the building



proposal approved based on the relevant cadastral information are also invalid.

15. The parcel where the Alto de Coloane project is located should be ownerless land which is not registered in the Real Estate Registry. According to according to Article 7 of the *Basic Law of the Macao Special Administrative Region*, it is a State property. The CCAC suggested the Macao SAR Government recovering the land parcel following appropriate procedure and method.

#### **Part IV: Problems relating to the approval for the planning of the construction project**

During the investigation, the CCAC found that the DSSOPT violated administrative instructions in the course of issuing the street alignment plan for the construction project at Alto de Coloane. There was also a lack of legal instruments during the assessments of the project's impacts on the environment, landscape and greening carried out by the DSPA and IACM.

##### **1) Violation of administrative instructions in the course of issuing the street alignment plan for the project**

1. In June 1999, Chong Fai Limited applied for a street alignment plan for the parcel with a description no. 6150. According to the analysis of the public works departments, the planning of the parcel should comply with the terms set forth in the *Remediation Planning for Coloane*, particularly those relevant to the permitted maximum building heights. However, as the stipulation of the plot ratio in the *Planning* remained controversial, they suggested that the terms concerning the plot ratio not be applied.
2. According to the street alignment plan issued by the public works departments, the parcel owner was only permitted to construct 7-storey buildings not more than 20.5 m (or 33.4 m above sea level) in height along Estrada do Campo and Estrada de Seac Pai Van. Moreover, massive hill excavation was not permitted, as an area at Alto de Coloane, covering some 20,000 m<sup>2</sup> and adjacent to Estrada do Alto de Coloane and Estrada Militar, fell within the scope that needed to be construction-free and green treated.
3. After acquiring the title of the parcel in 2004, Win Loyal Limited applied for a new street alignment plan in March 2009. According to the preliminary development proposal, the company planned to construct nine 22-metre high independent villas and nine 115-metre high residential buildings. In the course of analysing the relevant application, the DSSOPT had a concern about whether or not the parcel should be subject to the *Remediation Planning for Coloane*.
4. In 1987, the then Department for Land, Public Works and Transport believed that it was necessary to take preventive and restrictive measures before carrying out the planning for Coloane Village. As such, it issued Administrative Instruction no. 7 /87, where it stipulated the areas around Rua da Cordoaria, Avenida da República, Avenida de Cinco de Outubro and Estrada do Campo should be listed

as those needing special planning. The administrative instruction also stipulated the permitted maximum building heights for different streets.

5. On 9<sup>th</sup> December 1997, the then Secretary for Transport and Public Works, in an order, approved the *Remediation Planning for Coloane* formulated by an entrusted professional company. The *Planning* set forth detailed planning on Coloane Village, Ká Hó and Hac Sá as well as a number of building construction terms on such aspects as land occupation rates, plot ratios and building height bands.
6. As the *Remediation Planning for Coloane* covered the parcel of the entire Alto de Coloane project, when Chong Fai Limited applied for a street alignment plan in August 1999, the DSSOPT expressly mentioned that the planning of the parcel should comply with the terms set forth in the *Planning*. It not only limited the permitted maximum building height to be 20.5 m but also decided that a large area of the parcel at Alto de Coloane should be construction-free and green treated.
7. However, as there were different understandings on the effect of the *Remediation Planning for Coloane* within the DSSOPT, there were different decisions regarding whether the terms laid down in the *Planning* should be observed in the approval of the construction projects in Coloane. In its reply to the CCAC's enquiry, the DSSOPT said that the approved *Remediation Planning for Coloane* only served as internal reference, thus it was not binding on the planning terms of the relevant parcel.
8. In April 2009, the Secretary for Transport and Public Works approved Administrative Instruction no. 01/DSSOPT/2009 which stipulates the building heights of different districts of Macao and other planning terms. Point 15 of the administrative instruction mainly concerns the planning for Coloane Village. Its content, basically identical to that of Administrative Instruction no. 7/87, stipulates the building heights of the district and other binding terms.
9. With regard to the application of Win Loyal Limited, the DSSOPT believed that, for the purpose of producing the street alignment plan, the *Remediation Planning for Coloane* may serve as a basic factor of consideration rather than binding terms. The bureau therefore, according to the building heights of Coloane Village and other planning terms set forth in Administrative Instruction no. 01/DSSOPT/2009, issued a street alignment plan for the construction project at Alto de Coloane.
10. In December 2009, the DSSOPT issued a street alignment plan, where it stipulated that the parcel should be divided into three sections (A, B, C) for planning and the permitted maximum plot ratio should be 5:
  - Section A: adjacent to Estrada de Seac Pai Van, covering 28,066 m<sup>2</sup>, with 80 m above sea level being the permitted maximum building height;

