

**For discussion  
on 26 May 2009**

**LEGISLATIVE COUNCIL  
PANEL ON DEVELOPMENT**

**Provision of Public Facilities in Private Developments  
The Way Forward**

**INTRODUCTION**

The Administration has engaged Members in discussions on the provision of public facilities in private developments over the past year (the background and related issues of the subject were discussed by the Panel on 22 April 2008; the findings and recommendations of the review conducted by the Development Bureau (DEVB) were presented to the Panel on 8 December 2008; and views from deputations were collected at the Special Meetings of the Panel on 31 May 2008 and 16 February 2009). In this paper, we aim to seek Members' specific views on a number of policy and operational issues as well as a way forward to address some outstanding cases of private developments which have caused owners' and residents' concern.

**EXISTING POLICY AND ARRANGEMENTS**

**Provision of Public Facilities in Private Developments**

2. As stated in previous papers submitted to this Panel, the incorporation of public facilities in private developments for public use is intended to achieve integrated design, optimization of land use and better site planning, to bring forward the timely completion of some public facilities to serve a wider need, or to match the envisaged population intake brought by a private development project.

3. Such facilities can broadly be categorized into –

(a) Government, Institution and Community (GIC) facilities, such as

community halls, elderly centres, nurseries, youth centres, schools etc.;

- (b) public open space (POS);
- (c) public transport terminus (PTT); and
- (d) public access (e.g. pedestrian access like footbridges and vehicular access like right of way).

4. Such facilities, which may be located within or outside private lots, may arise under the following circumstances –

- (a) land sale – Bureaux/Departments may propose to include in the land sale conditions the requirement that the developer shall provide certain facilities in the future development for public use; or
- (b) private development/redevelopment – where the development requires planning permission by the Town Planning Board (TPB), such as when the site falls within or includes some land zoned “GIC” or “Open Space” (O), or in developments within a “Comprehensive Development Area” (CDA) zone<sup>1</sup>, Bureaux/Departments may propose the inclusion of some public facilities, or the developers themselves may propose such facilities in their planning applications for approval of the private developments. Such requirements may be imposed as planning conditions by the TPB in approving the planning applications.

5. The Planning Department and other concerned departments would relay the planning conditions so imposed by the TPB to the Lands Department for them to be translated into or implemented through lease conditions ***whenever this is practical*** (for instance where the development is

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<sup>1</sup> Under section 4A of the Town Planning Ordinance (Chapter 131), an applicant seeking the TPB’s permission for development within a CDA zone is required to prepare a master layout plan and submit it to the TPB for approval. Such master layout plan shall include information in respect of the proposed land uses, position, dimension, height of buildings, site areas and floor areas of various uses, GIC, recreational and open space facilities, development programmes and any other matters the TPB considers appropriate. A copy of the approved master layout plan shall be deposited in the Land Registry and shall be available for inspection without payment of a fee.

the subject of a new or modified lease). Inevitably, there would be cases where it might not be possible for such planning conditions to be translated into or implemented through lease conditions, e.g. sites with unrestricted leases or where the existing lease is not required to be modified for the development.

6. Apart from land lease, planning conditions may also be enforced through the requirement for the applicant to submit building plans for approval under the Buildings Ordinance (BO) (Cap. 123). Under section 16(1)(d) of the BO, the Building Authority may refuse to give his approval of any plans of building works where the carrying out of the building works would contravene any approved or draft OZP prepared under the Town Planning Ordinance (TPO) (Cap 131). Where the building works are within a CDA, the Building Authority may also refuse to grant approval if the works contravene a master layout plan approved by the TPB.

7. Upon the completion of the private development, to ensure that developers have fulfilled the relevant requirements on the construction of such facilities, the Buildings Department and the Lands Department, in consultation with the Planning Department and other relevant Departments, will scrutinise the completed development to ensure that all the requirements in the approved building plans and land leases are complied with, before occupation permits and certificates of compliance are issued respectively.

