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Panel on Development

Meeting on 26 May 2009

Background brief on public facilities in private developments

Purpose

This paper provides background information on the provision of public facilities in private developments and a summary of the views and concerns expressed by Members during relevant discussions.

Background

2. According to the Administration, incorporation of public facilities within private developments for public use is intended to achieve integrated design, optimization of land use and better site planning, to bring forward the completion of some public facilities to serve a wider need, or to match envisaged population intake brought by a private development project.

3. Public facilities within private developments can be broadly categorized into --

- (a) Government, Institution and Community (GIC) facilities, such as community halls, elderly centres, nurseries, youth centres, schools etc.;
- (b) public open space (POS);
- (c) public transport terminus (PTT); and
- (d) public access (e.g. pedestrian access like footbridges and vehicular access like right of way).

4. The provision of public facilities within private developments may arise under the following circumstances --

- (a) land sale – Bureaux/Departments may propose to include in the land sale conditions the requirement that the developer shall provide certain facilities in the future development for public use; or
- (b) private development/redevelopment – where the development requires planning permission by the Town Planning Board (TPB)¹, Bureaux/Departments may propose the inclusion of some public facilities, or the developers themselves may propose such facilities in their planning applications for approval of the private developments. Such requirements may be imposed as planning conditions by TPB in approving the planning applications and subsequently translated into lease conditions if this is practical (for instance where the development is the subject of a new or modified lease).

5. The Administration has stressed that the GIC/POS facilities in private developments are required as a lease condition, and such provision by the developer does **not** attract any gross floor area (GFA) concessions. Discussion on this subject therefore should not be mixed up with the dedication of private space for public use as provided for under the Buildings Ordinance (Cap. 123). Under the Buildings Ordinance, developers may of their own volition dedicate certain floor space in their developments as public passage for public use or pavement widening in return for concessions in the form of exemption of such floor space from GFA calculation or bonus GFA. The terms and conditions of such dedication are stipulated in the Deeds of Dedication signed between the Director of Buildings and the developer.

Measures to enhance transparency and public accessibility to public facilities in private developments

6. In a bid to enhance transparency and public accessibility to the public facilities in private developments, the Administration has taken the following measures since March 2008 --

- (a) the Lands Department (LandsD) has released the lists of private developments containing public facilities in batches (*the latest batch was released in December 2008 and the current updated list contains 450 developments completed since 1987*);
- (b) LandsD has also released abridged lists of private developments containing POS with location maps and photographs (*the current*

¹ Examples are sites that fall within or include some land zoned "GIC" or "Open Space" (O), or in developments within a "Comprehensive Development Area" (CDA) zone.

list released in December 2008 contains 43 such private developments completed since 1987);

- (c) the Buildings Department (BD) has released the lists of private developments with areas dedicated for public passage and other uses (if any) as specified in the relevant deeds of dedication (*the current list released in December 2008 contains 320 such developments*);
- (d) the Development Bureau has written to the Real Estate Developers Association of Hong Kong requesting its help to remind the trade that the provision of such facilities and the respective developers'/owners' management and maintenance responsibilities in respect of such facilities are clearly set out in the land leases or the deeds of dedication as the case may be;
- (e) LandsD and BD have written individually to the owners' incorporations or management companies of the private developments concerned, to require them to take various actions to enhance public accessibility to the public facilities; and
- (f) all District Councils have been provided with details of the public facilities within private developments in their districts and their support sought in monitoring the use of those facilities within their districts.

Questions raised at Council meetings in March to May 2008

7. The provision and management of public facilities in private developments space became an issue of wide public concern in early 2008, when it was reported by the media that the public open space located on the ground floor of the Times Square in Causeway Bay had been rented out by the developer concerned for commercial activities, and that various restrictions were imposed by the property management company upon the public on the use of the space. A number of questions related to the subject were raised by Members at Council meetings held in March to May 2008. Apart from the circumstances surrounding the public open space at Times Square, Members also raised questions on the disclosure of information on provision of public facilities in private residential developments to prospective property buyers, the rights of members of the public in using public facilities on private land vis-à-vis those on Government land, management of public open space in private developments, and the need to review the Hong Kong Planning Standards and Guidelines (HKPSG).

