

**立法會**  
**Legislative Council**

LC Paper No. CB(1)611/08-09  
(These minutes have been seen  
by the Administration)

Ref : CB1/PL/DEV/1

**Panel on Development**

**Minutes of special meeting**  
**held on Monday, 8 December 2008, at 10:15 am**  
**in the Chamber of the Legislative Council Building**

**Members present** : Hon LAU Wong-fat, GBM, GBS, JP (Chairman)  
Prof Hon Patrick LAU Sau-shing, SBS, JP (Deputy Chairman)  
Hon Albert HO Chun-yan  
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Hon James TO Kun-sun  
Hon CHAN Kam-lam, SBS, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Hon WONG Yung-kan, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Albert CHAN Wai-yip  
Hon LEE Wing-tat  
Hon Alan LEONG Kah-kit, SC  
Hon CHEUNG Hok-ming, SBS, JP  
Hon KAM Nai-wai, MH  
Hon Cyd HO Sau-lan  
Hon Starry LEE Wai-king  
Hon Tanya CHAN  
Dr Hon Priscilla LEUNG Mei-fun  
Hon Mrs Regina IP LAU Suk-yee, GBS, JP

**Members attending** : Hon WONG Kwok-hing, MH  
Hon LEUNG Kwok-hung

**Members absent** : Dr Hon Philip WONG Yu-hong, GBS  
Hon IP Kwok-him, GBS, JP  
Dr Hon Samson TAM Wai-ho, JP

**Public officers attending** : **Agenda item I**

Mrs Carrie LAM CHENG Yuet-ngor, JP  
Secretary for Development

Mrs Susan MAK LOK Suet-ling, JP  
Deputy Secretary for Development

**Agenda item II**

Mrs Carrie LAM CHENG Yuet-ngor, JP  
Secretary for Development

Mr John CHAI Sung-veng, JP  
Director of Civil Engineering & Development

Mr YIP Sai-chor, JP  
Head of Civil Engineering Office  
Civil Engineering and Development Department

Mr Norman HEUNG Yuk-sai  
Deputy Project Manager (Kowloon)  
Civil Engineering and Development Department

**Agenda item III**

Mrs Carrie LAM CHENG Yuet-ngor, JP  
Secretary for Development

Mr Raymond YOUNG Lap-moon, JP  
Permanent Secretary for Development (Planning & Lands)

Miss Diane WONG Shuk-han  
Principal Assistant Secretary (Planning & Lands) 1  
Development Bureau

Miss Annie TAM Kam-lan, JP  
Director of Lands

Mrs Ava NG TSE Suk-ying, JP  
Director of Planning

**Clerk in attendance :** Ms Anita SIT  
Chief Council Secretary (1)4

**Staff in attendance :** Mr WONG Siu-yee  
Senior Council Secretary (1)7

Ms Christina SHIU  
Legislative Assistant (1)7

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Action

**I            Creation of a Principal Assistant Secretary for Development post and a Government Town Planner post in Planning and Lands Branch of Development Bureau**

(LC Paper No.  
CB(1)319/08-09(01)

-- Administration's paper on proposed creation of an Administrative Officer Staff Grade C Post and a Government Town Planner Post in the Planning and Lands Branch of the Development Bureau)

The Secretary for Development (SDEV) briefed members on the proposal for the creation of a Principal Assistant Secretary for Development (PAS(H)) post to strengthen harbourfront enhancement initiatives and harbour preservation; and a Government Town Planner (GTP) post to strengthen work relating to cross-boundary planning and development, Frontier Closed Area and New Development Areas (NDAs). Similar to the creation of a dedicated Commissioner for Heritage post in the Works Branch which had greatly facilitated the Development Bureau's heritage conservation work, she appealed to Members for their support to creating the two proposed posts in the Planning and Lands Branch.

Permanent versus supernumerary posts

2.        Mr LEE Wing-tat said that if the Administration's proposal was approved, there would be a total of three Principal Assistant Secretaries in the Planning Unit of the Planning and Lands Branch. He expressed concern that other units in the Development Bureau would also submit proposals for

additional directorate staff in future. He also queried the need to create the two proposed posts on a permanent basis.

3. Mr Albert CHAN commented that there were insufficient justifications for creating a permanent D2 post for harbourfront enhancement because the bulk of the enhancement work should be completed within three to five years after the design and consultation stages. As such, a time-limited supernumerary post would suffice. Although members noted that there had been some development and progress in harbourfront enhancement work, the Administration's proposal would create an impression that the Administration was taking the opportunity to create high-level posts. He added that the Administration should first examine whether there was over-staffing in other bureaux and departments before seeking to create new posts.

