

立法會

Legislative Council

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Panel on Development

Special meeting on 8 December 2008

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.

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, bring forward the completion of some public facilities to serve a wider and district and territorial need, or to match envisaged population intake brought by the private developments. Public facilities within private developments may be categorized into --

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

3. The provision of public facilities within private development may arise under the land sale conditions or planning conditions, and be subsequently translated into the lease conditions, or in accordance with the Building Ordinance, requiring owners to dedicate certain floor spaces for public use within their private land, which is subsequently subject to Deeds of Dedication.

4. GIC facilities, PTT and MTR facilities are usually handed over to the Administration. Other categories of facilities, if they are not required to be handed over to the Administration, will be subject to the relevant provisions in the respective contractual documents, i.e. the leases or the deeds of dedication as the case may be, in respect of their management, maintenance and the opening to the public on an ongoing basis. The Lands Department (LandsD) and the Buildings Department (BD) are responsible for monitoring the implementation of the relevant requirements concerning the discharge of such obligations by means of spot checks and acting upon complaints from members of the public.

5. The rights and obligations of the owners of private developments are laid down in the respective contractual documents. Generally, these owners are required to --

- (a) permit the public to lawfully use these facilities and not to allow the area to be obstructed, where applicable; and
- (b) manage and maintain such facilities to the satisfaction of the Government.

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

6. Public space has become an issue of 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 various restrictions were imposed by the property management company upon the public on the use of the space.

7. In a bid to enhance transparency and public accessibility to the public facilities in private developments, the Administration took the following measures in March 2008 --

- (a) lists of 231 private developments (79 in BD's list and 152 in LandsD's list on private developments completed in or after 1997) containing public facilities were compiled and made known to the public. Further to that, an abridged list of 31 private developments containing OS with location maps and photographs was provided;
- (b) the Real Estate Developers Association of Hong Kong was requested to help remind the trade that provision of such facilities and the respective developers'/owners' management and

maintenance responsibilities were clearly set out in the land leases or the deeds of dedication as the case may be;

- (c) owners' corporations or management companies of the concerned private developments were individually reminded to take various actions to enhance public accessibility to the public facilities; and
- (d) all District Councils were provided with details of the public facilities within private developments in their districts and their support was solicited in monitoring the use of those facilities within their districts.

8. According to the Administration's paper provided to the Panel on Development in April 2008, inspections by LandsD and BD on the listed developments showed that by and large, the requirements in the land leases or the deeds of dedications had been complied with. The Administration would follow up on isolated cases, and monitor the feedback from the public and the District Council, and would take follow-up actions as appropriate. The Administration pledged to review the policy on provision of public facilities in private developments and examine the implementation issues.

9. On 26 August 2008, the Administration published the following updated lists of the public facilities in private developments --

- (a) LandsD's list containing a total of 300 developments completed since 1992;
- (b) BD's list covering a total of 319 private developments which were required under the deeds of dedication to provide spaces for public passages and street widening purposes; and
- (c) The list of private developments containing OS covering a total of 36 such private developments.

Deliberations at Panel meetings

General issues

10. In view of mounting public concern on the subject matter, the Panel on Development held discussions with the Administration on 22 April and 31 May 2008 on issues arising from the provision of public facilities in private developments. Deputations also attended the latter meeting to present their views. The Administration explained that the objectives of the policy were integrated planning, timely provision of public facilities and optimization of land use. 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 and thus it should be retained.

11. 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.

12. 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.

13. 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

14. 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

15. 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

16. 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.

17. 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

18. 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

19. 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.

Deliberations at Council meetings

20. Several questions on the subject matter were raised at Council meetings. Dr Hon Margaret NG raised an oral question on 5 March 2008 on the circumstances surrounding the public open space located at the ground level of Time Square in Causeway Bay. A written question was raised by Hon LEE Wing-tat on 23 April 2008, questioning whether there was sufficient disclosure of relevant information to prospective property buyers. Oral questions on "Use of

public facilities on private land by public" and "Management of public facilities on private land" were raised by Hon James TO and Hon SIN Chung-kai respectively on 7 May 2008. Hon James TO was concerned about the rights of members of the public in using public facilities on private land vis-à-vis those on government land. Hon SIN Chung-kai questioned, among others, whether the Government had issued guidelines to private land owners on the management of public facilities. A written question on "Management of public open space in private developments" was also raised by Hon Audrey EU at the same meeting. Hon Audrey EU questioned, among others, whether the Government would consider reviewing the Hong Kong Planning Standards and Guidelines to set out the basic standards for private developers on the opening of public facilities for public use. The wording of the questions and the Administration's replies are in **Appendices I to V**.

