

**M. F. A. Mansoor v Ministry of Urban Development, Water Supply and Housing Facilities  
(Ministry of Megapolis and Western Development)**

RTIC Appeal (In Person)/1108/2019 – **Order** adopted as part of the formal meeting of the Commission on **29.09.2021**

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

**Chairperson:** Mr. Mahinda Gammampila  
**Commissioner:** Ms. Kishali Pinto – Jayawardena  
**Commissioner:** Justice Rohini Walgama

**Appellant:** M. F. A. Mansoor  
**Notice issued to PA:** Designated Officer, Ministry of Urban Development, Water Supply and Housing Facilities  
Designated Officer, Presidential Secretariat

**Appearance/Representations:**

**Appellant:** M. F. A. Mansoor, Fr. Sarath Iddamalgoda, Sr. Noel Fernando, N. A. Roshantha

**Ministry of Urban Development:** Dr. Sugath Yalegama (Additional Secretary), Anoja Herath (Director - Policy)

**Presidential Secretariat:** Absent

**ORDER OF 29.09.2021**

**Matters Arising at the Hearing:**

The Right to Information Commission of Sri Lanka, in pursuance of the General Guidelines on Functions Permitted under Quarantine Curfew issued by the Ministry of Health on 2021.08.20 and the Circular bearing No. 02/2021 (IV) issued by the Ministry of Public Services, Provincial Councils and Local Government on 06.08.2021 and in conformity to the health protocols specified therein, sat with the minimum quota of Commissioners and staff on 29.09.2021 to hear the instant appeal listed on the 209th Agenda of the Commission along with other listed appeals on that day.

Responding to the directive of the Commission in its Interim Order dated 24.09.2021 calling upon the Appellants to specify the clauses in the Tripartite Agreement of 2016 which would be of public interest, the Appellants in both RTIC Appeal 1108/2019 and RTIC Appeal 1114/2019, made submissions. On the directive of the RTI Commission the Appellant in RTIC Appeal 1114/2019 brought the 2014 Agreement (signed in 2014 between the Sri Lanka Ports Authority and CHEC

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Port City Colombo (Private) Limited) already in the public domain consequent to litigation in the Court of Appeal (CA/Writ/112/2015) for the scrutiny of the Commission.

In his Written Submissions dated 28.09.2021, as well as during the hearing of this Appeal on 24.09.2021, Executive Director of the Centre for Environmental Justice (Appellant in RTIC Appeal 1114/2019) highlighted the clauses in 2016 Tripartite Agreement that are of public interest to the Appellants.

*“We agree that we are amenable to the redaction of clauses which may have to be withheld due to the sensitivity of information pertaining to ‘commercial confidence’ in accordance with 5 Section (1) (d) RTI Act.*

*As agreed on the 24/09/2021 hearing, we herewith submit the further matters we are interested in this agreement.*

- 1. Any conditions related to development rights, alienation of Public property including beach front, sea bed, sand & rock material etc.*
- 2. Any conditions that affect the services, responsibilities that the Government of Sri Lanka committed to the public at present and future generations and the nature of the conditions under which they are bound.*
- 3. Section 28 (d) imposes a duty of each and every member of the public to protect the public property and such duties are accepted as enforceable duties as in the SC judgment of Chunnakam and Court of appeal judgment on Wilpattu. Therefore no one can prevent exercising our duty and we want to know if any conditions affect such duties.*
- 4. Provisions available for the government of Sri Lanka or any agency under the same to interfere with the development work by the project company for the purpose of ensuring the health, safety of the public and the environment.*
- 5. Preliminary clearances obtained for the port city development including rights to use filling material such as sea sand, rock material and the conditions relating to the payment of royalty and other costs.*
- 6. Agency in the government of Sri Lanka has been given the task of compliance monitoring, environmental monitoring and the conditions and the plans.*
- 7. Terms on claiming any resources, archaeological treasures discovered during the dredging operations in the sea.*
- 8. Procedure the reclaimed land will be allotted between the government of Sri Lanka and the project developing company? Percentage wise figures including common areas and rights of the public to enter those areas and enjoy in the constitutional rights and engage in constitutional duties and responsibilities.*
- 9. Information related to the ownership of the beach front. Marina etc.*
- 10 The clauses related to the services to provide and other connected projects/ activities that the government of Sri Lanka need to build at the cost of public funds including solid waste management, fecal waste management, pollution*