4. In response, SDEV explained that under the existing structure of the Planning and Lands Branch, there was only one Principal Assistant Secretary who was responsible for work including harbourfront enhancement, review of Outline Zoning Plans and implementation of measures to reduce development intensity. As the Development Bureau was tasked with the important responsibility of bringing the harbour to the people, the proposed PAS(H) post would help strengthen the work in this area. The Administration would brief the Subcommittee on Harbourfront Planning which was recently formed under the Panel on the details of the short-term, medium-term and long-term harbourfront enhancement work, and would also arrange a round-the-harbour tour for members. The reprovisioning of facilities to enhance accessibility to certain harbourfront areas was an example of long-term work. She said that it would not be practical to expect that harbourfront enhancement work could be completed within three to five years. Apart from design of harbourfront enhancement work and the related public consultation, the Development Bureau would also be responsible for the implementation of these project works and for coming up with the suitable management model for some of the facilities. As regards the proposed GTP post, SDEV advised that the officer would handle cross-boundary planning and development issues and the implementation of NDAs. As present, these areas of work were handled by a departmental officer on loan. The Development Bureau would not be over-staffed with the two proposed posts in place. She added that she had no intention to request for additional directorate staff in the Development Bureau again within her current term of office. As a matter of fact, two D1 posts within the DEVB family were scheduled for deletion in the forecast for the year. As long-term work was involved, time-limited posts would not be the appropriate option.

5. Ir Dr Raymond HO expressed support for the proposal. On harbourfront enhancement work, he commented that 10 years would not be sufficient for completing the work, not to say three to five years. On the development of NDAs and the Lok Ma Chau Loop, he said that development of

similar new areas in other places would take 20 to 30 years and the planning and development processes would require a lot of co-ordination and negotiation work.

6. Prof Patrick LAU said that apart from harbourfront enhancement works, the management of harbourfront areas was also an important aspect that needed to be looked into in the long term. He asked whether the PAS(H) would be responsible for this area of work. If so, there would be stronger justifications for a permanent post. As regards the GTP post, he was concerned about how the GTP could best oversee the implementation of NDAs. In this regard, he considered that the Administration should draw reference from the implementation of new towns in the past.

7. In response, SDEV said that harbourfront enhancement work involved cross-bureaux and cross-departmental coordination. In some cases, the PAS(H) would need her support in order to work effectively on this area. Revitalization of idle piers was an example. As regards the management of harbourfront areas, she was aware of the suggestion in the community that a dedicated authority should be established for the purpose. The Administration maintained an open mind on the issue and would explore practicable models. If there was a decision to establish such an authority in the future, the staffing requirements of the Development Bureau would be reviewed accordingly. She added that she would further strengthen the justifications for the two proposed posts in the submission to the Establishment Subcommittee.

8. Ms Starry LEE expressed support for the Administration's proposal. As the Victoria Harbour was a working harbour, a lot of coordination work would be required in implementing harbourfront enhancement work. She urged the Administration to implement enhancement measures as soon as possible, especially for harbourfront areas on the Kowloon side such as Hung Hom and To Kwa Wan. The Administration should delete the PAS(H) post when it was no longer needed.

9. In response, SDEV said that the Administration would make use of every opportunity to carry out harbourfront enhancement work. The provision of a continuous promenade from Hung Hom to Kai Tak was a long-term objective and implementation would hinge on the reprovisioning of existing facilities. On staff establishment, the Administration's internal vetting process for creating additional posts was very stringent and each bureau or department had to consider the possibility of redeployment and deletion of posts.

#### Overall staffing situation of the Government

10. Mr KAM Nai-wai said that although the public recognized the work of the Development Bureau, they might query the necessity of an increase in

staffing in order to cope with additional workload. As he could not see that the establishment of the Commissioner for Heritage post had brought about substantial achievements, he queried whether creating a PAS(H) post for harbourfront enhancement was justified. He noted that the approved Under Secretary post in the Development Bureau was not yet filled. In this regard, he sought explanation on the division of labour within the Development Bureau. Whether the Under Secretary post would be filled was one of his considerations in examining the Administration's current proposal. Ms Emily LAU said that SDEV should brief members on the responsibilities of her Under Secretary although creation of the post had already been approved.

11. As regards heritage conservation, SDEV said that the Development Bureau would provide a comprehensive paper on an update of its initiatives in this area of work for discussion by the Panel. On division of labour, she said that there was no overlap in work responsibilities between the Under Secretary and civil servants in the Development Bureau. In fact, they would mutually support one another's work. As the Under Secretary post in the Development Bureau had been approved by the Finance Committee, the post would be filled if there was a suitable candidate.

12. Ms Emily LAU said that the Administration had to convince members of the need for additional staffing. She expressed concern that the economic climate might become even worse than that during the outbreak of the Severe Acute Respiratory Syndrome in 2003. At that time, creation of posts would be offset by deletion of the same number of posts so as to contain the civil service establishment. The Administration should conduct an overall internal review of the additional staffing requirements of various bureaux and departments.

13. In response, SDEV said that the Civil Service Bureau would report to the Legislative Council on the overall staffing requirements of the Government. The proposal for creating the two posts in the Development Bureau was put forward after having been vigilantly vetted by the Civil Service Bureau and the Financial Services and the Treasury Bureau. The Development Bureau would review its plan to create another three directorate posts in the Works Branch, also included in the forecast for the year.

14. Ir Dr Raymond HO expressed support for the Administration's proposal because it was important to have a dedicated post for a specific area of work. Enhancing coordination within the Government was of utmost importance because each department had its own priorities. In the past, the lack of coordination had caused delay to the implementation of some projects. The justifications for the PAS(H) post would be even stronger if the officer would provide enhanced support for public engagement activities. The Administration had deleted posts, especially from works departments, in the past, for example, there was deletion of posts upon the merging of the Civil Engineering

Department and the Territory Development Department into the Civil Engineering and Development Department.