21. A list of relevant papers is in **Appendix VI**.

Council Business Division 1
Legislative Council Secretariat
4 December 2008

**Oral question on "Public Open Space"
raised at the meeting of the Legislative Council on 5 March 2008
and the Administration's reply**

(This question was raised by Dr Hon Margaret NG)

Question:

The media have recently reported that when the Town Planning Board ("TPB") granted planning permission for the development project of Times Square in Causeway Bay ("the Square"), it had imposed some additional conditions, one of which required that a public open space be set aside at the street level of the Square. However, the area concerned has never been open for public use since the completion of the Square, and the property management company of the Square even charge venue rental for the commercial activities organised by commercial organisations in that area. In this connection, will the Government inform this Council:

- (a) of the details of the additional conditions specified in the planning permission granted by TPB for the development project of the Square;
- (b) whether it has assessed the rights and responsibilities of the owner or management company of the Square in respect of the area, and to which party the income derived from the area should belong; and
- (c) of the policies or measures in place to ensure that real estate developers will comply with the condition on the provision of public open space as stipulated in the land leases?

Reply:

Madam President,

My reply to the three-part question is as follows:

- (a) The planning application for the development of Times Square in Causeway Bay was approved by the Town Planning Board (TPB) in May 1989. In approving the planning permission, the TPB had imposed the following three conditions:
 - (i) an amount of public open space provision;

- (ii) the layout and implementation of a landscape scheme for the public open space to the satisfaction of the then Director of Buildings and Lands or of the TPB; and
 - (iii) the provision of access, car parking and loading and unloading facilities and the implementation of a traffic improvement proposal in the area to the satisfaction of the Commissioner for Transport or of the TPB.
- (b) The development project of Times Square provides a public open space is located on the ground level of the Square at the junction of Russell Street and Matheson Street. The space covers 3,017 square metres and comprises two parts, namely the covered area and the open area. The space dedicated for public use is located on private land. The title of the land belongs to the owner of Times Square who has the obligation to manage the public open space. His rights and obligations are governed by a Deed of Dedication (the Deed). The Deed was signed in 1992 by the then Director of Buildings and Lands on behalf of the Government and the owner of Times Square. The Deed governs the rights and obligations of the owner, the land use of the site and the enforcement actions on the part of the Government. The key terms and conditions are as follows:
- (i) The owner shall at its own expense keep and maintain the dedicated area in a clean and tidy condition and free from any obstruction;
 - (ii) The owner shall employ cleaners and watchmen for ensuring effective management;
 - (iii) The owner should open the dedicated area for pedestrian passage or passive recreation ground for public use;
 - (iv) Subject to the prior approval of the Buildings Department, the owner has the right to place (or permit the placing of) temporary structures on the dedicated area for temporary exhibitions and displays, provided that the same shall not impede the use of pedestrian passage. The owner may charge the organisations for their use of electricity/water or related facilities and other services provided by the owner in respect of such exhibitions or displays;
 - (v) If the owner fails to comply with the requirements of the Deed, the Government can take follow-up actions in accordance with the provisions of the Deed, e.g. requiring the owner to undertake works for the removal of any obstruction from the dedicated area impeding the use of pedestrian passage.

- (c) Generally, the TPB can impose appropriate conditions on individual merits in approving planning permissions, for example requiring an applicant to provide public open space. Having regard to the practical considerations, such conditions will be incorporated in the land leases or implemented through the Buildings Ordinance. To ensure that developers have fulfilled the relevant provisions, the Lands Department and the Buildings Department will scrutinise the development projects upon completion to satisfy themselves that all the requirements in the land leases or building plans are complied with, before issuing the certificates of compliance or occupation permits. To ensure that the owners continue to discharge their duties, the two departments will monitor the implementation of the relevant provisions by conducting spot checks and act upon receiving complaints from members of the public.