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*management flood control, road access, electricity supply, water supply, security services, maintenance of the ground water level etc.”*

Mr. Feisal Mansoor, Appellant in RTIC Appeal 1108/2019, has submitted as follows in his Written Submissions to the Commission dated 29.09.2021,

*“In response to the Hon. Commission’s direction to the Appellant to “... apprise the Commission of the aspects of the Tripartite Agreement that, to their knowledge, impact upon/or are exceptionally important in terms of Section 5 (4) of the RTI Act in order for the Commission to assess the same in the context of the Agreement which is presently before the Commission...” the Appellant states that it is not possible to directly and accurately respond to this direction without knowledge of the provisions of the said Tripartite Agreement or even its Table of Contents, except as he has already done in response to the objections raised by the Public Authority in its presentments to the Hon. Commission and insofar as those presents are concerned the Appellant is of the view that the Public Authority has not presented any legal impediment to the disclosure of this Tripartite Agreement in full....”*

Dr. Sugath Yalagama, Additional Secretary to the Ministry and Ms. Anoja Herath, Director – Policy, represented the PA, the Ministry of Urban Development. The Director Legal of Added PA (Presidential Secretariat), Mr. Harigupta Rohanadeera by letter dated 29.09.2021, informed the Commission of his inability to attend the hearing due to the lockdown, and due to the matters involved in the Appeal being of a complicated nature, requiring further time to be studied.

At the outset, the PA was reminded by the Commission that in Appeals concerning contested agreements of this nature, the procedure is that the PA is called upon to indicate what clauses they are proposing to withhold as assessed against the duty of the PA to release. This response is thereafter directed to the Appellants to indicate the public interest in the release of identified clauses. Consequent to these submissions, the Commission will evaluate the release of selected clauses of an agreement.

However, in this Appeal, a clear indication about the contested clauses which the PA seeks to withhold has not been forthcoming from the PA. This Commission has been hampered by the absence of precise feedback from the PA on what specific clauses of the Tripartite Agreement are operational and ongoing, as well as those which cannot be released owing to commercial sensitivity, and the objection of the Third Party (the Project Company, CHEC (Pvt) Ltd). There has been no clause – by – clause contestation in this Appeal, over two years from the filing of this Appeal.

The Appellant in RTIC Appeal 1108/2019, in addition to the Tripartite Agreement of 2016, requested for the below environmental monitoring reports, carried out in terms of the Supplementary Environmental Impact Assessments of December 2015 and December 2016 in relation to the Port City Project, viz.,

- *Copies of all Environmental monitoring reports as specified in the Proposed Colombo Port City Development Project Supplementary Environmental Impact Assessments of December 2015*

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- *Copies of all Environmental monitoring reports as specified in the Supplementary Environmental Impact Assessment for the Off Shore Sand Extraction Project at Kerawalapitiya of December 2016*

Consequent to directions issued by the Commission, the Public Authority on 20.07.2021 wrote to the Department of Coast Conservation and Coastal Resource Management that the Appellant Mr. M.F.A. Mansoor be allowed to access environmental monitoring reports of the Colombo Port City Development Project carried out in terms of the respective EIAs. The Appellant was directed on 20.07.2021 to peruse the said monitoring reports by virtue of Section 27 of the RTI Act and to inspect and take copies of the same. Subsequently, the Appellant informed this Commission in writing on 27.07.2021, that steps are underway to obtain the environmental monitoring reports from the Department of Coast Conservation and Coastal Resource Management.