15. In response, SDEV said that the PAS(H) would spearhead and promote active engagement with stakeholders and the public on harbourfront enhancement initiatives. She concurred that it would be desirable to have officers at an appropriate level responsible for the increasing public engagement activities.

16. Mr Alan LEONG expressed support for the Administration submitting the proposal to the Establishment Subcommittee, but suggested that the Development Bureau should clarify that no other existing staff could share out the responsibilities of the two proposed posts. He considered that the proposal might have to face difficulties in view of the large number of additional posts proposed by various bureaux and departments in the coming year, namely 8 permanent and 16 supernumerary posts. Members of the Civic Party were pleased that Hong Kong's town planning work would be led by a town planner and not by a works professional. He asked whether the Development Bureau was responsible for overseeing the various projects to be carried out on North Lantau. He was worried that if the Transport and Housing Bureau took the lead, the emphasis would be placed on facilitating vehicular traffic.

17. In response, SDEV said that with the Revised Concept Plan for Lantau already in place to provide an overall planning framework to guide the future development of Lantau, the respective bureaux would take the lead in implementing various works projects on Lantau under their policy areas. By way of illustration, enhancement projects for Mui Wo and Tai O would be undertaken by the Development Bureau and the logistics park by another bureau. She would relay Mr Alan LEONG's views on the development of Lantau to the Financial Secretary.

18. Mr Abraham SHEK expressed support for the Administration's proposal because during economic recession, creating employment opportunities through implementation of infrastructure projects would have a chain effect in boosting the economy. Both the Administration and the Legislative Council should adopt a new mentality and make concerted efforts to expedite the implementation of infrastructure projects. The Administration should also review whether additional staffing for the Planning Department and the Lands Department was needed.

19. SDEV thanked Mr Abraham SHEK for his support. She said that the Administration adopted a restrained approach in creation of new posts to cope with additional workload, and the Development Bureau would further streamline existing work procedures to facilitate cross-bureaux and cross-departmental coordination.

Other comments

20. Mrs Regina IP expressed support for the Administration's proposal, especially the GTP post. She opined that the post should be created as soon as possible to take forward the development of the Lok Ma Chau Loop. The implementation timeframe of the Lok Ma Chau Loop project should be compressed and the GTP should be able to inject new ideas on how to expedite the project. She also expressed support for the PAS(H) post in principle, but pointed out that pedestrian accessibility to some harbourfront areas, such as the Quarry Bay Park, should be enhanced as soon as possible.

21. In response, SDEV said that accessibility was an important principle in harbourfront enhancement work and the Administration would introduce further enhancement measures, such as adding more signage, to facilitate accessibility.

22. Mrs Sophie LEUNG expressed support for the Administration's proposal because it would strengthen the Development Bureau's capability to take forward its work from a more global perspective. Specifically, there would be better coordination and more interaction with the public in harbourfront enhancement work. She also expressed support for the revised responsibilities of the two existing Principal Assistant Secretaries with the creation of the new posts.

23. Mr WONG Yung-kan was pleased to note that the GTP post would, among others, oversee projects at the boundary areas, such as the Lok Ma Chau Loop. Implementing more infrastructure projects would boost the economy. He urged the Administration to communicate with villagers when implementing infrastructure projects in the New Territories. As regards harbourfront enhancement, he considered that the Administration should also give due attention to waterfront areas in the New Territories. He also urged the Administration to implement measures to mitigate waves within the Victoria Harbour.

24. In response, SDEV said that the Civil Engineering and Development Department would be responsible for waterfront enhancement work outside the Victoria Harbour. Examples of such work included the proposed cycle track along the waterfront from Tsuen Wan to Tuen Mun and the proposed waterfront enhancement measures in Tseung Kwan O. As regards mitigating waves within the Victoria Harbour, seawalls with wave absorbing features would be used for the Central Reclamation Phase III. Her colleagues in the Civil Engineering and Development Department would further brief Mr WONG Yung-kan on wave mitigation measures after the meeting.



25. The Chairman said that he would report Members' views to the Establishment Subcommittee.

**II Creation of two time-limited Chief Engineers (D1) Directorate posts in the Civil Engineering and Development Department**

(LC Paper No.  
CB(1)319/08-09(02)

-- Administration's paper on proposed creation of two supernumerary posts of Chief Engineer in the Civil Engineering and Development Department)

26. SDEV briefed members on the justifications for creating two supernumerary project-based posts of Chief Engineer in the Civil Engineering and Development Department to oversee the infrastructure works for the Kai Tak Development and the proposed Liantang/Heung Yuen Wai Boundary Control Point (BCP) project.

Overall staffing situation of the Government

27. Ir Dr Raymond HO expressed support for the proposed supernumerary posts, which he considered would facilitate the implementation of more public works projects and hence create more employment opportunities to compensate for the reduction in employment opportunities in the private construction sector. As implementing public works projects required teamwork, he commented that additional staffing at lower levels was also needed, especially in works departments. The Administration had deleted too many works-related posts in the past, and this had affected the progress of the pre-construction work of some projects.