Deliberations of the Panel on Development

Discussions at the meetings on 22 April and 31 May 2008

8. In view of mounting public concern on the subject matter, the Panel on Development (the Panel) held discussions with the Administration on 22 April and 31 May 2008 on issues relating to the provision and management of public facilities in private developments. Interested parties and individuals were invited to attend the latter meeting to present their views. A summary of the discussions is given in **Appendix I**.

9. In gist, the Administration acknowledged that there was room for improvement in the management, accessibility and quality of those public facilities, but stressed that there was a strong basis for the policy on the provision of public facilities in private developments and thus it should be retained. Members in general considered that the Administration had made the correct move to release information on private developments containing public facilities to enhance transparency, but urged the Administration to devise measures to ensure that the ongoing obligations in terms of managing and maintaining such facilities and opening them for public use were properly and effectively discharged. The Administration undertook to review the policy and examine the implementation issues.

Discussions at the meetings on 8 December 2008 and 16 February 2009

10. At the meeting of the Panel on 8 December 2008, the Administration briefed members on the preliminary findings and recommendations of its review concerning the provision of POS in private developments. The Administration affirmed the policy on the incorporation of public facilities in private developments, stating that *"the policy is based on sound considerations and enables the needed facilities to be provided to the public in a timely and integrated manner through private developments, and provides for better planning and optimized the use of limited land"*.

11. According to the Administration, members of TPB have noted that for future cases, unless there is a shortfall of existing and planned open space provision in the district or special circumstances justifying the provision of POS as part of private development projects, Bureau/Departments should not in future recommend to TPB to accept or require the provision of POS in private developments, especially residential developments, or on Government land adjacent to such developments, in order to prevent the recurrence of implementation problems highlighted in public discussions. As such, the problems should be finite.

12. In respect of existing POS on Government land, the Administration has indicated that instead of requiring individual owners to shoulder the cost of

operating, managing and maintaining the POS, it would not be unreasonable for the Government to consider recovering the open space on a case-by-case basis, subject to the following criteria --

- (a) the POS is at grade and can be alienated from the private development;
- (b) the scale of the POS is substantial relative to the scale of the private development;
- (c) there is no legal obstacle in the lease conditions for Government to take back the management;
- (d) the availability of recurrent resources to the concerned department;
- (e) the consent of the owners (through owners' incorporation) if needed;
and
- (f) the support of the relevant District Council and the relevant Area Committee.

13. For POS on private land, the Administration has acknowledged that there are calls to waive the requirement in the lease for public accessibility in respect of existing POS on private land within residential developments. While the Administration foresees considerable difficulties in doing this in view of possible public objections, it is prepared to sympathetically consider, on a very exceptional basis, waiving the requirement, subject to the following criteria --

- (a) it is legally in order for LandsD to do so;
- (b) a request for the waiver must be initiated by and with the consent of the owners through its owners' incorporation and subject to payment of the relevant financial consideration for such waiver;
- (c) there is sufficient existing POS in suitable locations within the district according to the HKPSG. Also, other considerations like the location and distribution of the POS should also be taken into account;
- (d) the agreement of TPB for amending the relevant plans if required;
and
- (e) there is support from the relevant District Council and Area Committee, in particular their understanding that a piece of POS will no longer be open to the public.

14. According to the Administration's paper LC Paper No. CB(1)367/08-09(01) for the Panel meeting in December 2008, of the **16** POS in private residential developments then identified, **nine** are purely on ground level, and **seven** are on podium levels. Of these seven cases, the Administration found that only **Metro Harbour View** warranted exceptional consideration, as a large portion of the POS is located within the enclosed compound of the development, encircled by the tower blocks and is very difficult to segregate the POS from the private blocks.

15. The Administration further advised in February 2009 that generally, no major problems were envisaged for public facilities like public transport interchange, Government and community facilities and public access in private developments. For POS in private developments, the major concerns were the management and maintenance costs to be borne by the owners and how to strike a balance between public accessibility and private rights. For the Metro Harbour View, granting a waiver was only one of the possible solutions. There were also different views on the proposal and it was necessary to determine a waiver fee in each case. The Administration would make its decision based on objective criteria agreeable to the Panel.

16. The main concerns and views expressed by members during the discussions at the two Panel meetings are summarized in paragraphs 17 to 32 below.

General issues

17. Some members considered that the policy had its merits in making the provision of many much needed public facilities possible, as Hong Kong was a compact city with scanty land resource. There were views that the current problems arose mainly because there were no comprehensive management and regulating systems at the time when the relevant leases conditions were prepared. In some cases, POS in private developments was well managed by the owners concerned. Developers would be willing to cooperate and all parties concerned should resolve historical problems in a fair and harmonious manner.