**Order:**

The 2016 Tripartite Agreement was handed over to the Commission by the original PA in this Appeal, the Ministry of Megapolis and Western Development on 03.03.2020 consequent to the direction of the Commission dated 25.02.2020 under Section 15 (c) of the RTI Act. In its direction dated 25.02.2020, the Commission held that,

*“The PA is further directed to submit a copy of the said Tripartite Agreement to the Commission under confidential cover in order that the Commission, so that it can observe for itself, the clauses in re the submission that certain clauses concern ongoing aspects, on or before 03.03.2020. This direction is made in terms of Section 15 (c) of the Right to Information Act No 12 of 2016 which states that,*

*“For the purpose of performing its duties and discharging of its functions under this Act, the Commission shall have the power...to inspect any information held by a public authority, including any information denied by a public authority under the provisions of this Act.”*

*Furthermore, it is also noted that, acting in pursuance of the said statutory powers vested in it, this Commission has in previous appeal hearings directed relevant Public Authorities to provide information under confidential cover for the perusal of the Commission (vide RTIC Appeal / 216/2018 T. Nadesan v Office of the Cabinet of Ministers, Order dated 11.12.2018; RTIC Appeal 89/2017 H.C.S. de Zoysa Siriwardena v. Sri Lanka Army Order dated 30.01.2018), pursuant to which Orders, the information has been so provided.”*

The 2014 Agreement was handed over to the Commission at this hearing on 29.09.2021, by the Appellant in RTIC Appeal 1114/2019 by virtue of the said Agreement being released as a consequence of litigation in the Court of Appeal (CA/Writ/112/2015).

Considering the public interest therefore, the Commission embarked on a comparative examination of the 2014 Agreement (signed in 2014 between the Sri Lanka Ports Authority and CHEC Port City Colombo (Private) Limited) and the 2016 Tripartite Agreement (signed on 12.08.2016 to which the signatory parties as of record are the Secretary to the Ministry of

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Megapolis and Western Development, acting for and on behalf of the Government of the Democratic Socialist Republic of Sri Lanka, Dr. Jagath Munasinghe of the Urban Development Authority and Tang Qiaolang, Chairman of the CHEC Port City Colombo Pvt Ltd.) to ascertain which segments of the 2016 Agreement may be released as evaluated against the points of public interest as set out by the Appellants. This was the approach adopted by the Commission in *T. Nadesan v Office of the Cabinet of Ministers* RTIC Appeal/216/2018; Order dated 02.04.2019, where the Commission made Interim Order stating that,

*“The official copy of the report of the Committee appointed in terms of Cabinet Decision dated 05.08.2015 (No. 15/1131/603/045) to investigate and make recommendations on the matters related to the ‘consultancy firms and related payments’ of the project on the construction of the Defence Headquarters Complex (DHQC) in Akuregoda, as sent under confidential cover by the Office of the Cabinet, is accepted and filed of record.*

*It is noted that an unofficial copy of the said report is in the public domain and news clippings regarding the same has already been handed over to the Commission by the Appellant in previous proceedings of this appeal.*

*Both parties agree to the said official report now under confidential cover being perused by this Commission for the purpose of checking if its contents correspond to the substance of the unofficial report in the public domain consequent to which a notification to that effect will be provided to both parties. It stands to reason that the release of information already in the public domain is of stronger force by that very fact. If there are segments that do not correspond, these will be assessed for release or not as against the exceptions provided for in Section 5(1) of the Act and the parties to this appeal will be required to provide arguments for and against the same...”*

*Severability of Clauses in an Agreement*

The PA to this Appeal, the Ministry of Urban Development, has at no point, despite repeated directives of the Commission, presented the clauses of the Agreement which it is amenable to release.

The PA is reminded that in Appeals before this Commission where the subject matter concerns agreements, the approach taken between the PA, Appellant and the Commission has been to consider the provisions of an Agreement that may be released, and release the Agreement subject to redaction of commercially sensitive information. Section 6 of the RTI Act provides for the release of information subject to redaction, and severability of information that may be legitimately exempted under and in terms of the RTI Act.