28. Mr KAM Nai-wai was worried that the Administration would create many high-level posts when implementing public works projects with a total cost of some \$100 billion. He enquired whether an additional CE post had been created during the implementation of the Hong Kong- Shenzhen Western Corridor (HK-SWC) project and, if so, whether that post still existed or had been deleted. If the post still existed, he asked whether it could be redeployed to the Civil Engineering and Development Department. He expressed concern that Government departments would put up proposals for creating posts based on their own needs, without any coordination with other departments. Although Members supported expediting the implementation of infrastructure projects, the Administration should provide information on the overall staffing requirements of various bureaux and departments to assure Members that there was a genuine need to create additional posts. The Administration should also provide the number of jobs to be created by those public works projects.

29. Mr LEE Wing-tat also expressed concern on the 24 proposed additional directorate posts to be put forward by various bureaux and departments. While some bureaux and departments would delete posts which were no longer required, not all bureaux and departments would do so. He queried whether there was a corresponding reduction in staffing levels in bureaux and departments after their workload had been reduced. As regards the Liantang/Heung Yuen Wai BCP project, he enquired about the completion date of the project.

Admin 30. In response, SDEV said that the total project cost estimates for the some 100 public works projects to be submitted to the Legislative Council for funding approval during the current legislative session would be in the region of \$100 billion. The Administration would provide in the relevant funding proposal the respective numbers of employment opportunities for labourers and professional/technical staff to be created by each project. Nevertheless, she agreed to provide the number of employment opportunities to be created by those public works projects submitted or to be submitted for consideration by the Legislative Council in the current legislative session. Similar information would also be provided to the Panel on Manpower for its meeting scheduled for 18 December 2008. As regards whether a CE post had been created for the HK-SWC project, the Director of Civil Engineering and Development (DCED) said that the Highways Department also deployed a CE post for the project at that time. SDEV said that the Liantang/Heung Yuen Wai BCP project, which would be completed in 2018, was led by the Civil Engineering and Development Department while the HK-SWC project was led by the Highways Department. The two proposed CE posts in the Civil Engineering and Development Department would be for a period of five years in the first instance. The Development Bureau would review its staffing requirements in due course, taking into consideration the progress of the relevant projects. The need for creation of supernumerary posts depended on the number of projects to be implemented by the relevant department(s). As there were many highway projects in the pipeline, she believed that the Highways Department would, where appropriate, redeploy its staff for implementing other highway projects.

*(Post-meeting note: It is confirmed that Highways Department has not created any CE post for the Hong Kong-Shenzhen Western Corridor.)*

#### Protecting the interests of local contractors and workers

31. Prof Patrick LAU expressed support for the Administration's proposal. As small and medium contractors often could not benefit from large scale infrastructure projects, he considered that infrastructure projects should be sub-divided into different stages or projects of a smaller scale, so that their implementation could be expedited and small and medium contractors could also

bid for the works contracts. He considered that the future CEs under the present proposal should give some thoughts to this.

32. Ms Emily LAU was pleased to note that the Development Bureau would review the need for creating three directorate posts in the Works Branch. She asked whether large scale infrastructure projects could be subdivided into projects of a smaller scale so that small and medium contractors could also bid for the works contracts and, if so, whether the Administration had been adopting such a practice in the past.

33. In response, DCED said that the Administration would consider subdividing large scale infrastructure projects at the planning and design stages. Whether a large scale infrastructure project could be subdivided into projects of a smaller scale would depend on the nature of the project. By way of illustration, if a project comprised a bridge and a tunnel, consideration would be given at the design stage to the feasibility and desirability of procuring the bridge and the tunnel under separate contracts. However, for an ordinary highway, it would be unreasonable to do so. The Administration had to consider the overall cost-effectiveness of subdividing a project and would do so if deemed appropriate. SDEV added that the Administration had to adhere to the requirements of the World Trade Organization Agreement on Government Procurement. In the past, the Administration had adopted an established tendering mechanism which was open and fair and it would continue to do so in future. Even if large scale infrastructure projects were subdivided into projects of a smaller scale, there was no guarantee that small and medium contractors would be successful in the tender exercises. Depending on their capabilities, contractors could participate in tender exercises for three different classes of public works projects, namely those with project estimates up to \$20 million, up to \$50 million and over \$50 million.

34. Mr WONG Kwok-hing expressed support for the Administration's proposal because it would help create more employment opportunities. However, he was worried that if the Administration had to adhere to the World Trade Organization Agreement on Government Procurement (WTO-GPA) for all public works projects, local contractors and workers might not necessarily benefit from those projects, as the contracts for these projects might be awarded to non-local contractors.

35. In response, SDEV said that as Hong Kong was a free economy, it would not be appropriate to exclude non-local contractors from the tender exercises for public works projects. Regardless of which type of contractors was awarded tenders, local workers would benefit from the additional employment opportunities to be created because Hong Kong had strict requirements on importing non-local workers. More minor works projects which were labour

intensive and with a short lead time would be implemented to provide further employment opportunities in the construction sector.

36. Mr LEUNG Kwok-hung said that Hong Kong should accord priority to the protection of the interests of local workers. Hong Kong should be free to decide whether to accede to the WTO GPA. He was worried that pre-fabricated components would be manufactured in the Mainland and Mainland workers instead of Hong Kong workers would be employed to install those components. In his view, designs which would not use pre-fabricated components should be adopted for public works projects. He was of the view that superfluous projects like the West Kowloon Cultural District should not be taken forward. Rather, arts and cultural venues should be dispersed in the 18 districts. He considered that more labour intensive works projects such as rehabilitation of old buildings should be implemented.

