



BERMUDA

ST. GEORGE'S RESORT ACT 2018

2018 : 45

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ST. GEORGE'S RESORT ACT 2018

WHEREAS it is expedient to re-enact the St. George's Resort Act 2015 with amendments requested by the Developer;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the St. George's Resort Act 2018.

Interpretation

2 In this Act, unless the context otherwise requires—

“Developer” means Hotelco Bermuda Holding Ltd., a local company incorporated under the laws of Bermuda on 17 July 2015 and includes any local company that is a wholly owned subsidiary of the Developer provided that, for the purposes of section 3 only, such subsidiary has been granted consent under section 4A of the Companies Act 1981 to hold land;

“Development” means the development on the Property of the Resort;

“Development Plan” means the plan in Schedule 5 (Drawing No. 5510/046/448z rev. 2, dated February 2018);

“freehold land” means all that land which is part of the Property, having an area of approximately 0.618 hectares (1.528 acres), shown hatched in red as the lot marked 7 on the Subdivision Plan;

“Hotel” means the luxury hotel to be developed and built by or on behalf of the Developer on the Property in accordance with the Master Development Agreement;

“lease” means a lease entered into by the Minister and the Developer under section 3;

“Master Development Agreement” means the agreement to be entered into between the Government and the Developer for the development of the Property;

“Minister”, except in Schedule 1 and wherever else otherwise stated, means the Minister responsible for public lands;

“Property” means all that land in the Parish of St. George's having an area of approximately 50.482 hectares (124.743 acres) shown outlined in red in Schedule 3 (Drawing No. 5743/003/01 rev. 1), the boundaries of which are more accurately shown on the definitive boundary plans listed in Schedule 4, which plans shall be available for inspection during office hours at the office of the Senior Land Surveyor with the Ministry of Public Works;

“the repealed Act” means the St. George's Resort Act 2015;

“Resort” means the Hotel, restaurant, beach club, golf course, tennis courts, fitness centre, spa, casino (if a casino licence is granted under the Gaming Act 2014

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in respect of the Resort), resort residences, staff housing and all other infrastructure, recreational facilities and woodland areas that are part of the resort operation;

“resort residence” means a residential unit other than staff housing, constructed on the Property;

“Subdivision Plan” means the plan in Schedule 6 (Drawing No. 5510/046/499, dated February 2018);

“subsidiary” means a subsidiary company as set out in section 86 of the Companies Act 1981.

[Section 2 amended by 2021 : 23 s. 54 effective 1 August 2021]

Minister may convey and lease Property to Developer

3 (1) Notwithstanding section 8 of the Public Lands Act 1984, section 120 of the Companies Act 1981, or any other Act, the Minister may, for such consideration as the Government may determine—

- (a) convey (in fee simple) or, as agreed with the Developer, lease for a term not exceeding 262 years, any of the freehold land to the Developer in exchange for the land conveyed to the Developer as freehold land under section 3(1)(a) of the repealed Act;
- (b) lease the rest of the Property to the Developer for a term not exceeding 262 years;
- (c) grant to the Developer such other easements over Government land as the Minister may think necessary or convenient—
 - (i) so that access may be had by persons, animals or vehicles to the Property; and
 - (ii) for the provision of utilities and infrastructure to the Property; and
- (d) in order to facilitate the Development, by agreement with the Developer and with the prior approval of Cabinet—
 - (i) vary any term (other than the term of years) of any lease granted pursuant to paragraph (b) (or section 3(1)(b) of the repealed Act); and
 - (ii) accept a surrender of any part of the Property leased pursuant to paragraph (b) (or section 3(1)(b) of the repealed Act) for the purpose of granting a new lease to a different wholly owned subsidiary of Hotelco Bermuda Holding Ltd. that is a local company, and to grant such lease to the subsidiary; and
- (e) in the event of early termination (as a result of default by the Developer or its successor in title) of a lease granted pursuant to paragraph (b) (or section 3(1)(b) of the repealed Act), grant a lease of a part of the Property to any person who under a sublease (“the former sublease”), immediately

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before such termination, was the sublessee (“the former sublessee”) of that part of the Property—

- (i) for a term of years equivalent to the then unexpired term granted by the former sublease;
- (ii) on similar terms to the former sublease but, if the premium in respect of the former sublease has been duly paid, without payment of a premium or fine.