18. Some other members opined that encountering difficulties in implementation reflected that the policy was problematic. Owners concerned and citizens who used POS in private developments were dissatisfied with the policy. Developers might have exploited grey areas of planning and land use policies to reap benefits.

The Metro Harbour View case

19. Some members queried why approval could have been given to the plan of the Metro Harbour View and expressed doubt on whether the management

problem arising from the integrated design of the POS on the podium level was not envisaged at the time when the project was approved.

20. The Administration explained that the original site of Metro Harbour View was for industrial use as a shipyard. The developer concerned proposed to provide POS in the development as a planning gain and the development was subsequently approved. As the site was elongated with noisy roads surrounding the development, there were many constraints in the layout of the building blocks and the POS. The POS was thus provided on the podium level and access by the public and interface with private space were less than satisfactory.

Possible solutions to existing developments

21. As to how the problems with **POS on private land** provided in private developments should be addressed, individual members expressed the following views and suggestions --

- (a) The Administration should receive further views from affected owners in a more focused way.
- (b) Owners of other private developments concerned would find it unacceptable if the Administration only handled the Metro Harbour View case on an exceptional basis. The Administration should seek the views of the owners of the other private developments with POS on podium levels. The Administration should also consider whether some at-grade POS had security and management problems.
- (c) The Administration should disclose its detailed considerations for cases involving POS on podium levels in private developments. If a waiver was to be granted for the Metro Harbour View case, the Administration should require the developer concerned rather than the small property owners to bear the necessary fees.
- (d) The developers concerned should be held responsible if they misrepresented the information on their developments. The matter could be taken to the courts and those developers should be required to bear the costs for handling issues related to POS in private developments. The Administration should also bear part of the responsibilities.
- (e) If public interest was prejudiced, the developers concerned should repay the premium deducted for providing the POS. The Administration should rectify the situation and explore whether it was possible to require the developers concerned to bear part of the costs for resolving the matter.

- (f) The criteria based on which the Administration would make its decision on whether to grant a waiver had to be very detailed and broad principles would not suffice.
- (g) Requiring owners' corporations to shoulder the management of POS was impractical because maintenance and insurance issues might lead to disputes, and some owners' corporations even devised methods to avoid bearing maintenance costs of the POS at the expense of public interests. The developers concerned could each pay a sum to a fund, which would be used for engaging a non-governmental organization to manage POS in private developments.
- (h) The Administration should formulate management guidelines for POS in private developments through public engagement.
- (i) There should be an independent adjudication mechanism with public participation to decide on the types of facilities to be provided.

22. The Administration clarified that there had been no deduction in premium when developers provided POS in private developments. It also advised that granting a waiver was only one of the possible solutions for consideration. In handling existing POS in private developments, the Administration had to be lawful and reasonable in deciding the method to adopt.

23. Regarding owners' responsibility, the Administration explained that although the lease was signed between the Government and the developer, the management responsibility of the POS was transferred to the owners through the agreements between the developer and the owners.

24. The Administration also advised that it was soliciting assistance from experienced architects to formulate guidelines for managing POS in private developments. Besides, it would investigate whether activities allowed on the streets would be the same as those on POS in private developments so that guidelines could be issued to clarify the relevant issues.

25. With regard to **POS on Government land** provided in private developments, members in general considered that the Administration should take up the management and maintenance responsibilities of the POS. However, a member expressed reservation on whether the management should be handed over to the Leisure and Cultural Services Department because some owners might not be satisfied with the efficiency of the department. The Administration responded that entrustment of the management responsibility of

the POS to the management of the private developments concerned might be a possible solution.

New and future developments

Dissemination of information to prospective owners and owners' responsibility

26. Members noted that the Administration had introduced enhanced measures that sales brochures of residential properties should specify owners' responsibilities on POS in the developments. With effect from 10 October 2008, developers had to show conspicuously the information on the POS or public facilities concerned in sale brochures and provide a location plan of such POS or public facilities.

27. A member expressed doubt on whether clearly delineating the subsequent responsibilities for the operation of the public facilities would ensure that property purchasers were willing to bear their responsibilities. Even if purchasers of first-hand private developments with POS had a clear understanding of their responsibilities, this might not be the case for subsequent purchasers.