Finally, in response to the introduction of Hon Margaret NG's question, I wish to point out that the development project of Times Square has fulfilled the requirements of the Deed mentioned above. Upon completion of Times Square, the public open space on the ground level has been opened for public use as a pedestrian passage and an open space for passive recreation in accordance with the Deed. I have also clarified that in accordance with the provisions of the Deed, the owner of Times Square may charge organisations holding exhibitions or displays on the Area, but only for their use of water/electricity or related facilities and other services provided by the owner in respect of such exhibitions and displays.

Appendix II

Written question on "Public facilities in private developments" raised at the meeting of the Legislative Council on 23 April 2008 and the Administration's reply

(This question was raised by Hon LEE Wing-tat)

Question:

In connection with the disclosure by property developers and estate agents to prospective property buyers that certain facilities in private developments shall be open for public use in accordance with the land leases or deeds of dedication concerned, will the Government inform this Council:

- (a) given that some sales brochures or property information provided by estate agents to prospective property buyers had depicted the club house and public open space on the podium as "club house with podium garden for exclusive use of residents", while some sales brochures stated that "owners shall be responsible for the maintenance of various items spelt out in clause 26(a) of the Special Conditions of the Land Grant" but failed to provide the contents of the clause, whether the Government and the Estate Agents Authority are aware of such situations;
- (b) whether the Government has studied if consumers have been misled by such sales brochures and property information into believing wrongly that the public open space in the developments were for residents' exclusive use, and whether such sales brochures and property information have listed out the obligations to be discharged by property owners;
- (c) whether it can set out in detail the information to be provided in sales brochures as stipulated in the Lands Department Consent Scheme, and whether the scope and conditions of opening up the facilities (such as open space) for public use in accordance with the land leases or deeds of dedication as well as the relevant obligations of owners are included in the information; if they are not included, whether the Government will amend the relevant requirements so that prospective buyers can have access to the relevant information through such sales brochures; and
- (d) whether it knows if the information referred to in (c) are included in the guidelines issued by the Real Estate Developers Association of Hong Kong to its members on sales brochures; if such information is not included, whether it will ask the Association to revise the relevant guidelines?

Reply:

Madam President,

In accordance with the Lands Department's Consent Scheme and the Guidelines for Sales Descriptions of Uncompleted Residential Properties issued by the Real Estate Developers Association of Hong Kong ('REDA'), developers should provide in the sales brochures specified property information, including salient points of the Government lease, and the information so provided must be accurate at the time of printing of the sales brochures. In addition, in approving pre-sale applications from developers, the Lands Department will clearly state in its pre-sale consent letter that apart from strict compliance with the requirements of the Consent Scheme, developers should provide in the sales brochures information on the public facilities or public open space which developers (subsequently owners) are responsible for managing, operating and maintaining at their own expenses. The sales brochures should also contain a statement indicating that owners will have to meet a proportion of the relevant expenses in the management charges.

My reply to the four-part question is as follows:

- (a) Developers are responsible for ensuring the accuracy of all the information contained in the sales brochures. They may be legally liable if the sales brochures contain any inaccurate, misleading or false information. Separately, the Estate Agents Authority ('EAA') has issued practice circulars requiring estate agents to provide accurate property information to prospective purchasers. In case of non-compliance with the practice circulars or provision of inaccurate and misleading information, the EAA can undertake disciplinary actions against the estate agents or suspend their licences under the Estate Agents Ordinance. We have recently received comments and complaints about developers not having disclosed clearly salient points of the Government leases in the sales brochures of certain developments. We have followed up on the cases concerned.
- (b)&(c) As mentioned above, developers are required under the Consent Scheme to provide in sales brochures salient points of the Government lease (including lot number, lease term, user restrictions on the lot, onerous lease conditions which would restrict purchasers' usual legal rights) and other specified items of information. These include general description of the development; the identity of the intended manager if known; names of contractors and Authorized Persons; location plan showing prominent neighbouring facilities or features; layout plan showing communal facilities within the development; salient points of the Deed of Mutual Covenant ('DMC') (including definition of common areas; terms of appointment of the management company; the basis of fixing

management fees; the management fee deposit); anticipated completion date of the building; detailed plan of a typical floor; schedule of flat size; fittings and finishes; the location, number and dimensions of the carparks; date of printing of sales brochures; miscellaneous payments upon delivery of units to owners; slope maintenance responsibilities and contributions by owners; statement on the payment of preliminary deposit; and the amount to be forfeited in case of cancellation of the Sale and Purchase Agreement.