*“Where a request for information is refused on any of the grounds referred to in section 5, access shall nevertheless be given to that part of any record or document which contains any information that is not exempted from being disclosed under that section, and which can reasonably be severed from any part that contains information exempted from being disclosed.”*

As stated in our Orders in this Appeal on 25.06.2019 and 24.09.2021, the existence of a general confidentiality clause in an agreement does not preclude the right of access to the whole of the

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agreement, as per the decision of this Commission in *Airline Pilots Guild of Sri Lanka v. SriLankan Airlines Ltd.* (RTIC Appeal (In-Person)/99/2017 Order delivered on 12.06.2018). Here the Public Authority was ordered to release information in relation to the Memorandum of Understanding dated 28th July 2016 with PIA, the Wet lease agreement dated 04th August 2016 with PIA and the Wet lease extension agreement dated 02nd November 2016 with PIA, but withheld in regard to the Agreement in issue between the Public Authority and Airbus S.A. as the negotiations were ongoing at the time.

In relation to the reports of Seabury, Skyworks and Nyrus, the Commission ruled that,

*“Beyond refusing information disclosure on the basis that the reports of Seabury, Skyworks and Nyrus, (which formed part of the process relating to the purchase and cancellation of the said aircraft) contained detailed evaluation and vital information of the route network and fleet evaluation, strategic overview and business advisory of the Public Authority, and cannot be disclosed, in view of the fact it will seriously prejudice and jeopardize the business activities of the Public Authority and that the information contained in the reports will cause serious financial repercussions and detriment if they were utilized by competitors, no specifics were provided by the Public Authority in relation to the same.*

*Acting under Section 32 (1), which empowers this Commission to ‘affirm, vary or reverse the decision appealed against and forward the request back to the information officer concerned for necessary action’, we direct that the Public Authority release the reports of Seabury (February 2013), Skyworks (October 22 nd 2015 and October 26 th 2015) and Nyrus dated 18 th March to the Appellant, with those portions of the said reports objectively assessed by the Public Authority as needing to be excluded within the meaning of ‘commercial confidence harming the competitive position of a third party in terms of Section 5 (1)(d), which assessment is a statutory duty laid on the Public Authority by virtue of that Section.*

*The Public Authority may also assess if any portion of the reports therein may need to be excluded as coming within the ambit of information given by a 3 rd party which was treated as confidential at the time in terms of Section 5(1)(i). Such portions of the reports may be severed under and in terms of Section 6 of the RTI Act and the Appellant shall be provided with access to the remaining portions.*

*As these are the two exemptions cited by the Public Authority in relation to refusal of information disclosure in Item 6 of the information request, we shall confine ourselves to those above stated exemptions in relation to the direction regarding discretion to severe.*

*The Public Authority is directed to notify this Commission within four weeks of the delivery of this Order as to whether the said reports will be released in full or if not, what parts of the said reports will be so severed under Section 6 of the Act, in order for the Commission to ascertain compliance with this directive.” (Emphasis added)*

*Third Party Objection under Section 29 (2) (c)*

On two occasions before this Commission, the Ministry of Urban Development cited the objections raised by the Project Company, CHEC Port City (Pvt) Ltd to refuse the release of the

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Tripartite Agreement under Section 29 (2) (c). The clauses specifically objected to by the Project Company are as below.

The CHEC Port City (Pvt) Ltd. has by two writings (dated 20.12.2018, and 08.02.2021) objected to the release of the Tripartite Agreement. In its letter dated 20.12.2018, the CHEC has stated that,

*“With regards to the releasing of a copy of the Tripartite Agreement, we are of the view that this is a Commercial Arrangement formally signed between the Project Company and the Government of Sri Lanka, upon receiving approval of the Cabinet of Ministers. The Tripartite Agreement also includes a cost breakdown of the project, project financing arrangements etc. which are of price sensitive nature in considering that the Project Company’s contractors bid for similar projects worldwide. Due to the confidential and price sensitive nature of the information contained in the Tripartite Agreement, we are of the view that the Tripartite Agreement should not be released.”*

