香港地產建設商會
THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG
香港中環德輔道中十九號環球大廈1403室
Room 1403, World-Wide House, 19 Des Voeux Road Central, Hong Kong.
Tel: 2826 0111 Fax: 2845 2521

23 January 2009

Clerk
to the Panel on Development
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Attention: Mr. Wong Siu-yee

Dear Mr. Wong

Panel on Development
Public Facilities in Private Developments

We thank you for your letter of 24 December 2008.

We would wish to refer to our previous submission to the Panel in May 2008 (copy attached), as the views we expressed then remain valid today.

In response to the paper prepared by the Development Bureau (CB(1)319/08-09(03)), with which we agree in principle, we would wish to make two additional points:

1. We agree with the approach of treating the construction of public facilities as entrusted works with the cost reimbursable to the developers (paragraph 24). While we note the Bureau's concern of a possible mismatch in timing between the planning of such facilities and the actual approval of funding, our experience is that the application to the Town Planning Board for change of use and the subsequent lease modification process will take considerable time. The relevant Department(s) should have sufficient time to secure the necessary funding approval.

2. We support the Government's initiative in drawing up a set of management guidelines applicable for privately-held public open space (paragraph 29). To ensure that these guidelines are practicable, we would urge the consultant

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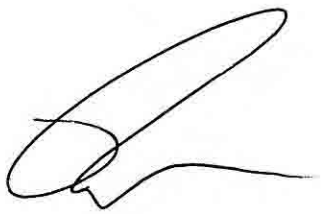
commissioned for this assignment to approach the industry for their input at the earliest opportunity.

Please note that we shall not be attending the meeting on 16 February.

Yours sincerely



Louis Loong
Secretary General

cc Mrs. Carrie Lam, JP
Secretary for Development

香港地產建設商會 (Attachment)
THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG
香港中環德輔道中十九號環球大廈1403室
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30 May 2008 By fax and hand delivery

Clerk to
the Panel on Development
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Attention: Mr. Wong Siu-yee

Dear Mr Wong,

Panel on Development
Provision of Public Facilities in Private Developments

We thank you for your letter of 28 April and as requested, are pleased to enclose herewith our written submission.

Yours sincerely

Louis Loong
Secretary General

Submission to LegCo Panel on Development on
Provision of GIC Facilities in Private Developments

1. Introduction

It is not uncommon for developers to be required to provide GIC facilities in new developments. These facilities are usually designed and built by the developer concerned for the sake of better planning and coordination, and will generally be taken over by the relevant Government department(s) upon completion. There are also circumstances in which the completed GIC facilities are retained by the original developer or are assigned to the subsequent owners of the relevant private development.

There are two broad problem areas:

1.1 Deduction of costs from premium

For Government auction/tender sites, the costs of building GIC facilities are clearly accounted for, either by way of reimbursement or by the developer factoring such costs into their bids. In the case of land exchange/PTG however, the current Government policy is not to take the costs of building such GIC facilities into account in premium assessment save in exceptional cases (viz. MTRC). This inconsistency in policy is presumably the result of a misconception that by allowing the developer to deduct such costs from the premium, the Government will get less revenue from the land.

This is irrational thinking. In a property development project, the provision of the GIC facilities is a public benefit and the costs should be treated in exactly the same way as other expenses viz. site formation, construction fees, interests, etc. in computing the fair and proper premium. By disallowing developers to do so, the Government is in fact demanding a premium exceeding the true market value by the amount of the disallowed costs. It is unrealistic and unreasonable to expect anyone to pay above the true market value, and this has evidently resulted in many land exchange negotiations reaching an impasse.

1.2 Maintenance and management of completed GIC facilities

Subsequent management and maintenance of the GIC facilities is another problem. If these GIC facilities (which are "offered" or requested as a planning condition at the TPB stage) are intended for the unrestricted use and enjoyment of the general public, then the concerned Government department should take up the maintenance responsibilities upon completion. The application to the TPB for change of use and the subsequent lease modification process usually take considerable periods, leaving sufficient time for the relevant department(s) to secure a funding approval to take over such facilities upon completion. If this is not the case, then such facilities should be excluded from the project.

2/.....

2. The Way Forward

2.1 GIC Facilities

Clearly the simplest way forward (which REDA has advocated for many years) is to discontinue the practice of requiring or accepting 'offers' of GIC facilities as part of private sector developments. The possible exception might be the provision of open space or road space and areas dedicated for public passageway for which different arrangements may apply (see section 2.2).

The inclusion of GIC premises in private sector projects has often been argued as necessary to 'make the most efficient use of land resources', but there are many disadvantages which would be avoided by the cessation of this practice:-

2.1.1 It would require respective Government departments to revert to the normal means of obtaining approval to public expenditure through Administrative and LegCo procedures which would ensure that all necessary capital, as well as recurrent staffing and maintenance expenditure, was in place before the facility was committed.

2.1.2 It would avoid the often 'hidden', but nonetheless substantial cost, of imposing serious design constraints on new developments with a consequent impact on good and/or efficient design which has a detrimental effect on land values and therefore premiums.

2.1.3 It would avoid the complex issue of negotiating lease modification premiums where the issue of deductibility of cost arises. This in turn would lead to a more efficient and productive process and the realisation of more development projects adding to the residential or commercial stock.

In the event that the provision of GIC facilities in private developments were considered absolutely unavoidable (and accepted by the developer as such), then capital costs of such facilities should be fully deductible from premium and due approvals obtained for the relevant department to accept delivery on completion and the grant of the necessary operating and maintenance costs.

2.2 Open Space

The policies of incentivising or even requiring developers to provide areas of open space or the provision of public passageway have contributed positively to the development of the city and are to be applauded and therefore continued. It should also be noted that developers are usually willing to bear the capital costs of open space (within reason) as these are generally modest in the overall context and have a marketing value for a project. However, detailed arrangements with respect to ownership and operation need to be examined.

2.2.1 In the case where public open space is to be provided in a development intended for sale into strata title (usually, but not always, a residential project), then either on completion, or within a maximum time thereafter e.g. 3 years, the developer should have the unequivocal right to surrender such premises to Government, and the Government should have the obligation to accept such space as well as the ongoing responsibility to maintain such facilities for the benefit of the public. The developer may always choose to retain such a facility but likewise must bear the obligations of maintenance.

2.2.2 In the case of public open space (or areas dedicated public passageway under the Buildings Ordinance) incorporated into developments held for long term investment purposes, then the developer would normally prefer to retain ownership of such facilities and bear the maintenance cost in the long term interest of the project. In such instances it is clearly desirable to establish a set of guidelines governing operating hours, uses and activities which may be permitted or even encouraged in these areas e.g. provision of artworks, seating, temporary displays and exhibitions, etc. as well as those which are inappropriate viz. demonstrations, picnics, barbecues, unauthorised exhibitions, etc.

3. Conclusion

A policy review is clearly required with respect to provision of GIC facilities in private sector developments, the deductibility of costs from premium calculations as well as ownership and ongoing management responsibilities. The rules and the rationale need to be properly explained and clear guidelines established to move forward.

4. Corollary

REDA would strongly object to the withdrawal or amendment to any existing arrangements as this has far reaching legal implications.

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May 2008