In addition, in approving pre-sale applications from developers, the Lands Department will clearly state in its pre-sale consent letter that developers should provide in the sales brochures information on public facilities or public open space which developers (subsequently owners) are responsible for the managing, operating and maintaining at their own expenses. The sales brochures should also contain a statement indicating that owners will have to meet a proportion of the relevant expenses in the management charges.

In view of the relevant cases we have received and public concern about the provision of public facilities and public open space by private residential developments, we will explore with relevant parties, including the REDA, Consumer Council and EAA, ways to further enhance the disclosure in sales brochures of salient points of the Government lease, in particular information on areas which are to be opened for public use and maintained at owners' expenses.

- (d) Under the REDA guidelines, developers are required to provide specified property information, including salient points of the Government lease and owners' responsibilities to construct and maintain any facilities prescribed in the lease. The REDA has also asked developers to use larger prints or texts of different colour in the sales brochures to highlight the relevant clauses about owners' responsibilities regarding the maintenance of public facilities. Prospective purchasers can also refer to the Government lease or DMC for details of the relevant clauses. The REDA has already issued guidelines requiring developers to provide a copy of the Government lease and DMC at the sales offices for free inspection by prospective purchasers.

In addition, the REDA has requested developers to appoint an independent auditor to certify that the sales arrangements and information contained in the sales brochures comply with the requirements of the REDA guidelines and to submit to it the relevant independent audit report.

**Oral question on "Use of public facilities on private land by public"
raised at the meeting of the Legislative Council on 7 May 2008
and the Administration's reply**

(This question was raised by Hon James TO)

Question:

Regarding members of the public using facilities such as pedestrian passages, footbridges and open space managed by land owners for public use ("public facilities") on private land, will the Government inform this Council whether:

- (a) there are differences on use restrictions between public facilities on private land and those on government land; if there are, of the differences;
- (b) members of the public may apply for conducting activities or hanging banners in public facilities on private land; if they may, of the procedure, conditions and restrictions of application; if they may not, the reasons for that; and
- (c) any mechanism is in place to handle complaints lodged by members of the public about not being allowed to use public facilities on private land; if so, of the details; if not, whether such a mechanism will be set up?

Reply:

Madam President,

At the LegCo sitting today, a total of three Members have raised questions on the provision of public facilities within private developments. This shows the concern of the community over this issue.

As pointed out in the paper provided by this Bureau to the LegCo Development Panel last month, the provision of public facilities within private development may arise under the land sale conditions or planning conditions, and be subsequently translated into the lease conditions, or in accordance with the Building Ordinance, requiring owners to dedicate certain floor spaces for public use within their private land, which is subsequently subject to Deeds of Dedication. Under these two circumstances, the Government and the owners of the respective properties are parties to a contract, and both parties should abide by the spirit of the contracts and the relevant provisions in the contracts. Generally speaking, owners should design and build the relevant public facilities

in accordance with the requirements in the contracts. If these public facilities are not handed over to the Government upon completion, the relevant contractual documents will require owners to bear the management and maintenance responsibilities and open these facilities for public use. Hence, arrangements for public facilities within private developments are not the same in nature as those for public facilities managed by Government departments.

My reply to the three-part question raised by the Hon James TO regarding public facilities managed by private owners on their private land is as follows:

- (a) There is obvious difference between these public facilities managed by private owners within their private developments and those facilities on Government land that are managed by Government departments. Using open space as examples, public open space under the Leisure and Cultural Services Department (LCSD) are governed by the Pleasure Grounds Regulations, which are subsidiary legislation under the Public Health and Municipal Services Ordinance (Cap. 132), with each pleasure ground subject to these Regulations, following its gazettal. Users must abide by the Pleasure Grounds Regulations and all instructions from the officers managing such facilities. As for public open space within private developments for public use, the management and use of such facilities would depend on the relevant contractual documents, i.e. land lease conditions or the provisions in the Deeds of Dedication. In general, lease conditions would briefly stipulate that "a grantee shall at his/her own expense provide open space and be responsible for its subsequent maintenance, and allow members of the public to use these facilities freely for lawful purposes, without payment of any nature". If private owners prescribe conditions on the use of such facilities on their own initiatives, those conditions could not be in breach of the contractual provisions.
- (b) For public facilities on private land for public use, owners can decide on their own whether or not to permit individual organisation or person to organise activities or display banners. However, this should not be in breach with the contractual provisions in the leases or the Deeds of Dedication. Generally speaking, users are not allowed to organise activities which are unlawful or are in breach of the contractual provisions, in such land or facilities for public use. Also, they should not obstruct others from enjoying the use of such facilities appropriately. Furthermore, unless otherwise specified in the leases or the Deeds of Dedication, these facilities should only be used according to its originally designated uses, such as public passage or open space. Generally speaking, the display or hoisting of publicity material on footbridges is not allowed under the contractual provisions.

- (c) The contractual provisions stipulate that the public facilities should be open for public use, but owners can decide on their own whether or not to allow certain activities or behaviours of individual organisations or persons on their private land. What is important is that the decisions of the owners should not be in breach of the contractual conditions. If applicant organisations or persons have doubts on the interpretation of contractual provisions or consider that the owners' decisions of not approving their applications are in breach of the provisions in the leases or Deeds of Dedication, they can approach the Lands Department or the Buildings Department to make enquiries or file complaints.

**Oral question on "Management of public facilities on private land"
raised at the meeting of the Legislative Council on 7 May 2008
and the Administration's reply**

(This question was raised by Hon SIN Chung-kai)

Question:

Regarding facilities such as pedestrian passages, footbridges and open spaces managed by the land owners for public use ("public facilities") on private land, will the Government inform this Council:

- (a) whether the Government has issued guidelines to private land owners on the management of public facilities, requiring them to put up legible notices at prominent places to inform the public of the exact boundaries, opening hours, enquiry telephone numbers, etc. of these public facilities; if it has, of the details of the guidelines; if not, whether it will issue such guidelines;
- (b) whether it allows private land owners to let public facilities; if so, whether it has issued guidelines to them on the letting arrangements, prescribing such matters as permissible charge levels and whether applications from non-profit-making organisations should be given priority etc.; if it has not, whether it will issue such guidelines; and
- (c) how the Government handles the letting of public facilities by private land owners at a charge the level of which exceeds that considered reasonable by the Government?

Reply:

Madam President,

My reply to the three-part question is as follows:

- (a) Public facilities provided within private developments are subject to the provisions in the leases and the Deeds of Dedication. Generally speaking, these provisions placed emphasis on the two parties to the contract, in terms of the rights and obligations in respect of construction, use, management and maintenance of such facilities.

To facilitate members of the public to use these public facilities within private developments, the Development Bureau (DEVB) has earlier on taken forward a number of measures, including the publication of detailed information related to these public facilities on the websites of the relevant Government departments. Currently, the information already published includes the Buildings Department (BD)'s list of 79 private developments with public passage dedicated for public use under the Deeds of Dedication and the Lands Department (LandsD)'s list on 152 private developments completed in or after 1997 with public facilities for public use.

The two departments have also issued letters to the owners of the above-mentioned private developments, advising the putting up of notices in prominent places, indicating those public facilities which are open for public use, as well as indicating clearly their locations and uses, opening hours, the organisations or persons responsible for management and maintenance of these facilities and their contact telephone numbers.

The above-mentioned advice to owners matches broadly with what the Hon SIN Chung-kai has asked, and DEVB will actively consider the appropriateness or otherwise of turning such advice into standard guidelines, to serve as reference for the owners of existing private developments and future developments.

- (b) In general, under the provisions of the leases or the Deeds of Dedication, owners are required to allow members of the public to use these public facilities for lawful purposes without payment of any nature upon completion of these facilities. Hence, owners are not allowed to let out such facilities for profits or obstruct others from using these facilities. There are a few exceptions though, such as providing fee-paying public car parks under the leases, temporary exhibition and display that are allowed under the Deeds of Dedication, or a short term waiver has been obtained from LandsD, upon payment of the relevant fees to the Government, for certain uses other than the originally designated uses. Details of such private developments have already been clearly set out in the published information on the websites for perusal by the public.
- (c) If owners act in breach of the provisions in the leases or the Deeds of Dedication, the Government will take appropriate action having regard to the actual circumstances of each case, including legal action.