(2) For the avoidance of doubt, it is hereby declared that separate leases may be granted to the Developer in relation to different parts of the Property.

(3) A variation under subsection (1)(d) of the area demised by a lease shall not, except for the purposes of section 5(2), by operation of law effect a deemed surrender and regrant of such lease.

(4) Any conveyance or lease granted by the Minister to the Developer under this Act shall be subject to the following rights of access—

- (a) the public shall have, free of charge, access to any beach and foreshore on the Property (save for any hotel facilities or amenities the use of which may be reserved for hotel guests and the owners or occupiers of any resort residence only) provided that the Developer or any operator of the Hotel may, with the agreement of the Minister (acting reasonably), and subject to giving reasonable prior notice to the public, limit access at specified times and to specified areas of the beach and foreshore for the purposes of special events or for the maintenance or improvement of or repairs to any part of the beach or foreshore or any structures or equipment thereon; and
- (b) public utility providers shall have reasonable access to the Property in order to maintain installations and equipment on the Property.

(5) The Developer shall ensure that the golf course remains accessible to the public during such times and on such reasonable terms and conditions as the Developer shall, after consultation with the Minister, approve.

(6) Upon the conveyance of any part of the Property to the Developer, or execution of a lease for any part of the Property, the Government shall hold the Developer harmless against any assertion by any other person of any right to occupy or use that part of the Property.

(7) Subsections (3)(b), (3)(c), (4) and (5) of section 4AA of the Companies Act 1981 (Minister may modify or revoke consent to carry on restricted business activity relating to corporate land holding) shall not apply in relation to any land holding by the Developer, or any successor in title of the Developer, under and in accordance with this Act.

(8) In subsection (7), “successor in title” means a company (including a local LLC as defined in section 2 of the Limited Liability Company Act 2016) that—

- (a) has acquired an interest in a lease or ownership (as the case may be) of land which is a part of the Property; and

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- (b) has been granted consent under section 4A of the Companies Act 1981 to acquire or hold that land.

(9) In relation to the acquisition or holding of any “hotel residence” or “tourist accommodation” (as those expressions are defined in section 72(1) of the Bermuda Immigration and Protection Act 1956) that are part of the Property, each of the following provisions of law—

- (a) section 120(5) of the Companies Act 1981;
- (b) section 129(1)(aa) of the Companies Act 1981;
- (c) section 20(5) of the Limited Liability Company Act 2016.

shall apply with the modification that, in each case, “131 years” shall be read as “262 years”.

Planning permission in principle

4 (1) Subject to the conditions set out in subsection (2), planning permission in principle is hereby granted for the development on the Property of the Resort including—

- (a) the Hotel on the lots marked 2A, 2B and 2C on the Plans;
- (b) a casino (if a casino licence is granted under the Gaming Act 2014 in respect of the Resort) on the lot marked 3 on the Plans;
- (c) a spa on the lot marked 4 on the Plans;
- (d) resort residences consisting of detached residential units on the lots marked 12, 14, 15, 16, 17, 18 and 19 on the Plans;
- (e) a golf course, woodland areas and resort residences on the lots marked 1A, 1B, 1C, 1D, 1E, 1F, 1G and 13 on the Plans;
- (f) resort residences on the lots marked 5, 6, 7, 8, 9, 10 and 11 on the Plans;
- (g) resort residences, staff housing, parking, sewage treatment and other resort-related infrastructure and facilities on the lot marked 21 on the Plans.

(2) The conditions are as follows—

- (a) the detached residential units on the lots marked 12, 14, 15, 16, 17, 18 and 19 on the Plans shall be restricted to a density of Residential 2 standards (“Residential 2” having the meaning given in the Bermuda Plan 2008 Planning Statement);
- (b) the resort residences on the lots marked 1A, 1B, 1C, 1D, 1E, 1F, 1G and 13 on the Plans shall be restricted to a density of 7 units per acre, and such development shall avoid any negative impact on the size and layout of the existing 18-hole golf course;
- (c) all access roads and sidewalks shall be sited, designed and laid out in accordance with the requirements of the Department of Works and Engineering and in compliance with the provisions of paragraphs TPT.4,