28. The Administration responded that both it and TPB considered that there was a need to continue with the policy of providing other public facilities in private developments. Upon completion, those facilities would be handed over to the relevant Government departments or non-governmental organizations for management. Owners would not have to bear the relevant costs. For public access in private developments, owners might have to shoulder management and maintenance responsibilities. The provision of such public access was conducive to good connectivity between different developments.

Design of open space

29. Members in general considered that the design of POS was important. Without careful planning, future management would be difficult. Some members considered that the Administration should review the HKPSG on provision of open space. Some members urged the Administration to engage professionals to design POS and enhance its communication with District Councils and stakeholders. A member opined that open space should be clearly classified, e.g. as public, semi-public, private and semi-private open space, to facilitate management. The member also pointed out that at present, TPB did not have any dedicated working group to look into the design of open space.

30. The Administration responded that it would consider the suggestion of setting up a dedicated group to look into various design issues and concurred that there should be more participation by District Councils and the public in designing POS. While the Administration would review the HKPSG on a

regular basis, it would strengthen the implementation of the HKPSG. Issues such as the type of facilities to be provided on POS could be studied when the Administration formulated the POS management guidelines. In general, the leases would require that the provision of POS should be to the satisfaction of the Director of Lands.

31. Some members pointed out that public space and street activities in new districts were scanty due to large lot size, implementation of Comprehensive Development Areas and proliferation of shopping malls and developments with podiums. They urged the Administration to formulate a policy on how the public could genuinely enjoy POS and use such space for self-initiated public activities.

32. The Administration responded that it would consider macroscopic planning and cityscape issues under the subject matter of creating a sustainable built environment. Members could also discuss issues related to management of streets and pedestrian zones and street performances on other occasions.

Recent development

33. The Panel will further discuss the subject at its meeting on 26 May 2009.

Relevant papers

34. A list of relevant papers is in **Appendix II**.

**Summary of discussions at the meetings of
the Panel on Development on 22 April and 31 May 2008**

General issues

Members in general considered that the Administration has made the correct move to promulgate the lists of private developments containing public facilities to enhance transparency. The Administration should however devise measures to ensure that the public had easy access to the public facilities and that the management of the facilities could cater for public use at ease.

2. Some members were of the view that the policy was unfair to the public because in many cases, the public could not access and/or use the facilities with ease. The provision of such public facilities would mainly be beneficial to developers because they were granted bonus gross floor area (GFA) for their developments. There was however a view that it was unfair for developers to bear the costs of providing public facilities in private developments but were accused of depriving the public's use of those facilities. If those facilities were not provided by developers, the public money required to provide such facilities would have been very substantial.

3. The Administration explained that provision of public facilities was often specified in the planning briefs, especially for projects in Comprehensive Development Area zones. In those cases, no additional GFA would be granted for the provision of public facilities. Bonus GFA might be granted in accordance with the provisions of the Buildings Ordinance (Cap. 123) for the provision of public facilities subject to deeds of dedication and those facilities were mostly pedestrian passages.

Location and design of public open space in private developments

4. Members shared the view that the design and location of public open space in private developments were important factors in determining its accessibility and making the space really public. Some members considered it undesirable to put public open space on podiums of private developments, as such public space was not easily accessible to the public. The Administration pointed out that if all such space was to be provided at ground level, flexibility in planning would be restricted. For future private developments, the Administration would give due consideration to the design and location of public open space to be provided therein.

Guidelines for management and use of public facilities in private developments

5. Some members suggested that the Administration should formulate guidelines with community participation on the management and use of public

facilities, in particular OS, in private developments. The Administration advised that it would seek to formulate guidelines to serve as reference for the owners of existing private developments and future developments.

Protection for prospective property purchasers and small property owners

6. Members raised concern about sufficient disclosure of information to prospective property purchasers on the inclusion of public facilities in private developments. The Administration explained that the interest of prospective property purchasers was protected through regulation of the sale of residential properties. Developers were required to disclose information on maintenance and management responsibilities of those public facilities in private developments in property sales brochures, and the Administration would consider stepping up measures in this regard in consultation with relevant parties.

7. Some members pointed out that some property owners wanted to relinquish those public facilities in private developments to the Government because they did not want to bear maintenance and management costs. There was also a suggestion that the Administration could consider the possibility of allowing property owners to buy out the public facilities in their private developments by paying a premium if those facilities had a low public utilization rate due to design problems. The Administration agreed to follow up this issue.