Written question on "Management of public open space in private developments" raised at the meeting of the Legislative Council on 7 May 2008 and the Administration's reply

(This question was raised by Hon Audrey EU)

Question:

Recently, quite a number of members of the public are concerned about their rights to use the public facilities in private developments and restrictions on such use. In this connection, will the Government inform this Council:

- (a) whether the Government will consider reviewing the current version of the Hong Kong Planning Standards and Guidelines to set out the basic standards for private developers on the opening of the above public facilities for public use (e.g. such facilities must be open 24 hours a day, types of public activities allowed in such facilities and other restrictions on public use of such facilities, etc.);
- (b) given that after the release by the Government earlier on of a list of private developments completed after 1997, which were required to provide public facilities, the Secretary for Development has undertaken to continue to compile the relevant information for the period before 1997 and upload such information onto the Government websites in batches upon completion of work, of the latest work progress; and state, according to the information already processed, the number of private developments completed before 1997, in which the developers were required by the Government to provide public facilities under their land leases, as well as the following details of such developments and facilities:

Address	Area	Nature and use of public facility	Year of approval
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and;

- (c) given that the "deeds of dedication" provide for dedication of areas in private developments for public passage, and the Buildings Department had, in its inspections made in 2006 and 2007 of such dedicated areas, identified cases of unauthorized structures causing obstruction to public passage, whether the Government has initiated any prosecution in respect of such cases; if it has, of the details; if not, the reasons for that?

Reply:

Madam President,

My reply to the three-part question is as follows:

- (a) The purpose of the Hong Kong Planning Standards and Guidelines (HKPSG) is to provide basic guidelines to ensure that, during the planning process, there is a fair basis for the Government to reserve adequate land to facilitate social and economic development and provide appropriate public facilities to meet the needs of the public. These standards and guidelines can help determine the total area of land required for the various types of land uses and their territorial distribution; provide the locational criteria for individual land uses and facilities; and formulate a land use budget and serve as assessment criteria for land uses of various districts.

Using open space as an example, the planning principles, hierarchy of classification, standards for provision and calculation for meeting such standards, zoning, locational criteria and design guidelines have been set out in detail in Chapter 4 of the HKPSG. It is worth mentioning that there is no distinction between public and private open space in the standards for open space in the HKPSG. Also, the HKPSG has not provided specific guidelines for public facilities provided by private developers.

The standards and guidelines for general public facilities have been covered in the HKPSG. The purpose of the HKPSG is to reserve land for planning public facilities. Operational details, such as opening hours, restriction of use and activities allowed in the area etc., are not suitable for inclusion in the HKPSG. Furthermore, the uses and operation of these facilities vary according to different circumstances and it is not possible to generalize them into a single standard to cover all scenarios.

- (b) On March 28, 2008, the Lands Department (LandsD) published a list on the provision of public facilities and/or open space required under leases for public use in private developments completed in or after 1997 on its website. LandsD is also preparing a similar list for private developments completed before 1997 and we will announce it when ready. As the number of private developments involved is large, publishing the lists in phases is a more pragmatic approach. We expect that the second phase of the list can be published on LandsD's website in the latter part of this year.
- (c) In 2006 and 2007, during inspections by the Buildings Department (BD) in respect of public facilities required under deeds of dedication for public passage in private developments, 4 cases involving unauthorized structures obstructing public passage have been found. The parties concerned have been immediately reminded by BD to remove the obstructions to ensure that

the public passage is accessible. As the parties concerned have removed the obstructions voluntarily and maintain an unobstructed public passage upon receipt of BD's notification, there is no need for BD to take further action, including prosecution action.

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 http://www.legco.gov.hk/yr07-08/english/panels/plw/papers/dev0422cb1-1273-4-e.pdf Minutes of meeting 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".	Information paper http://www.legco.gov.hk/yr07-08/english/panels/plw/papers/dev0422cb1-1273-4-e.pdf Minutes of meeting 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