TPT.10 and TPT.11, Chapter 11 of the Bermuda Plan 2008 Planning Statement;

- (d) all hard-surfaced roadways and junctions of access roads with the public road shall be designed and graded to drain, retain and dispose of all storm-water run-off within the curtilage of the Property and to avoid any storm-water run-off onto the public road or any neighbouring property;
- (e) the method, design and specifications of the proposed methods of sewage disposal, the supply of water and the provision made for containing and disposing of storm-water run-off shall comply with the requirements of the Environmental Authority, Department of Environment and Natural Resources and the Department of Health;
- (f) all utility cables, conduits and pipelines, including cable television relay cables, shall be located in buildings or placed underground;
- (g) an application for final planning permission shall be in compliance with the Bermuda Plan 2008 Planning Statement and, in particular, be accompanied by—
 - (i) a comprehensive landscaping plan prepared in accordance with paragraph LSG.4, Chapter 9 of the Bermuda Plan 2008 Planning Statement, and in preparing the landscaping plan, particular attention shall be given to the screening of parking areas and to the design, materials, treatment and planting of the Property along the public roads;
 - (ii) a full topographical survey for the Property;
 - (iii) except where the Development Applications Board does not consider it necessary in respect of a part, or parts, of the Development, a Traffic Impact Assessment and Statement prepared in accordance with policy TPT.3, Chapter 11 of the Bermuda Plan 2008 Planning Statement and Traffic Impact Assessment and Statement Guidance Note (GN 108);
 - (iv) except where the Development Applications Board does not consider it necessary in respect of a part, or parts, of the Development, an Environmental Impact Assessment and Statement prepared in accordance with policy ENV.5, Chapter 6 of the Bermuda Plan 2008 Planning Statement and Environmental Impact Assessment and Guidance Note (GN 106);
 - (v) details of measures (including any decontamination measures) for the removal of waste that is to be removed from the Property during demolition, site excavation and preparation, in accordance with the requirements of the Department of Works and Engineering and the Department of Environment and Natural Resources; and
 - (vi) details of phasing for the development of the Property, together with full details of implementation of all infrastructure to accompany each phase.

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(3) Planning permission granted under subsection (1) is deemed to be granted under the Development and Planning Act 1974 and is granted with the reservation for subsequent approval, by the Development Applications Board under that Act, of details of—

- (a) the scale, design, siting and layout of buildings, building heights, architectural detailing, external appearance and materials of any building, works or related infrastructure;
- (b) the design and layout of all access roads and parking areas (including rationale for parking provision); and
- (c) landscaping.

(4) In this section—

“Bermuda Plan 2008 Planning Statement” means the Bermuda Plan 2008 Planning Statement as amended or replaced from time to time;

“planning permission in principle” has the meaning assigned to it in section 23(8) of the Development and Planning Act 1974;

“Plans” means both the Development Plan and the Subdivision Plan.

[Section 4 amended by 2021 : 23 s. 54 effective 1 August 2021]

Planning permission to subdivide land

5 (1) Subject to subsection (2), planning permission is granted by this Act for the subdivision of the Property as shown on the Subdivision Plan, and the final plan of subdivision (i.e. Drawing No. 5743/003/03 rev. 1 (Sheets 1 to 8), dated June 2017, or a further revision thereof, prepared by the Senior Land Surveyor in the Ministry of Public Works) is to be submitted by the Minister, in accordance with section 35B(2) of the Development and Planning Act 1974, to the Minister responsible for planning.

(2) The final plan of subdivision may, at the request of the Developer, and with the consent of the Minister be varied in order to facilitate the Development or to reflect any changes to the area demised by a lease which have been approved pursuant to section 3(1) (d), following which a revised final plan of subdivision is to be submitted by the Minister, in accordance with section 35B(2) of the Development and Planning Act 1974, to the Minister responsible for planning.

(3) A revised final plan of subdivision shall be subject to the prior approval of the Development Applications Board.

Permission to use National Park land

6 (1) Notwithstanding section 24 of the Bermuda National Parks Act 1986, the written approval referred to in that section, of the Minister responsible for parks, is hereby deemed to be duly given for the use and development, as part of the golf course, of the islet shown in Schedule 3 as being part of the Property (“the national park islet”).