37. Mrs Regina IP said that it was optional for Hong Kong to accede to the WTO GPA. As the Mainland was considering acceding to the WTO GPA, the Administration's decision for Hong Kong to remain a party to the Agreement was a political one. Even if Hong Kong was not a party to the Agreement, the Administration could still follow those procurement principles.

38. SDEV responded that she had previously been involved in the work relating to Hong Kong's acceding to the WTO GPA. She considered that acceding to the WTO GPA was very important for Hong Kong's status as an international city in support of free trade. It would be a regressive move for Hong Kong to adopt protectionism.

#### Other comments

39. Ms Starry LEE expressed support for the Administration's proposal in principle. As the planning of the Kai Tak Development had started a long time ago, she enquired about the timetable for implementing the project and the rationale for not creating the two posts earlier. She suggested that some sites in the Kai Tak Development could be allocated for public use on a temporary basis provided that it would not affect the progress of the project.

40. In response, SDEV said that some preliminary works in the Kai Tak Development were already in progress and the Administration would provide the details of the implementation of the project to the Panel in due course. DCED added that as the overall planning for the Kai Tak Development project had already been completed, the project would proceed to the implementation stage, thus requiring additional staffing to take forward the project. As regards allocating some sites in the Kai Tak Development for public use on a temporary basis, the feasibility of using a particular site for such a purpose would depend on the timing of the works to be carried out on that site.

41. Mr CHEUNG Hok-ming expressed support for the Administration's proposal and hoped that the projects would be carried out as soon as possible so as to create more employment opportunities. He asked whether the responsibilities of the relevant proposed CE post would include providing support for reprovisioning Chuk Yuen Village, which would be affected by the Liantang/Heung Yuen Wai BCP project. He also asked whether the said project would be beneficial to the "Three-in-one" NDA scheme, especially for the Fanling North NDA.

42. In response, SDEV said that the proposed CE post would mainly provide support for the works aspects of infrastructure projects such as the Liantang/Heung Yuen Wai BCP project. DCED added that the proposed CE post in the Civil Engineering Office would coordinate the reprovisioning of Chuk Yuen Village. As regards the benefits for the "Three-in-one" NDA scheme, the connecting road to the Linatang/Heung Yuen Wai BCP would also serve the transport needs of the Fanling North NDA.

43. The Chairman said that he would report members' views to the Establishment Subcommittee.

### **III Public facilities in private developments**

LC Paper No. CB(1)319/08-09(03) -- Administration's paper on provision of public facilities in private developments

LC Paper No. CB(1)319/08-09(04) -- Paper on public facilities in private developments prepared by the Legislative Council Secretariat (Background brief)

44. Members noted the supplementary note provided by the Administration and the submission from the Incorporated Owners of Metro Harbour View, which were tabled at the meeting.

*(Post-meeting note: The supplementary note (LC Paper No. CB(1)367/08-09(01)) and submission (LC Paper No. CB(1)367/08-09(02)) were subsequently issued to members on 9 December 2008.)*

45. SDEV said that there were divergent views on the subject matter. The Administration's paper (LC Paper No. CB(1)319/08-09(03)) set out the preliminary findings and recommendations of the review conducted by Development Bureau (DEVB). The Administration had not made any decision on the recommendations, and Members and the public were welcome to give

views. The supplementary note (LC Paper No. CB(1)367/08-09(01)) provided further information on 39 public open space (POS) facilities in private developments. Based on the relevant criteria, the Administration was of the view that Metro Harbour View was a unique case deserving exceptional consideration. A people-oriented government should take into account the views of the owners. She would like to seek members' views on the proposed direction for considering future developments and proposed arrangements for some existing privately-managed POS.

#### Design and location of public open space

46. Mr CHAN Kam-lam said that the policy intention of providing public facilities in private developments was good because the arrangement would shorten the time needed for providing the necessary public facilities and reduce planning constraints. However, the crux was whether sufficient attention had been given to the design of the POS to facilitate public access and use. In this regard, he enquired about the Administration's participation in the design of the POS at Metro Harbour View. While the owners of Metro Harbour View hoped that access to the public open space concerned could be limited to residents only, the relevant lease conditions to allow public access had to be complied with. Whether the Administration should grant a waiver would be a dilemma.

47. Mr Alan LEONG commented that amalgamation of sites to achieve a higher plot ratio and connecting different buildings by podiums and footbridges often wiped out streets in Hong Kong. He queried why approval could have been given to the plan of Metro Harbour View at that time given that the POS was integrated with private space.

48. Mr James TO also expressed doubt on whether the management problem of the integrated design of the POS at Metro Harbour View was not envisaged at that time when the project was approved. He suggested that the Independent Commission Against Corruption should investigate into the case to see why the official concerned had given such an approval to the benefit of the developer.