In its letter dated 08.02.2021, the CHEC has reiterated the above response, stating that it is of the view that the information should not be released. The CHEC has further stated that,

*“As previously stated, the Tripartite Agreement is a commercial arrangement with the Project Company and the Government of Sri Lanka, which has duly been approved by the Cabinet of Ministers. Therefore, we are strongly of the view that such commercial arrangements should not be disclosed due to reasons stated in our previous correspondence.*

*We set out the below clarifications sought in your letter.*

- 1. The Land reclamation was completed with a total land area of 269 ha in January 2019. Infrastructure design and construction work on phase 1 is currently ongoing. Phase 2 infrastructure design is ongoing and the site work has commenced partially.*
- 2. The Tripartite Agreement is applicable to the entire project work, and the provisions of the said Agreement will continue to be applicable until such time the obligations of the parties are concluded. Construction related obligations of the Project Company will continue until such time the defects liability period is concluded in terms of the Tripartite Agreement.*
- 3. In terms of the Tripartite Agreement, Schedule 10 – Indicative Construction Programme, the Site construction work is planned to be completed by mid-2025, however this period may have to be extended due to the delays caused by Covid 19 pandemic.”*

From a reading of the above correspondence and the points of information which the Appellant in 1114/2019 has submitted are of public interest, it is evident that these clauses do not overlap. The price sensitive information which the Project Company seeks to withhold on the grounds that it is commercially sensitive information, may well be withheld, while releasing the clauses which are of public interest to the Appellants in terms of Section 5 (4) of the RTI Act. The Appellant in 1114/2019 has expressed his consensus to withhold information that is protected under Section 5 (1) (d) of the Act, both orally at the hearings on 24.09.2021 and 29.09.2021, as well as in his writing dated 28.09.2021, viz.,

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*“We agree that we are amenable to the redaction of clauses which may have to be withheld due to the sensitivity of information pertaining to ‘commercial confidence’ in accordance with 5 Section (1) (d) RTI Act.”*

*The Agreement of 2014 vis-à-vis the Tripartite Agreement of 2016*

General Observations and Findings

Having perused the Tripartite Agreement signed on 12.08.2016, provided to this Commission under confidential cover by the PA, and the Agreement signed in 2014 (which is now repealed and replaced), the Commission sees that many of the clauses in the 2014 Agreement are reproduced *verbatim* in the 2016 Agreement. We note that the Agreement of 2014 is in the public domain subsequent to litigation in the Court of Appeal (CA/Writ/112/2015).

As aforesaid, in view of the fact that the Agreement of 2014 is in the public domain, and several of its clauses have been reproduced in the now operative 2016 Agreement, the Commission finds no impediment to the release of those clauses, particularly where there is a public interest in the release of such information.

Upon an evaluation of both the 2014 and 2016 Agreements before this Commission at the hearing, the clauses which may correspond to the public interest issues raised by the Appellant in RTIC Appeal 1114/2019 are as follows.

The information relating to public interest as identified by the Appellant in RTIC Appeal 1114/2019, no.s 4, 5 and 6 (*Supra* at Page 2) relate to statutory obligations that are imposed on the GOSL. These are clearances and preliminary approvals that must be obtained for the project to commence and proceed within the statutory framework in Sri Lanka. These clauses have not been varied between the 2014 and 2016 Agreements, as it stands to reason that these are clauses imposed under and in terms of statute. As such, there is no impediment to the release of this information.

The clause pertaining to the protection of archeological and geological items corresponds to the public interest flagged by the Appellant in RTIC Appeal 1114/2019 in no. 7 of his points of information (*Supra* at Page 2). This clause, too, is identical between the 2014 and 2016 Agreements.

There does not appear to be any clause in the Agreement that directly corresponds to points of information no.s 3 and 10 highlighted by the Appellant in 1114/2019 (*Supra* at Page 2).