8. It should be stressed that where public facilities are required under lease conditions, **no** concessions for this are normally allowed for the developer in terms of premium deduction in lease modification / land exchange transactions; nor are bonus gross floor area (GFA) granted. This is different from the dedication of private space for the purpose of street widening and public passage which may be granted with bonus plot ratio and site coverage (or exemption of such floor space from GFA calculation as the case may be), as provided for under the BO.

9. Upon completion, GIC and PTT facilities are usually handed over to the relevant Government departments for operation and management. As such, these public facilities are not the subject of the current controversy or debate. For other facilities that are not required to be handed over to the Government, they will be subject to the relevant provisions in the respective contractual documents, namely the land leases or the deeds of dedication as the case may be, in respect of their management, maintenance and opening to the public on an ongoing basis.

## **RELEASE OF LISTS OF PRIVATE DEVELOPMENTS CONTAINING PUBLIC FACILITIES**

10. Since the POS and public access are created for public use, the public naturally has a right to know. In approaching this subject, DEVB has therefore attached great importance to and devoted considerable resources in providing public access to information. Members will be aware that for the first time, information on private developments containing public facilities has been systematically released on the departments' websites, with those required under the leases covered in the Lands Department's list and those required under deeds of dedication covered in the Buildings Department's list. The information released includes the location, public access of these facilities as well as site plans and photographs of open space. The telephone numbers of the relevant officers to answer enquiries or receive complaints are now made available. Given the volume involved, the release of information is done batch by batch. Apart from new cases coming on stream, the lists that have been published so far include -

- (a) the first batch on 28 March 2008, comprising the Lands Department's list covering private developments completed (normally refers to Certificates of Compliance issued) since 1997 and the Building Department's list covering all private developments known at that time;
- (b) the second batch on 26 August 2008, comprising the Lands Department's list covering private developments completed in or after 1992 and the Building Department's list covering private developments unveiled from further checking; and
- (c) the third batch on 30 December 2008, comprising principally the Lands Department's list covering private developments completed in or after 1987.

11. We will publish the fourth and hopefully the last batch, except updating to include newly completed developments in future, by June/July 2009, comprising principally the Lands Department's list of public facilities in private developments completed prior to 1987 as well as new cases coming on stream. We will update the lists from time to time and include new cases when their Certificates of Compliance (for cases required under lease) or

Occupation Permits (for deeds of dedication cases) are issued.

12. The Lands Department and the Buildings Department will monitor the implementation of the relevant requirements concerning the discharge of such ongoing obligations by conducting checks. As it would be too manpower intensive for Government departments to conduct regular inspections to all these developments, we have also sought the support of the 18 District Councils to help monitor the use of such facilities, and to bring to our attention any cases where follow-up action is required. We also welcome efforts made by the mass media and the general public to monitor the use of public facilities in private developments, and bring to our attention such cases where possible follow-up action might be required on our part. As at 30 April 2009, the Lands Department and the Buildings Department have received a total of 228 enquiries and 50 complaints<sup>2</sup>.

13. We have made our best endeavours to compile the lists to the best of our knowledge. It is hoped that Members would appreciate the fact that there are a large number of cases and that the provisions for some leases or deeds of dedication (as the case may be) could be quite unique. The POS at Citygate in Tung Chung is one of the examples. The background of this case involving a POS and a public passageway and the follow-up action we are taking are summarised at **Annex A**.

14. There have been queries as to why the POS at Citygate has not been included as the public passageway at Citygate in the lists released by the Lands Department so far. In compiling the lists, the lease conditions in the records of land leases are checked manually within the relevant timeframe to identify the relevant conditions concerning public facilities. The Citygate case was identified as a case for the first batch released in March 2008, as there was a public passageway connecting to the public transport terminus, where such provision for use by the public at all times was explicitly referred to in the lease condition. Since the references used in the land grant conditions in this particular case are OS rather than POS, the case was not picked up when the land grant conditions for provision of POS were checked for inclusion into the published list. However, it must be emphasized that the published list is for public information only, and non-inclusion of the

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<sup>2</sup> There could be double-counting of the cases, given the duplication of the cases received. For example, some of the complaints received by the Buildings Department were related to the Lands Department's list and have been referred to the Lands Department for follow-up action.