49. In response, SDEV said that the policy was on the whole in order and it should be supported, but there was room for deliberation on the implementation aspects, in particular the design and location of POS. Similar incidents would not likely recur because unless there was a shortfall of existing and planned open space provision in the district or there were special circumstances justifying the provision of POS as part of private development projects, no recommendation would be made to the Town Planning Board to accept or require such provision in private developments, especially residential developments, or on Government land adjacent to such developments. The Town Planning Board would carefully consider the location, design and implementation prospects of public facilities

proposed under any future planning applications before deciding whether such provision would be accepted as a planning gain.

50. As regards the design and location of the POS at Metro Harbour View, the Director of Planning 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. The plot ratios for residential and non-residential uses were 7.5 and 1.5 respectively. As the site was elongated with noisy roads surrounding the development, there were many constraints in the layout of the blocking 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. The Administration would review how to improve the design of future POS.

51. Prof Patrick LAU said that from the architectural point of view, there should be four types of open space, namely POS, private open space, semi-public open space and semi-private open space. He considered that streets and plazas were examples of POS that people could freely use. Space for public use under specified regulations such as opening hours belonged to semi-POS. Places such as lobbies and corridors in private developments belonged to semi-private open space because guests and visitors could have access to those places. The current complications arose because classifying open space either as public or as private at the time of planning was inadequate. In future, open space in private developments should be classified appropriately and it would be desirable for the Administration to manage such space. Classifying such space as semi-POS would facilitate management. A clear classification of open space would facilitate the preparation of the leases in a systematic way.

52. SDEV thanked Prof Patrick LAU for his views and said that apart from the architectural point of view, various types of open space might also differ from the legal point of view. The Administration was studying the legal aspects of the rights concerned. The Administration would also investigate whether activities allowed on the streets would be the same as those on POS in private developments so that guidelines could be issued in future to clarify the relevant issues.

#### Possible solutions

53. Ms Starry LEE asked whether the POS at Metro Harbour View was the only case which deserved exceptional consideration. She enquired about the legal arrangements involved, such as whether amendment to the Deed of Mutual Covenant was required, and the associated cost that the owners would have to bear. She also enquired about the possibility of providing more POS through alteration works for certain parts of the podium as suggested by some owners.

54. In response, SDEV said that in expressing sympathy to find a way forward in respect of the open space in Metro Harbour View given its unique circumstances, the Administration had conducted an analysis of the POS concerned based on objective criteria. For POS on Government land there was usually a clause in the lease for the Government to recover the POS at its discretion. If and when the Government deemed it appropriate to exercise such discretion, the owners could be relieved of the management responsibility of such space. However the situation would be more complicated where the POS was on private land on which the private development was built. In general, no serious problem would likely arise for POS in commercial or non-governmental organization projects on private land as the management and maintenance responsibility would normally still lie with the developer rather than small owners, and a case for exceptional or sympathetic consideration would unlikely arise in private residential developments where the POS was provided at-grade and clearly segregated. For POS on podium levels, the Administration had looked into the design, configuration, security, privacy and public accessibility aspects. On account of the contract spirit, the costs borne by owners for managing the POS would not be the sole factor for exceptional consideration. The Administration would consider the location and accessibility of the space, availability of other POS in the vicinity, consent of the owners' corporation, support from the relevant District Council, and legal practicability when deciding how to handle a particular case. A possible solution being considered was to grant a waiver of the relevant lease conditions on public accessibility.

55. As regards whether the POS at Metro Harbour View should be the only case deserving exceptional consideration, Mr LEE Wing-tat said that the Administration should have clear criteria for such consideration. Factors such as infringement of private space and security might only be a matter of degree for other private developments with POS. The Administration should seek the views of other owners' corporations of private developments with POS on podium levels before deciding whether to grant a waiver to the owners' corporation of Metro Harbour View. The Administration should also consider whether some at-grade POS would have security and segregation problems similar to POS on podium levels.

56. Prof Patrick LAU also considered that before making a decision on how to handle the POS at Metro Harbour View, the Administration should consult other owners' corporations of developments with similar circumstances.

57. In response, SDEV said that the Administration welcomed views from owners' corporations concerned and it would continue to maintain high transparency in disseminating information on POS to the public. The Administration could in general grasp the views of owners' corporations concerned. However, apart from their views, the Administration had to consider whether to grant a waiver based on objective criteria and the facts. By way of



illustration, the POS at Castello, although on the seventh floor, was entirely segregated from the private space of the development. She emphasized that the Administration had not yet made any decision on how to handle the POS at Metro Harbour View. Each case would be considered based on the criteria given in paragraph 32 of the Administration's paper.

58. Mr Albert HO said that if the Administration made a decision on how to handle a particular case, it would give rise to expectations from other concerned parties for a similar treatment. The starting point of Members of the Democratic Party was that existing POS in private developments should not become private space as far as possible, especially at no or nominal cost to the owners concerned, because the space belonged to the public. However, special consideration could be given to exceptional cases if they met the relevant criteria. By way of illustration, he said that he had visited a development in Tuen Mun where POS and facilities were provided on the roof-top. The lifts for accessing the POS and facilities could also access each floor of the development, thus posing security problems. Cases such as this required consideration on how to handle the situation. The policy of requiring owners' corporations to shoulder the management of POS was impractical because maintenance and insurance issues might lead to disputes, and even conflict of interest when some owners' corporations devised methods to avoid bearing maintenance costs of the POS at the expense of public interests. As a preliminary idea, he suggested that 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.