- Section B: adjacent to Estrada do Campo, covering 2,821 m<sup>2</sup>, with 8.9 m being the permitted maximum building height;
  - Section C: adjacent to Estrada do Alto de Coloane and Estrada Militar, covering 19,743 m<sup>2</sup>, with 9 m being the permitted maximum building height.
11. The analysis made by the DSSOPT pointed out that since section B, which was adjacent to Estrada do Campo, fell within the area of the planning laid down in Administrative Instruction no. 01/DSSOPT/2009, the permitted maximum building height was 8.9m. Only 9-metre high independent villas might be built at the parcel at Alto de Coloane adjacent to Estrada do Alto and Estrada Militar and the surrounding area should be green treated.
  12. After receiving the aforementioned street alignment plan, Win Loyal Limited applied for a new street alignment plan in March 2010. In the application, the company requested the DSSOPT to relax the planning terms, including changing the permitted maximum building height from 80 m above sea level to 198 m above sea level (63 storeys) and changing the plot ratio of 5 to a net plot ratio of 9.
  13. The DSSOPT stated in the analysis that the basis for dividing the parcel into three sections in the street alignment plan issued earlier was not clear enough and the factors such as the width-to-length ratio and aspect of the towers, hill structure preservation, ventilation and the compensation for and recovery of the integrated ecological system should be taken into account for the determination of different limits of building height in different sections. Therefore, the bureau suggested not setting different limits of building height in different sections but only determining an overall maximum building height.
  14. For the plot ratio, the analysis stated that although the suggestion of the plot ratio of 5 be changed to a net plot ratio of 9 raised by the parcel owner is accorded with the upper limited provided for in Administrative Instruction no. 01/DSSOPT/2009, by taking into account the planning terms for the construction projects in the surrounding areas and other limiting factors such as setback, building height, building coverage ratio and minimum distance between buildings, the DSSOPT suggested determining the plot ratio as 9.
  15. The Director of the DSSOPT issued an order about the analysis, indicating that when making a decision related to the development plan of the parcel, it was necessary to take the status of the parcel into account, i.e. the parcel was privately own instead of one leased out by the Government with concession. For the determination of the plot ratio, the Director suggested that it was necessary to take the index publicised in the Administrative Instruction into account. Therefore, the net plot ratio was eventually decided as 8, which was approximately equivalent to

a plot ratio of 12.