POS at Citygate in the published list in no way affects the interpretation of the relevant lease conditions. As soon as the issue was brought to our attention, we have promptly written to the owner to seek clarification.

## **PROPOSED POLICY FRAMEWORK FOR PROVISION OF POS IN FUTURE DEVELOPMENTS**

15. The subject has been the focus of public discussions over the past year. Views have been diverse, particularly on provision of POS. Regarding the policy of providing and managing POS in private developments, there is support from professional institutes and some civic groups since such incorporation of POS in private developments would allow more integrated planning and design, and ease the shortage of POS in districts where land resources for open space are limited. On the other hand, individual flat owners are concerned about security problems that might arise from allowing public access to POS within their residential developments. Some owners consider it unfair for them to bear the recurrent costs for public facilities which should fall under the Government's responsibilities, and claim that they were not made aware of the recurrent responsibilities in managing and maintaining POS in their developments when they bought their flats.

16. As explained in the Panel paper in December 2008, the policy on the incorporation of public facilities in private developments for public use is based on sound considerations, enabling the needed facilities to be provided to the public in a timely and integrated manner through private developments. It also provides for better planning and optimizes the use of limited land resources. We consider that the policy in general should be upheld.

17. However, we recognize that some issues and concerns have emerged in the implementation of the policy over the years, particularly in the provision of POS in private residential developments, whether on private or Government land. We have reviewed the relevant issues and are considering possible refinements along the following directions applicable to future cases, taking account of the concerns raised in the public discussions.

### **(a) *Provision, Design and Management***

18. For the provision of POS in future cases, the TPB has agreed that unless there is a shortfall of existing and planned open space provision in the

district or special circumstances justifying the provision of POS as part of private development projects, Bureaux/Departments would not in future recommend the TPB to accept or require the provision of POS in private developments, especially in residential developments or on Government land adjacent to such developments, in order to prevent the recurrence of the implementation and management problems highlighted in the public discussions. As regards those private developments on unrestricted lease or cases where planning conditions cannot be translated into or implemented through lease conditions, Bureaux/Departments would also not recommend the TPB to accept or require the provision of POS in these developments given the possibility that such proposed planning gains may not be capable of being implemented, as explained in paragraph 5 above.

19. On the design of POS, such as amenities, greenery and accessibility, the TPB has also concluded that it 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. We would also explore a mechanism whereby reference to some design guidelines can be made and views from the professional bodies and relevant sectors of the community can be drawn, during the process of considering design proposals arising from future planning applications. As regards the management, maintenance and opening to members of the public, some owners and management companies have suggested that some form of management guidelines to be issued by the Government would be useful for the daily management of POS in their private developments. We are receptive to this idea and have commissioned a consultancy study to compile design guidelines applicable to future cases and management guidelines applicable to future cases as well as existing cases. We will promulgate later this year a set of design and management guidelines applicable to POS in private developments required under lease.

**(b) *Funding and Recurrent Responsibilities***

**(i) Existing Policy**

20. Under the existing policy, the costs of providing and maintaining such public facilities in sites zoned GIC/O or CDA generally fall on the developer if he wishes to proceed with the development or redevelopment. The main rationale behind this policy is that the priority for the Government's capital works spending, which must be determined through the Public Works Programme (PWP), should not be dictated by the timing of private

developments. Practically, there is also a problem of timing mismatch, in that resources sought through the PWP for the GIC/POS element may not be available exactly at the time when a private development proceeds, especially when bids for resources for new capital works projects have to be considered on a competitive basis. Departments are also finding it difficult to seek resources for certain public facilities which are only needed if the private developments or land sales materialise. The existing policy also provides that, where large or extensive GIC/POS facilities are involved in a CDA site, the Government should not take advantage of the developer and should consider meeting part or all of the costs (capital and recurrent) of such facilities on a discretionary basis, provided that the case has met a set of criteria<sup>3</sup>.