The increase in the extent of Reclaimed Land between the 2014 and 2016 Agreements is the main difference between the 2014 and 2016 Agreements. However, this cannot be held to be ‘commercially sensitive’ information in terms of Section 5 (1) (d) of the RTI Act. This information, together with the extent of land divided between the GOSL and Project Company have been identified as information relating to public interest by the Appellant in 1114/2019, in no.s 8, and 9 (*Supra* at Page 2). In the 2014 Agreement between the Ports Authority and the Project Company extents of land allocated variously to the Ports Authority and Project Company are stated in terms of divisions of land referred to as “Marketable Land”, “Ports Authority Land (Marketable)” and, “Ports Authority Land” [*vide* page 25 of the 2014 Agreement, Clause 24.1].

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We are apprised of the fact that these same divisions with the addition of the Marina area is reflected in the Tripartite Agreement of 2016 *albeit* in different extents due to the increase of the Reclaimed Land, which information has at different times been made available in the public domain as confirmed by the representative for the PA, Dr. Sugath Yalegama. Upon being asked by the Commission as to whether the PA objects to the release of broadly defined divisions of extents of land as detailed in the Tripartite Agreement of 2016, Dr. Yalegama confirmed that there is no objection.

The Commission further notes that the clauses relating to the statutory obligations of the GOSL, clearances and approvals to be obtained, the preservation of archeological items are identical between the 2014 and 2016 Agreements.

Specific Clauses in the Agreement of 2014 / Tripartite Agreement of 2016

Consequently, the clauses, as identified by this Commission that can be released in terms of the public interest pleaded by the Appellants, and in terms of the *verbatim* reproduction of the 2014 Agreement in the 2016 Agreement, are as below. Dr. Yalegama confirmed the non – objection of the PA as of record to the release of the below clauses during this Appeal hearing.

- i. Recital Clause (J)
- ii. 2. Development Rights
- iii. 13. Preliminary Clearances for the Development Masterplan
- iv. 15. Archaeological / Geological items
- v. 24. Reclaimed Land
- vi. Schedule 9: GOSL Works and Services (6. Fisherman’s Compensation)

**Recital / Preambulatory Clause (J) [Page 2]**

At the time the GOSL Contract was entered into, the extent of the Reclamation Works was intended to be two hundred and thirty three (233) hectares. The extent of the Reclamation Works as envisaged in this Agreement is two hundred and sixty nine (269) hectares with the increase being principally to accommodate additional public land areas (which has increased from sixty three (63) hectares to ninety point nine (90.9) hectares) including public parks and waterfront areas for the use and enjoyment of the public. The extent of Marketable Land has increased by five point one (5.1) hectares and which has been allocated to the Project Company (a) to reflect the significant additional cost of reclamation arising from the creation of the additional public land areas, and (b) to allow the Project Company, subject to Clause 33A.2, to undertake development to support the establishment of the Colombo International Finance City which the Project Company has agreed to explore as soon as reasonably practicable.

**2. Development Rights [Page 4] (*identical provision in the 2014 Agreement*)**

2.4. Interference of any kind by the GOSL or by any Governmental Authority in any matter in respect of which the Project Company is entitled to exercise Development Rights under this Agreement except as may be necessary:

- (a) to protect public health and safety or the Environment;

- (b) for reasons of national security; or
- (c) as a consequence of the Project Company's breach of this Agreement or any Applicable Permits;
- (d) as a consequence road closures and other transportation restrictions enforced by Governmental Authorities on National Day or Victory Day celebrations,

shall, in each circumstance where the impact of any such interference is greater than 24 hours duration for any single event or an aggregate (when taken with the impact of any other interference) of 72 hours in duration in any 6 month period, be deemed to be a Compensation Event and the provisions of Clause 33 shall apply. Where (d) above applies, the GOSL shall use reasonable endeavours to ensure that the Project Company shall not be prevented from using dredging equipment in the undertaking of the Reclamation Works.