16. In April 2011, the DSSOPT issued a new street alignment plan for the Alto de Coloane project, regulating the permitted maximum building height to be 100 m above sea level, the permitted maximum net plot ratio to be 8 and part of the parcel to be public property, where public roads would be built and green treated. The Alto de Coloane project is currently based on this street alignment plan.
17. In comparison of this street alignment plan and the two issued in 1999 and 2009, apart from the significant increase of the plot ratio from 5 to almost 12, the building height was no longer restricted according to the topography of the concerned area and therefore the overall permitted maximum building height was 100 m, which means massive hill excavation will be done.
18. Since the southern part of the site of the Alto de Coloane project adjacent to Estrada do Campo fell within the area of the planning laid down in Administrative Instruction no. 01/DSSOPT/2009, the permitted maximum building height was limited to be 8.9 m. However, according to this street alignment plan, the permitted maximum height of building was 100 m, which obviously contradicted the stipulation provided for in Administrative Instruction no. 01/DSSOPT/2009.
19. According to Article 38 of Decree Law no. 79/85/M, *General Regulation of Urban Construction*, all building plans shall accord with the urban planning and related regulations or otherwise the application for approval shall be rejected. Therefore, the CCAC considered that since the street alignment plan for the Alto de Coloane project did not accord with the planning terms provided for in the Administrative Instruction, the DSSOPT should reject the application for the official building plan.
20. If there was no problem and dispute concerning the title, location and area of the parcel where the Alto de Coloane project is located, the parcel owner might apply for a new building plan according to the *Urban Planning Law* and the relevant assessment and approval procedure might follow. However, since the parcel is a State property, whether the relevant street alignment plan is valid or not is now a minor problem.

## **2) Lack of legal basis for environmental and greening assessments**

1. As the Alto de Coloane project necessitates massive hill excavation and the buildings to be built will be 100 m in height, there has been grave concern in society over its damages to the ecological environment in Coloane. In the course of project approval, the DSSOPT once invited the DSPA and IACM to give opinions on the environmental assessments of the project as well as its impacts on landscape and greening.
2. In response to a development proposal submitted by Win Loyal Limited in March 2009, which planned to construct nine 22-metre high independent villas and nine 115-metre high residential buildings, the DSPA gave the following advice: “As the development of the project will lead to massive hill excavation, shrinking green area and damages to the hill’s role in pollutant filtration, re-assessment of the impacts of the construction on the ecological environment is recommended.”
3. The IACM provided the following opinion: “The proposed construction project is located on the hillside between two road sections, namely Estrada do Alto de Coloane-Estrada Militar and Estrada do Campo-Estrada de Seac Pai Van. There is a difference of 60 m in elevation between them. In order to have the project developed on level land, hill excavation is inevitable. This will cause massive damages to the structure and vegetation of the hill. In addition to the loss of a considerable green area, the excavated part of the hill will become a concreted slope.”
4. Here is another opinion of the IACM: “The proposed nine residential buildings are 115 m in height, which means they will even be 55 m higher than Estrada Militar that is 60 m above sea level. No matter whether people are at Estrada Militar or Coloane Trail, these buildings will obstruct their line of sight of Hengqin Island. Moreover, Coloane has been the major hill area of Macao all along. Therefore, it needs careful consideration of whether the construction of the project will conflict with the urban planning of the city.”
5. Despite that the DSPA and IACM expressed their concern over the impacts of massive hill excavation and construction of high-rise buildings at Alto de Coloane, according to the street alignment plan issued by the DSSOPT in April 2011, all the 13 buildings will be at a height of 100 m above sea level, which means that the opinions of the DSPA and the IACM had no binding effect on the approval of the project.
6. In February 2013, Win Loyal Limited, according to the planning terms of the street alignment plan, submitted to the DSSOPT a draft of the building proposal

along with some environmental and landscape impact assessment reports. Later on, the DSPA and the IACM only put forward their amendment advices on these technical reports and accepted the environmental and landscape impact assessment reports in the end.

7. According to the investigation of the CCAC, as far as the Alto de Coloane project was concerned, there were no clear rules and regulations serving as reference for the assessment carried out by the DSPA on the environment and the assessment carried out by the IACM on landscape and greening. There were only some internal guidelines formulated by the departments themselves. For instance, through its guidelines the DSPA stipulated the circumstances where an environmental impact assessment is needed, the relevant standards and the operation procedures.
8. Since the DSPA and the IACM did not have the relevant statutory competence, their technical opinions about environmental protection, landscape and greening did not have any binding effect on the application for approval of the construction project and the approval made by the DSSOPT. Furthermore, there was no binding legal mechanism to monitor and examine whether the developer would fulfil the terms it had promised in the technical reports such as the environmental impact assessment report.
9. During the investigation of the CCAC, the staff of the DSPA and the IACM mentioned that as the Alto de Coloane project was a private construction project, they were not able to enter the site for observation and confirmation. Therefore, they could only conduct the assessments basing on the information provided by the developer and then requested the DSSOPT to ensure that their suggestions would be implemented by the developer in the construction and operation stages.