(2) Notwithstanding sections 15(4) of the Bermuda National Parks Act 1986, the written approval referred to in that section, of the Minister responsible for parks, is hereby

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deemed to be duly given for the use and development, as part of the golf course, of the national park islet.

(3) The Minister responsible for parks may impose such reasonable terms and conditions on the development and use of the national park islet as part of the golf course as he may consider necessary.

Protection of World Heritage Site (Historic Town of St. George and Related Fortifications)

7 (1) The development of the Property shall be compatible with the UNESCO World Heritage Site status of the Historic Town of St George and Related Fortifications.

(2) In particular—

- (a) the special historical character of the forts shall be retained and preserved;
- (b) only minimal change to the forts' distinctive materials, features, spaces and spatial relationships may be made;
- (c) any development must be compatible with historic materials, features, size, scale, proportion and massing to protect the integrity of the structures and their environment; and
- (d) the development scheme shall ensure that the forts are maintained and secured.

(3) The public shall have reasonable access to the forts.

(4) In this section, "forts" means Fort Albert and Fort Victoria.

Routes to be used despite St. George's Traffic Ordinance 1967

8 (1) Notwithstanding articles 30 and 31 of the St. George's Traffic Ordinance 1967, commercial vehicles (as defined in the Ordinance) used in the development or servicing of the Property shall have reasonable access to and from the Town of St. George—

(a) using the route—

- (i) Government Hill Road via Slippery Hill, Kent Street, York Street and Wellington Street, to access the Town from the Property; and
- (ii) Wellington Street via York Street, Kent Street, Slippery Hill, and Government Hill Road, to access the Property from the Town; or

(b) using any other alternative route, as may be necessary from time to time.

(2) It shall be the duty of a person driving a commercial vehicle on a route referred to in subsection (1), to travel at such reduced speed as will not cause damage to the road or surrounding structures.

Hotel concessions

9 The hotel concessions set out in Schedule 1 are hereby approved.

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Repeals the St. George's Resort Act 2015

10 The St. George's Resort Act 2015 is repealed.

Commencement

11 This Act shall come into operation on such day as the Minister responsible for tourism may by Notice in the Gazette appoint.

SCHEDULE 1

(section 9)

HOTEL CONCESSIONS

Interpretation

1 In this Schedule, unless the context otherwise requires—

“Amenities” means the golf course, beach club facility, pier, tennis courts, fitness centre, spa, restaurant and casino (if a casino licence is granted under the Gaming Act 2014 in respect of the Resort);

“component” means any one of the Hotel, each of the Amenities and each resort residence component;

“hotel licence” means a licence to operate a hotel granted under the Hotels (Licensing and Control) Act 1969;

“lease” means for the purposes of this Schedule the lease of the land upon which the Hotel is to be constructed, which lease is dated 2 September 2016;

“hotel management company” means a luxury hotel management company selected by the Developer to provide technical services to the Developer and manage the Hotel subject to the hotel licence;

“Minister” means the Minister responsible for tourism;

“opening date” means the date on which the Hotel, or other component of the Development, is certified by the Minister to be complete;

“operational equipment” means any equipment, heavy-duty appliance and machinery (such as heavy-duty laundry machinery, stoves, ovens, HVAC systems, refrigerators and freezers) that is to be installed or used in the Hotel or any other part of the Resort for use in the day-to-day operations of the Hotel or any other part of the Resort;

“operational supplies” means the operational supplies listed in Schedule 2;

“pre-opening date” means the date that the hotel management company takes possession of the Hotel to commence pre-opening activities;

“resort residence component” means a subdivided lot forming part of the Property intended for construction of and use as resort residences;

“substantial completion date”, in relation to each component, means the date on which the Department of Planning issues a final certificate of use and occupancy for the relevant component or, if later, the date on which all permits necessary under Bermuda laws to permit the occupation and use of the relevant component for its intended use have been granted;

“voluntary rental programme” means a programme, approved by the Minister responsible for tourism, which shall be implemented by the Developer or the hotel management company (or both), whereby any person who has entered

into a contract for the acquisition by way of a sublease of a resort residence may elect, on or before accepting such sublease, to enter into a written agreement with the Developer or the hotel management company (or both), as the case may be, for the Developer or hotel management company (or both), as the case may be, to use the resort residence or part thereof as tourist accommodation forming part of the Hotel inventory for at least six months each year.