(ii) Future Arrangements for Capital Costs

21. We generally feel that for GIC facilities and PTT which are needed to meet the Government policy objectives, such as provision of child care centres, welfare facilities and schools, the capital costs should be met by the Government. In practice, this could take the form of an entrustment and reimbursement approach, with the facilities immediately handed back to the Government upon completion. The only exception would be the reprovisioning of existing public facilities arising from redevelopment<sup>4</sup>. However, in respect of POS and public access, we consider that there is a

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<sup>3</sup> The criteria are as follows –

- (a) the scale of the GIC/POS facilities involved is extensive, and the development will be implemented over a period of five or more years;
- (b) the cost of the GIC/POS facilities is substantial and is disproportionate in comparison to the overall development cost of the CDA project;
- (c) the ownership and operation of the GIC/POS facilities will revert to the Government on completion;
- (d) the GIC/POS facilities could have been excised from the boundary of the CDA development but have been retained within the CDA with the acquiescence of the Government, to achieve more integrated, sustainable planning or environmental benefits; and
- (e) the CDA development was initiated or endorsed by the Government and will make a significant contribution towards stated Government policy objectives.

<sup>4</sup> Had it not been for the redevelopment initiated by the owners, the status quo would have remained unchanged and the capital cost would not have arisen. Hence, it should naturally follow that such capital costs should be funded by the developer regardless of whether the completed facilities would be taken back by the Government.



good case for the capital costs to be met by the developer.

22. As explained in paragraph 18 above, where for example, the proposed POS in private development is located in certain highly built-up areas with acute shortfall of local open space or is a planned waterfront promenade adjacent to the private development or is part and parcel of an urban renewal project revitalizing the area, we consider that there are planning and environmental benefits for the POS to be developed together with the private development to help alleviate the shortfall of local open space, or to bring forward the completion of planned POS instead of letting the sites lying idle awaiting the public works programme to materialise.

23. Recognising the possible timing mismatch in the Government's resource allocation and the commencement of a private development, we propose to ask the developer to construct the POS at his own cost without reimbursement of the construction cost by the Government. Since the construction cost of an open space is modest as compared with the overall capital cost of the development, we consider it not unreasonable for the developer to bear the construction costs of the POS. Indeed, the construction of the open space as part and parcel of the development is generally welcomed by developers and prospective buyers. In other words, the developer will not be reimbursed the costs of constructing the POS; neither would there be premium deduction for the POS in the assessed premium for lease modification / land exchange cases.

24. For public access, the construction costs are in general not items of development costs to be taken into account in premium calculation, unless these could be justified as works contingent on development. This prevailing arrangement for public access should continue.

### (iii) Future Arrangements for Recurrent Costs

25. As regards recurrent costs, we propose that as a matter of principle the relevant recurrent responsibilities for managing and maintaining such POS on Government land for public use should be met by the Government. Upon completion, the POS should be handed over to the relevant Government departments for management and maintenance. This would relieve small owners from the ongoing obligations to finance the operation and maintenance of POS on Government land opened for public use.

26. That said, we will build in flexibility for POS in commercial

developments. For such cases, most of them are in unitary ownership under the developer, rather than falling into multiple ownership. Indeed, private developers normally consider it advantageous to manage such POS together with the rest of the commercial developments. Such POS would help to attract the public to patronise the commercial operations, such as major shopping centres and high-quality POS would enhance the value of their development. We therefore consider it reasonable to invite the developers / owners of commercial developments or non-domestic portion of composite developments to bear the management and maintenance responsibilities for such POS on Government land.

27. Following the TPB's new approach to generally avoid accepting POS on **private land** incorporated in private developments particularly for residential projects where any ongoing liability would be passed on to small owners, the current controversy of asking small owners to bear such ongoing responsibilities should not arise. However, there may still be well-intended cases of POS incorporated in large scale private commercial developments where there is little objection for the private developer to construct and manage such POS for public use. We therefore recommend that the Administration should have the flexibility to seek such provision of POS for public enjoyment.