59. In response, SDEV shared the view that POS should not be given up lightly. However, under exceptional circumstances when the owners had legitimate concerns and the circumstances justified, empathy was her starting point in exploring how to find a solution. Regarding Mr HO's suggestion, she said she had visited New York city recently and noted that a conservancy trust was engaged to manage some public parks. This could also be a possible preliminary idea for consideration.

Admin 60. Mr Alan LEONG considered that encountering difficulties in implementation reflected that the policy was problematic. Referring to paragraph 27 of the Administration's paper, he asked whether by saying that "*the problem should be finite*", the Administration was implying a change in the policy. He requested the Administration to set out the criteria based on which it would handle the relevant cases. As the owners of Metro Harbour View were not a party to the lease, he queried whether it was fair for them to shoulder the responsibility and cost of applying for a waiver when the developer concerned had reaped the benefits from the provision of the POS. He also asked how the Administration would conduct public engagement and suggested that the Panel could consider holding a meeting to receive public views on the subject matter.

61. In response, SDEV said that the Administration was of the view that the policy should be maintained and there were public facilities other than POS. Public facilities could be provided in private developments when such a need was justified. In future, the Town Planning Board would carefully consider whether the design of the proposed POS was unsatisfactory or if the space would create management problems for the owners. The Administration was soliciting assistance from experienced architects to formulate guidelines for managing POS in private developments. There were existing criteria on how to handle the relevant cases and she undertook to set out the criteria for (a) waiving the requirement of public accessibility for POS on private land; and (b) recovering the operation and management responsibility of existing POS on Government land by the Government. As regards public engagement, while the Administration had conducted its own consultation in the review, she welcomed an initiative of the Panel to invite representatives and she would be glad to attend a Panel meeting personally to hear such public views.

62. As regards owners' responsibility, the Director of Lands said that although a 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. The owners of Metro Harbour View would need to comply with the lease conditions to open the POS to public unless the requirement of public accessibility for the POS was waived. The management of the POS in this case was also governed by the Deed of Mutual Covenant to which the Government was not a party.

63. Mr James TO considered it unfair for the owners of Metro Harbour View to shoulder the responsibility and cost of applying for a waiver. As they were not a party to the lease, the Administration should be prudent in considering whether to grant a waiver to the owners' corporation of Metro Harbour View in view of the complicated legal issues involved. Other owners' corporations of developments with POS would submit applications for a waiver or seek judicial review if a waiver was granted to the owners' corporation of Metro Harbour View, especially if it was granted at a nominal cost.

64. Dr Priscilla LEUNG also expressed concern that owners of other private developments who were bearing high management fees would follow suit in demanding a waiver if the Administration decided to grant a waiver to the owners' corporation of Metro Harbour View. By way of illustration, although the owners had to bear high management fees, Whampoa Garden was relatively a quite successful case of managing open space. The public could have access to nearly all the streets and podiums there if no election campaign activities were involved. She was worried that the circumstances might change if granting a waiver to the owners' corporation of Metro Harbour View became a precedent. She said that 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.

65. In response, SDEV said that while existing public facilities should continue to perform their functions, the distress of owners where circumstances warranted had to be handled at the same time lest the governance would be criticized as rigid. She had not under-estimated the various complications involved but a responsible government should try to find a solution to the problem even when faced with possible legal challenges or consequences of establishing a precedent.

66. Mr WONG Kwok-hing referred to paragraph 4 of Annex B to LC Paper No. CB(1)319/08-09(03) and asked how the Administration would handle the POS in Tung Chung where the owners of the private developments concerned had to bear high management and maintenance costs for the space.

67. Mr LEE Wing-tat said that handing over the management of at-grade POS on Government land to Leisure and Cultural Services Department (LCSD) would also need further consideration because some owners might not be satisfied with the efficiency of the LCSD if it took up the management of the redelivered POS.

68. In response, SDEV said that the POS concerned in Tung Chung was on Government land and that as provided for under the lease, the Administration could give notice to recover the POS. The issue was to identify a department to manage the POS if and when it was returned to the Government. In general, LCSD was responsible for managing POS. Whether it could obtain the necessary resources in a timely manner had to be explored. She however agree to Mr LEE's observation and that not all owners in those private developments in Tung Chung expressed support for redelivering the POS to Government because they considered that they were managing the POS well at present. The Administration needed further internal co-ordination and discussion before any POS on Government land would be recovered. Entrustment of the management responsibility of POS to the concerned management of the private development might be a possible solution. The purpose of the Administration's paper was to solicit the views of the Legislative Council and the public only and no decision had been made.

### Monitoring issues

69. Miss Tanya CHAN said that taking one year to provide information on public facilities in private developments completed in the 1980s was too long. She queried whether the Lands Department had sufficient monitoring of compliance with land lease conditions relevant to the provision of public facilities in private developments. She also queried whether developers would

benefit from the provision of public facilities in private developments through promotional techniques or premium concessions.

70. In response, SDEV said that developers would not gain additional gross floor area or premium concessions by providing public facilities in private developments as a planning gain under lease conditions. It was difficult to judge whether they would gain intangible benefits. Public facilities provided under deeds of dedication in accordance with the Buildings Ordinance belonged to a separate category.