Concessions

2 (1) Subject to subparagraph (2), the Developer shall in respect of the Development be entitled to the following concessions—

- (a) for a period beginning with the execution of the Master Development Agreement and ending on the first anniversary of the opening date of the Hotel or other component of the Development, full relief from customs duty otherwise payable on the importation of building materials, furnishings, fixtures, equipment and operational supplies necessary for building, furnishing, equipping and operating the Hotel and Amenities;
- (b) for a period beginning on the first anniversary of the opening date of the Hotel or other component of the Development and ending on the tenth anniversary of that date, full relief from customs duty otherwise payable on the importation of all building materials to be used exclusively in the repair, maintenance, rebuilding, refurbishment or replacement of any part of the Resort from time to time;
- (c) for a period beginning with the commencement of the lease and ending on the tenth anniversary of the opening date of the Hotel or other component of the Development, full relief from customs duty otherwise payable on the importation of building materials, furnishings, fixtures, equipment and operational supplies, not otherwise granted relief from customs import duty under sub-subparagraphs (a), (b), and (d);
- (d) in respect of each of the resort residence components, for the period beginning on the date of execution of the Master Development Agreement and ending on the first anniversary of the substantial completion date of each resort residence component, full relief from customs duty otherwise payable on the importation of building materials, furnishings, fixtures, equipment and operational supplies necessary for the building, furnishing, equipping and operating of such resort residence component;
- (e) full relief from customs duty otherwise payable on the importation of building materials, furnishings, fixtures, equipment and operational supplies imported to be used exclusively in the first cycle of refurbishment of the Resort provided such refurbishment is commenced prior to the seventh anniversary of the opening date of the Hotel or other component of the Development;
- (f) full relief from customs duty otherwise payable on the importation of operational equipment imported for the sole purpose of permanently

installing or using such equipment in the Hotel or some other part of the Resort, for a period beginning with the date of commencement of this Act and ending on the tenth anniversary of the opening date of the Hotel or other component of the Development;

- (g) full relief from customs duty otherwise payable on the importation of plant, machinery and equipment which are imported to be used exclusively in the initial construction of the Resort, provided that all such plant, machinery and equipment is removed from Bermuda within two months of the substantial completion date of the component for which it was last used;
- (h) for a period beginning with the opening date of the Hotel and ending on the tenth anniversary of that date, full exemption from the employer's share of payroll tax otherwise payable in respect of all Resort employees;
- (i) from the date of the execution of the Master Development Agreement until the substantial completion date of each component, full exemption from the employer's share of payroll tax otherwise payable by the Developer or any of its subcontractors in respect of any person employed by the Developer or any of its subcontractors for the construction of the relevant component;
- (j) for a period beginning with the opening date and ending on the tenth anniversary of that date, full exemption from the hotel occupancy tax otherwise payable in respect of the Hotel or any resort residences included in the Hotel's voluntary rental programme;
- (k) for a period beginning with the commencement of the lease and ending on the tenth anniversary of the opening date of the Hotel, full exemption from land tax otherwise payable in respect of the Hotel and its Amenities;
- (l) for a period beginning with the date of substantial completion of each resort residence component and ending on the tenth anniversary of that date, full exemption from land tax otherwise payable in respect of each resort residence in that resort residence component; and
- (m) full exemption from the charge otherwise payable under regulation 6 of the Bermuda Immigration and Protection (Rental and Use) Regulations 2007 on the rental or use for profit of a resort residence, provided that such resort residence is placed in the voluntary rental programme.

(2) The concessions in subparagraphs (1)(e), (1)(l) and (1)(m) shall not be available to a resort residence unless the resort residence has been included in the Hotel's voluntary rental programme.

(3) For the purposes of subparagraphs (1)(h) and (1)(i), the employer's share of payroll tax means that portion of payroll tax which the employer is not entitled to deduct from an employee's wages under section 19 of the Payroll Tax Act 1995.