**13. Preliminary Clearances for the Development Masterplan** [Pages 16 – 18]  
*(nearly identical provision in the 2014 Agreement)*

13.1

The Project Company and the GOSL shall both acting reasonably, as soon as reasonably practicable (and in any event within fifteen (15) Business Days of the Project Company submitting a final draft to the GOSL), agree the Development Masterplan which shall contain and/or such matters as are required pursuant to the Urban Development Authority Law No. 41 of 1978 as amended and any other details required by Applicable Law. The Development Masterplan shall in any event include the following (in sufficient detail to allow for approval by the relevant Governmental Authorities having an interest in the Developments):

- (a) the extent of the Marketable Land (which shall in no circumstances be less than 175 hectares excluding the Marina Area);
- (b) the manner in which the land and buildings in the development area shall be used;
- (c) the allotment, reservation or zoning of land for different purposes;
- (d) construction of any residential (including condominium), commercial, leisure, educational, or community based developments and other similar developments on the Marketable Land together with proposed densities and building heights;
- (e) the Common Area; and
- (f) access and egress to the Marketable Land

13.2 The GOSL shall, during the development of the Development Masterplan ,facilitate such meetings with the Urban Development Authority (in its statutory capacity as a consenting body pursuant to the Urban Development Authority Act No. 41 of 1978, as amended) as shall be necessary to ensure that the Development

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Masterplan shall be consistent with the “development plan” envisaged by the Urban Development Authority for the land area in question. The Development Masterplan agreed pursuant to Clause 13.1 shall seek, subject to Clause 24.6 and Applicable Law, to maximize the commercial benefits of the Project for both the Project Company and the GOSL including (for the avoidance of doubt) by seeking to increase the extent of Marketable Land realized from the Reclamation Works. In the event of any conflict between the interests of the Project Company and the GOSL in relation to the Development Masterplan the GOSL and the Project Company shall seek to resolve such disputes in good faith.

13.3. As soon as practicable after the agreement of the Development Masterplan between the GOSL and the Project Company pursuant to Clause 13.1, the GOSL shall submit same to the relevant Governmental Authorities for their approval. The GOSL shall contemporaneously apply for the following Applicable Permits for the undertaking of the Developments in accordance with the Development Masterplan:

- (a) Environmental Impact Assessment from the Central Environmental Authority together with licenses for emissions, noise, water and waste disposal;
- (b) Relevant approvals from the Municipality of Colombo including a Building Lines and Street Lines Certificate;
- (c) Relevant approvals from the Urban Development Authority including a Development Permit pursuant to Section 8 (J) of the Urban Development Authority Law;
- (d) Approval, if applicable, from the Roads Development Authority, Urban Development Authority and Municipality of Colombo in relation to the roads network;
- (e) Approval from the CCD including, if appropriate, a Coastal Conservation Major Permit;
- (f) Approvals in relation to the disposal of waste and waste water from the National Water Supply and Drainage Board and any other Governmental Authority having jurisdiction in relation to the same;
- (g) Relevant approvals (if any) from the Sri Lanka Land Reclamation and Development Corporation;
- (h) Clearance from the Civil Aviation Authority and the Ministry of Defense;
- (i) Approval from the Ceylon Electricity Board; and
- (j) such other permits from relevant Governmental Authorities as shall be necessary in accordance with Applicable Law, to establish “in principle”, preliminary or outline approval to undertake the Developments in accordance with the Development Masterplan (subject always to such detailed consents and approvals as any Developer would ordinarily expect to obtain having regard to the detailed proposals for the relevant Development),

hereinafter referred to together as the “Preliminary Clearances for Development” and individually as a “Preliminary Clearance for Development”.