71. The Director of Lands said that before issuing the Certificate of Compliance for any particular development, the Lands Department would ensure that all lease conditions including those governing the provision of public facilities had been complied with. Due to the large number of land leases involved, it was impracticable for the Lands Department to conduct inspections for every site frequently. Lands Department would follow up with site inspections based on information provided by the public and it would also conduct surprise inspections. Information on public facilities in private developments under the leases was couched in legal terms but it had been edited and disseminated to the public in an easily understandable way. Two batches had been completed and the third batch would be completed in December 2008. The fourth, probably the final, batch was expected to be publicized in the first half of 2009.

72. Mr KAM Nai-wai considered that the policy was a failure, and he believed that in future, developers and the Administration would not respectively apply for and approve the provision of public facilities in private developments lightly. Although such facilities had been approved, the Lands Department could not even conduct yearly inspections to check for compliance of lease conditions. Therefore, the policy was unworkable and such facilities should not have been approved in the first instance. By way of illustration, he said that a lift was built at Hollywood Terrace to connect Queen's Road Central and Hollywood Road. The Administration had not disseminated the relevant information and the lift was left unused because the owners were unwilling to bear the maintenance costs of the lift for public use. The owners only provided public access through a staircase between the two roads to comply with the relevant lease conditions. It was a waste of resources. The Lands Department had not dutifully prepared the lease and the Administration, instead of the owners, should bear the responsibility. Being the developer of the development, the Hong Kong Housing Society was unfair to the owners.

73. In response, SDEV said that the policy was not a failure because some social welfare and community facilities had to be provided in the vicinity of the local community. Providing them in private developments was sometimes the only possible solution. The Leighton Hill Community Hall was a successful

example to provide a much needed community hall for the Wan Chai community. Nevertheless, there was room for improvement in implementing the policy, and the Administration had been requesting developers and owners to further enhance transparency in information dissemination and compliance with lease conditions and guidelines. If the policy was abolished, citizens would be the ones to suffer in the end. As regards the Hollywood Terrace case, the Administration would further study the relevant lease to see if the owners concerned had breached the relevant lease condition.

74. Mr LEUNG Kwok-hung said that the Administration had approved public facilities in private developments too lightly. By way of illustration, there should be a footbridge connecting Aon China Building and Entertainment Building, but it was still not yet constructed at present. Some POS at International Finance Centre II was used as cafés. When sites zoned as open space were used for commercial purposes, the public could not freely use those sites. Activities such as demonstration and election campaigns were not allowed in many public facilities. In some places, using passages through arcades was the only means to travel between two communities. Disseminating information on websites was inadequate. Rather, there should be sign boards on site to show which facilities and passages were for public use. The Administration should take actions on developers and departments to ensure that they had fulfilled their responsibilities.

75. Mr James TO said that illegal occupation of Government land had been a common phenomenon for a long time and in some cases, triad societies would collect rentals through such illegal occupation. The Administration was not prompt in taking action and there was also the risk of adverse possession by the occupiers. He would strongly express support if SDEV was determined to combat the problem.

#### Provision of property sale information

76. Mr WONG Kwok-hing said that the rights and responsibilities of various parties should have been clearly specified right from the start before approving the developments concerned. While the developers concerned had gained tangible and intangible benefits when selling those developments with POS, disputes were subsequently created between flat owners and the Administration. The Administration should learn a lesson from the problem and prevent this from recurring in future. He asked whether the sales brochures for private residential developments would provide information on the rights and responsibilities of the owners and maintenance costs in relation to public facilities in those developments.

77. Expressing a similar concern, Mr LEE Wing-tat said that while the developers concerned would benefit from private developments containing POS

sold at a higher price, the owners would have to bear the maintenance costs of the POS. He urged the Administration to further discuss with the Real Estates Developers Association of Hong Kong on the issue.

78. Miss Tanya CHAN said that as first-hand residential property purchasers often engaged the lawyers provided by the developers concerned, lawyers should be obligated to provide purchasers with a clear explanation on the public facilities to be provided in the private developments.

79. In response, SDEV said that the responsibilities of developers and owners were clearly specified in the relevant lease conditions. In approving the Metro Harbour View project, the authorities concerned might not have given sufficient consideration to the location and accessibility of the POS. As land was scarce in Hong Kong, integrated planning capitalizing on private developments was needed. Otherwise, the provision of many necessary public facilities would not have been possible. There would be planning gains and the policy should not be scrapped just because of a few less-than-satisfactory cases. In order to allow property purchasers to have a better understanding of their responsibilities, the Transport and Housing Bureau and the Estate Agents Authority would be requested to enhance the public's understanding of the professional role of lawyers in property transaction. The Transport and Housing Bureau had reached an agreement with the Real Estates Developers Association of Hong Kong that public facilities provided in private developments according to lease conditions would be separately listed out in sales brochures. The Director of Lands added that with effect from 10 October 2008, developers had to show conspicuously in sale brochures, in both English and Chinese and in larger prints, information on any such POS or public facilities within or outside the lot which were to be managed, operated or maintained at the expense of the developer or its assignees. There should also be a location plan of such POS or public facilities.

#### **IV Any other business**

80. There being no other business, the meeting ended at 1:15 pm.