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Application of Tourism Investment Act 2017

3 (1) Sections 6, 7, 8, 9 (as modified by subparagraph (2)), 10 and 11 of the Tourism Investment Act 2017 apply in relation to concessions granted under this Schedule as they apply to a tourism investment order under that Act.

(2) For the purposes of subparagraph (1), the Tourism Investment Act 2017 is modified in section 9(2) by replacing paragraph (a) with the following—

“(a) he supplies to the Minister or the Collector any information which that person knows to be false or does not believe to be true; or”.

[Schedule 1 amended by 2021 : 23 s. 54 effective 1 August 2021]

SCHEDULE 2

(paragraph 1 of Schedule 1)

LIST OF OPERATIONAL SUPPLIES THAT QUALIFY FOR FULL RELIEF FROM
CUSTOMS IMPORT DUTY

| Description of Goods | Customs Tariff Code |
|-------------------------------|-----------------------|
| Air freshener refills | 3307.490 |
| Bath/Shower gel | 3401.300 |
| Bath salts | 3307.300 |
| Bin liners (plastic) | 3923.210 and 3923.290 |
| Body lotion | 3304.990 |
| Cotton balls | 5601.210 |
| Cotton buds | 5601.210 |
| Cup lids (plastic) | 3923.500 |
| Cups (plastic) | 3924.100 |
| Cups (paper) | 4823.690 |
| Coasters (paper) | 4823.700 |
| Envelopes (paper) | 4817.100 |
| Facial tissue | 4803.000 |
| Feminine care products | 9619.009 |
| Glass caps and bags (paper) | 4823.909 |
| Glass caps and bags (plastic) | 3923.210 and 3923.290 |
| Hair conditioner | 3305.900 |
| Hair shampoo | 3305.100 |
| Ice bucket bags (plastic) | 3923.210 and 3923.290 |
| Laundry bags (paper) | 4819.300 and 4819.400 |
| Laundry bags (plastic) | 3923.210 and 3923.290 |
| Matches/Matchbooks | 3605.000 |
| Mouthwash | 3306.900 |
| Pencils | 9609.100 |
| Pens (ball point) | 9608.100 |
| Pens (felt tipped) | 9608.200 |
| Pens (fountain) | 9608.300 |
| Pens (sets) | 9608.500 |
| Razors (disposable) | 8212.100 |
| Room service forms | 4820.100 |
| Sanitary napkin disposal bags | 4819.300 |

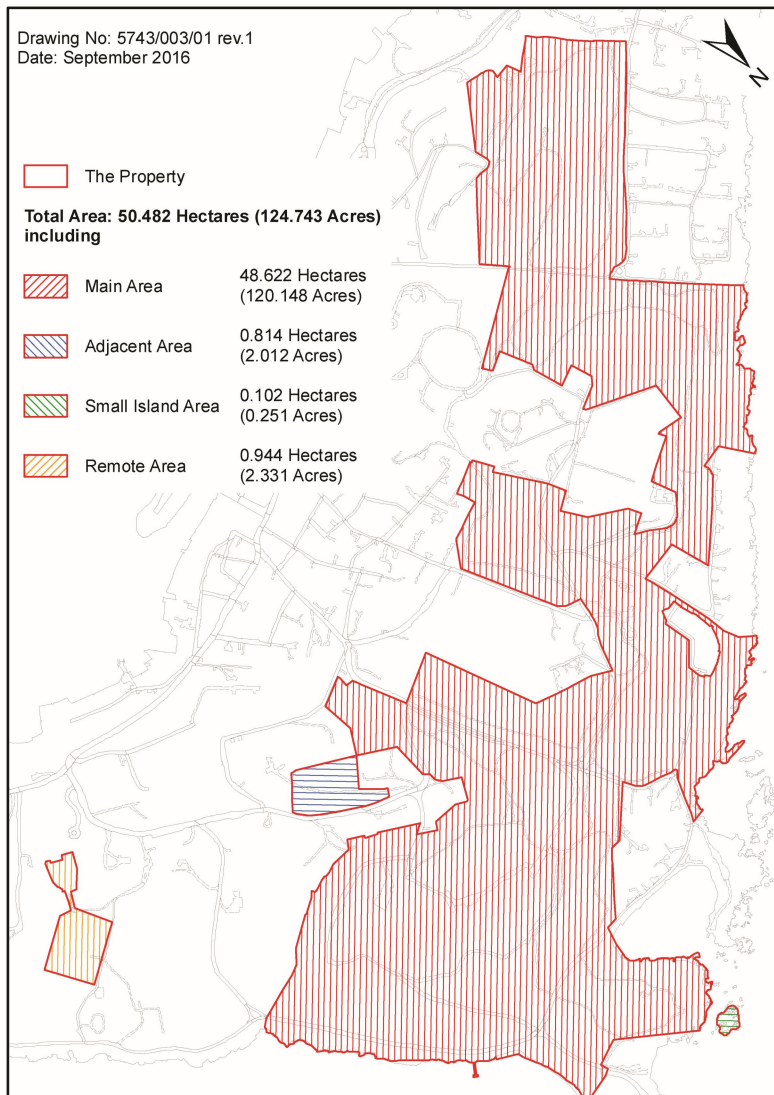
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| Description of Goods | Customs Tariff Code |
|---|---------------------|
| Sewing kits | 9605.000 |
| Shoe polish | 3405.100 |
| Soap (bar) | 3401.110 |
| Shower caps | 6506.910 |
| Toilet paper | 4803.000 |
| Toilet seat bands (paper) | 4823.909 |
| Tooth brushes | 9603.210 |
| Toothpaste | 3306.100 |
| Tray liners/bin liners (paper) | 4823.909 |
| Vanity kits (shower cap, sewing kit, nail file, cotton balls and cotton buds) | 9605.000 |
| Writing paper/note pads | 4820.100 |