## **Part V: Opinions and suggestions**

1. The CCAC found in the investigation that a land parcel in the old Coloane village registered over 100 years ago was “switched” to one at Alto de Coloane adjacent to Estrada do Campo and Estrada de Seac Pai Van. As a result, the area of the parcel has become around 100 times larger. Buildings of around 100 m high will be built on it. Although one cannot rule out the possibility that there were frauds and alleged criminal offenses, it also reflects that the then public departments handled the matters without care and examination.
2. In the case, the then Branch Office of the Financial Services of the Islands did not act in accordance with its regular practices and statutory competence by issuing the so-called “transcription certificates” of the Miscellaneous Notification Form of Property Tax. The interest party’s statements which were unable to be proved or even false were “packaged” into documents issued by public departments in this way and they eventually became the basis and proof for the amendment of suit document and land boundary survey.
3. The then Department for Cartography and Cadastre, against the law and its professional knowledge, accepted one of the certificates issued by the tax affairs department as the basis for confirming the location of the parcel and ignored the mistakes. Thinking that it would be none of its business after shirking its due responsibility for the examination by making up an excuse that it was a document issued by another department, the department overturned its stance for the rejection of the previous two applications for the cadastral map and eventually led to the “switch” of the parcel.
4. In fact, many of the incidents occurred before the handover of Macao. The current regimes, operation and supervision systems of government departments are relatively sound and similar cases are not likely to occur. However, the public departments and its personnel shall be aware that performing one’s duty with attentiveness and dedication is not just a slogan. It is possible that an oversight or mistake in an administrative procedure or decision will eventually lead to irreversible damage to the Macao SAR.
5. Also, the CCAC believed that the public works departments must strictly abide by the principle of legality and the related administrative instructions in the course of approving the construction projects. Departments responsible for environmental protection and municipal affairs should enhance the regulations relevant to environmental impact assessment, landscape and greening as soon as possible, so that the natural environment may be protected and the greening of



hills may be carried out in accordance with the law.

**To sum up, based on the investigation into the construction project at Alto de Coloane, the CCAC hereby presents the conclusion and recommendation as below:**

1. The parcel with a description number 6150 is actually located near the current Largo do Presidente António Ramalho Eanes in the old Coloane Village instead of being at Alto de Coloane adjacent to Estrada do Campo and Estrada de Seac Pai Van, while the actual area of the parcel is, at the most, only a few hundred square metres instead of 53,866 m<sup>2</sup>.
2. The cadastral map of the parcel with a description number 6150 issued by then Department for Cartography and Cadastre (Cartography and Cadastre Bureau) is invalid. In addition, the street alignment plan and the draft of the building proposal approved based on the relevant cadastral information are also invalid.
3. Since the street alignment plan for the Alto de Coloane project did not accord with the planning terms provided for in Administrative Instruction no. 01/DSSOPT/2009, the DSSOPT should reject the application for the official building plan.
4. The parcel at Alto de Coloane adjacent to Estrada do Campo and Estrada de Seac Pai Van, where the Alto de Coloane project is located, is a State property and the Macao SAR Government should recover the relevant land parcel following appropriate procedure and method.

**We hereby present the report to the Chief Executive for his perusal.**

Commission Against Corruption, 31<sup>st</sup> January 2018

The Commissioner Against Corruption

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Cheong Weng Chon

## Map of the land parcel of the construction project at Alto de Coloane