Street performance at public open space

8. Some members expressed the view that subject to good management, street performances in public open space would add vibrancy to the city and help nurture artistic talents. They urged the Administration to plan accordingly including the setting up of a registration system for street performers and the drawing up of appropriate guidelines.

Review of the policy

9. Some members urged the Administration to conduct a comprehensive review on the policy, including the relevant specifications in the Hong Kong Planning Standards and Guidelines. The Administration assured members that it would conduct the review in the best possible way and the exact timetable would be decided after completing some preliminary groundwork. In conducting the review, the Administration would solicit the views of the public and developers in order to strike the right balance.

Public facilities in private developments

List of relevant papers

Date	Meeting	References
5 March 2008	An oral question on "Public open space" was raised by Hon Margaret NG at the Council meeting	Hansard (pages 26 to 32) http://www.legco.gov.hk/yr07-08/chinese/counmtg/floor/cm0305-confirm-ec.pdf
22 April 2008	The Panel discussed with the Administration the subject of "Public facilities in private developments".	Information paper (LC Paper No. CB(1)1273/07-08(04)) http://www.legco.gov.hk/yr07-08/english/panels/plw/papers/dev0422cb1-1273-4-e.pdf Minutes of meeting (LC Paper No. CB(1)1952/07-08) http://www.legco.gov.hk/yr07-08/english/panels/plw/minutes/de080422.pdf
23 April 2008	A written question on "Disclosure to prospective property buyers of requirement to provide facilities in private developments for public use" was raised at the Council meeting.	Hansard (pages 28 to 31) http://www.legco.gov.hk/yr07-08/chinese/counmtg/floor/cm0423-confirm-ec.pdf

Date	Meeting	References
7 May 2008	An oral question on "Use of public facilities on private land by public" was raised by Hon James TO at the Council meeting.	Hansard (pages 24 to 30) http://www.legco.gov.hk/yr07-08/chinese/counmtg/floor/cm0507-confirm-ec.pdf
7 May 2008	An oral question on "Management of public facilities on private land" was raised by Hon SIN Chung-kai at the Council meeting.	Hansard (pages 36 to 43) http://www.legco.gov.hk/yr07-08/chinese/counmtg/floor/cm0507-confirm-ec.pdf
7 May 2008	A written question on "Management of public open space in private developments" was raised by Hon Audrey EU at the Council meeting.	Hansard (pages 54 to 55) http://www.legco.gov.hk/yr07-08/chinese/counmtg/floor/cm0507-confirm-ec.pdf
31 May 2008	The Panel discussed with the Administration and deputations the subject of "Public facilities in private developments".	Submissions http://www.legco.gov.hk/yr07-08/english/panels/plw/papers/plw_g.htm Minutes of meeting (LC Paper No. CB(1)2321/07-08) http://www.legco.gov.hk/yr07-08/english/panels/plw/minutes/de080531.pdf

Date	Meeting	References
26 August 2008	Press release of the Administration on updated lists of public facilities in private developments	http://www.devb-plb.gov.hk/eng/press/2008/200808260081.htm
8 December 2008	The Panel discussed with the Administration the subject of "Public facilities in private developments".	<p>Information paper (LC Paper No. CB(1)319/08-09(03)) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev1208cb1-319-3-e.pdf</p> <p>Background brief (LC Paper No. CB(1)319/08-09(04)) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev1208cb1-319-4-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)611/08-09) http://www.legco.gov.hk/yr08-09/english/panels/dev/minutes/dev20081208.pdf</p> <p>Supplementary note (LC Paper No. CB(1)367/08-09(01)) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev1208cb1-367-1-e.pdf</p> <p>Follow-up paper (LC Paper No. CB(1)770/08-09(01)) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev1208cb1-770-1-e.pdf</p>
30 December 2008	Press release of the Administration on updated lists of public facilities in private developments	http://www.info.gov.hk/gia/general/200812/30/P200812300078.htm

Date	Meeting	References
16 February 2009	The Panel discussed with the Administration and deputations the subject of "Public facilities in private developments".	Submissions http://www.legco.gov.hk/yr11-12/english/panels/dev/papers/dev_g.htm Minutes of meeting (LC Paper No. CB(1)1374/08-09) http://www.legco.gov.hk/yr08-09/english/panels/dev/minutes/dev20090216.pdf