SCHEDULE 3

(section 2)

PROPERTY PLAN



SCHEDULE 4

(section 2)

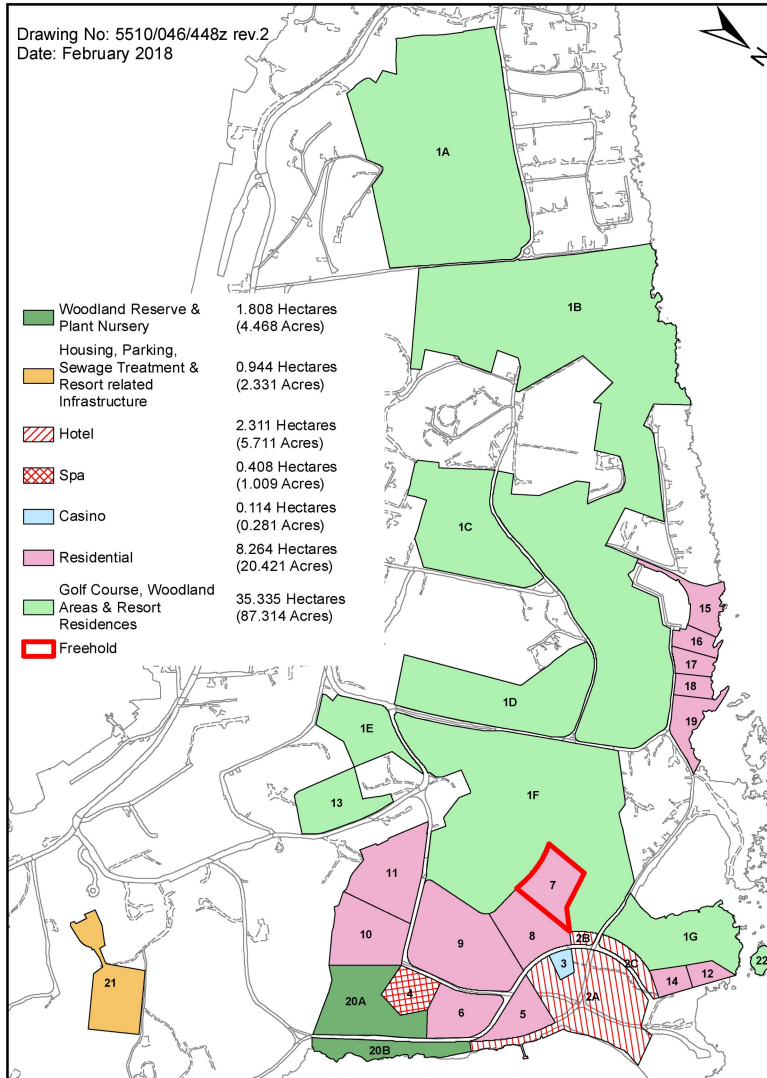
DEFINITIVE BOUNDARY PLANS OF THE PROPERTY

| | |
|-------------------------|-------------------------------------|
| Drawing No. 5642/021/01 | Suffering Lane |
| Drawing No. 5642/021/02 | Khyber Pass/Cemetery Hill |
| Drawing No. 5642/021/03 | Bourne Drive |
| Drawing No. 5642/021/04 | Park Gates |
| Drawing No. 5642/021/05 | Naval Tanks, Anchorage Road |
| Drawing No. 5642/021/06 | Preparatory School & Rectory |