**15. Archaeological / Geological items** [Page 21] (*identical provision in the 2014 Agreement*)

15.1 As between the GOSL and the Project Company, all fossils, minerals, antiquities, structures or other remnants or things either of particular geological or archaeological interest on, under or in the vicinity of the Water Area such as ship wrecks, gun barrels and other similar items shall be deemed to be the absolute property of the GOSL. The Project Company shall take all reasonable precautions to prevent any other persons from removing or damaging any such items. Immediately on discovery of the item the Project Company shall inform the GOSL of the discovery and comply with such instructions as the GOSL may reasonably give as to the removal of the items. The GOSL shall promptly (so as to ensure that there is no material delay in the carrying out of the Reclamation Works) undertake the removal of such items and shall promptly reimburse to the Project Company all reasonable additional costs and expenses incurred by the Project Company as a consequence of the discovery or compliance with the GOSL’s instructions.

**24. Reclaimed Land** [Page 31 – 32]

24.1 The interest in the Reclaimed Land shall be allocated between the GOSL and the Project Company in accordance with the provisions of this Agreement. The total area of the Reclaimed Land shall be approximately two hundred and sixty nine (269) hectares. Subject to Clause 24.3:

24.1.1. the Project Company shall be entitled to:

(a) one hundred and thirteen point one (113.1) hectares of the Marketable Land;

and

(b) the Marina Area (approximately three (3) hectares)

(hereinafter together referred to as the “Project Land”)

24.1.2. the GOSL shall be entitled to:

(a) sixty two (62) hectares of the Marketable Land (the “GOSL land (marketable)”) and

(b) approximately ninety point nine (90.9) hectares of land that is not allocated for development (together with beaches and the Breakwater)

(hereinafter together referred to as the “GOSL Land”.) The Project Land shall be held by the Project Company (or such other Person or Persons as the Project Company may nominate in writing) pursuant to Clause 24.8

**Schedule 9: GOSL Works and Services**

**6. Fishermen's Compensation [Page 151]**

The GOSL shall ensure that fishermen will receive income support in respect of loss of income, if any, arising as a consequence of the Reclamation Works. The Project Company shall, as a gesture of good will contribute to the GOSL the sum of Rs. 500 million which GOSL shall use solely for the purpose of paying such income support to fishermen.

In regard to 6. of Schedule 9 above (which is not in the 2014 Agreement), the Commission queried specifically from Dr. Yalgama, the representative of the Ministry of Urban Development, as to what the objections may be in regard to the release of the same, as this pertains to a public interest obligation on the part of the GOSL with regard to the communities specifically affected by the Port City project activities. Following consultations had between the representatives, it was informed to the Commission that there is no objection in releasing this segment of Schedule 9.

The Commission is, however, reserving the consideration of the release of the remainder of the Tripartite Agreement of 2016 at a later point in the hearing of this Appeal consequent to the Public Authorities making further submissions, once the current lockdown period lapses.

*Interim Conclusions*

In sum, the applicability of the exemptions pleaded by the PA in terms of Section 5 (1) of the RTI Act to the Tripartite Agreement remains to be adjudicated more fully across the Agreement and its schedules. That being the case, the Commission does not see an impediment to the release of clauses which are (a) of public interest as indicated by the Appellant in 1114/2019 and therefore attract the application of Section 5 (4) of the RTI Act (b) are not of a commercially sensitive nature and (c) have already been released in *vis-à-vis* the 2014 Agreement and are therefore substantially in the public domain. The enumeration of the above clauses is in no manner exhaustive, and may be varied upon agreement between the parties that further clauses of the Agreement can be released.

As reiterated in the Commission's Interim Order of 24.09.2021, the Commission is cognizant of the fact that close upon two years have lapsed from the date of the Appellant's filing this Appeal before the Commission and approximately two months have lapsed after the added PA was added as a Respondent to this Appeal. We are mindful of our statutory duty to deliver our decisions on Appeal within one month, under Section 32 (1) (a) of the RTI Act, which task has been made all the more difficult due to the indefinite nature of the lockdown currently in force as compelled by the global pandemic.

Recognizing the aforesaid concerns, and having regard particularly to Section 5 (4) of the RTI Act, the Commission has determined the delivery of the instant Order.

*Appeal Adjourned*

**Next Date of Hearing: (Date will be notified to the parties in due course)**