| Drawing No. 5642/021/07 | Coot Pond and Blackbeards |
| Drawing No. 5642/021/08 | Government Hill Road, Victoria Road |
| Drawing No. 5642/021/09 | Former Club Med Lease |
| Drawing No. 5642/021/10 | BHC-Sapper Lane / Slippery Hill |
| Drawing No. 5642/021/11 | Redcoat Lane |

SCHEDULE 5

(section 2)

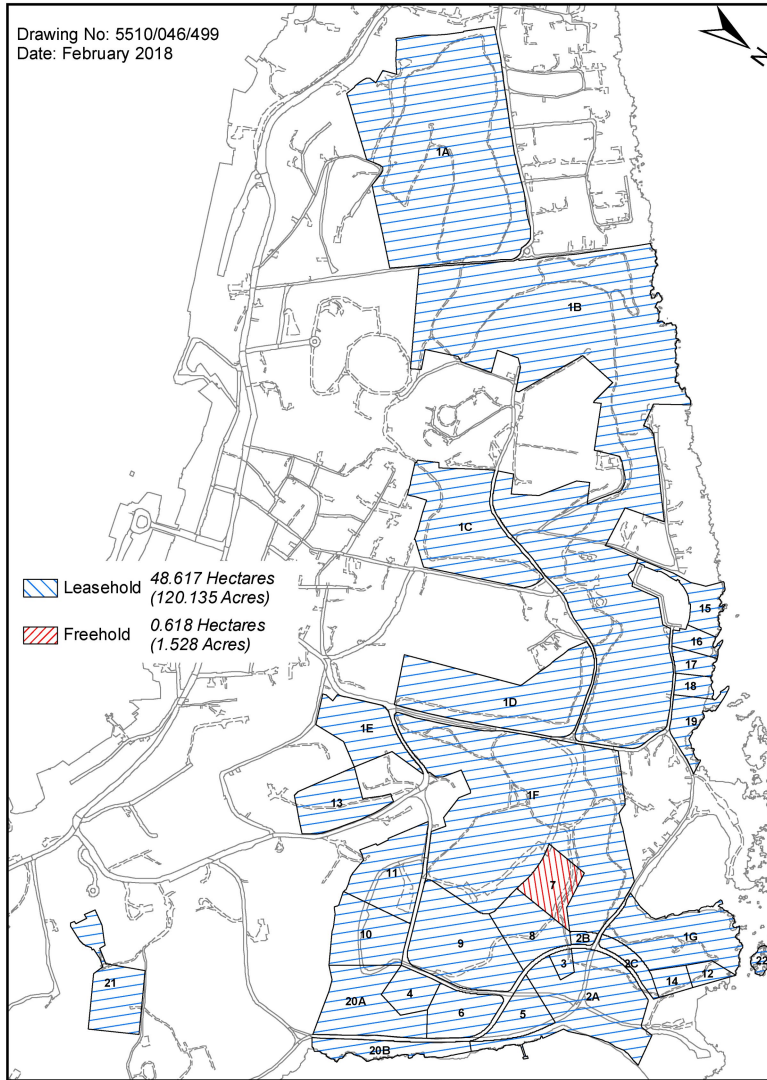
DEVELOPMENT PLAN



SCHEDULE 6

(section 2)

SUBDIVISION PLAN



ST. GEORGE'S RESORT ACT 2018

[Assent Date: 30 July 2018]

[Operative Date: 31 August 2018]

[Amended by:

2021 : 23]