28. To illustrate how the above proposals work in practice, we quote below two land sale sites in the 2009-10 Application List and the case of IFC II. Regarding the former, the two sites are the ex-Government Supplies Depot (ex-GSD) site at Oil Street and the western part of the Ex-North Point Estate (ex-NPE) site, the disposal of which is still subject to finalization of the planning and lease formalities. In order not to leave land earmarked for POS in prime locations idle or forgoing the opportunity to create waterfront promenades for public use, the future purchasers of the two land sale sites are required, through conditions of sale, to provide POS of about 3,800 m<sup>2</sup> on the ex-GSD Oil Street site, and about 2,300 m<sup>2</sup> in the form of public waterfront promenade at the western part of the ex-NPE site. The purchasers are required to construct the POS at their own cost without reimbursement by the Government, and upon completion, the purchasers will hand over the POS to the Leisure and Cultural Services Department for management and maintenance, and these POS and waterfront promenade will be opened for public use in the same way as other Government leisure facilities. Regarding the latter, the IFC II, a commercial development, includes POS of not less than 13,000 m<sup>2</sup>. This has provided since 2005 an opportunity for the public to enjoy large POS in a prime location in the Central Business

District, easily accessible and well connected with bus transport interchange, railway station and various pedestrian access and footbridges, and blended in with the premium office, hotel and retail facilities there. Under the lease conditions, the Grantee is required to provide, landscape and thereafter maintain at his own expense and in all respects to the satisfaction of the Director of Lands the POS in question, and shall throughout the term of the lease at all times permit the public to pass and repass on foot through the POS for all lawful purposes including sitting-out and recreational purposes freely and without payment of any nature whatsoever. It would be a pity if we forego the opportunity of allowing such support-worthy cases in future.

## **POSSIBLE ARRANGEMENTS FOR EXISTING POS IN PRIVATE DEVELOPMENTS**

29. As stated in our paper of 8 December 2008, and in fulfillment of the contractual spirit, we are of the view that existing POS in private developments should continue to be managed and maintained in compliance with the requirements in the leases. However, we have also suggested that there might be isolated cases where because of the unique circumstances, exceptional treatment should be considered on a case-by-case basis depending on the merits of individual cases, taking account of the revised policy following this review.

### ***(a) Existing POS on Government Land***

30. For POS on Government land in private developments, instead of requiring the owners to shoulder the recurrent costs, we consider it reasonable for the Government to recover the POS (the authority for which is normally provided for in the land lease) subject to resource availability. Considerations will be given on a case-by-case basis but the general criteria are as follows -

- (a) the POS is at grade and can be alienated from the private development;
- (b) the scale of the POS is substantial relative to the scale of the private development;
- (c) there is no legal obstacle in the lease conditions for Government to take back the management;

- (d) the availability of recurrent resources to the concerned department;
- (e) the consent of the owners (through owners' incorporation) if needed;  
and
- (f) the support of the relevant District Council and Area Committee.

31. In the discussion paper of 8 December 2008, existing POS on Government land provided by four private developments in Tung Chung (namely Tung Chung Crescent, Seaview Crescent and Coastal Skyline and Caribbean Coast) have been given as examples for illustration. In their respective lease, there are the following standard conditions -

- (a) formation of the POS by the Grantee;
- (b) maintenance of the POS by the Grantee;
- (c) the Grantee is responsible for the upkeep, maintenance and repair of the POS, until the POS is redelivered to the Government *on demand*;  
and
- (d) the Grantee shall at all times while he is in possession of the POS allow free access over and along the POS for all Government and public pedestrian traffic.

32. So far, views are diverse among owners of these developments. At the Special Meeting of the Panel on 16 February 2009, while some owners of Coastal Skyline requested the Government to take over the POS on Government land, some owners of Tung Chung Crescent considered the POS to be well-managed in accordance with the lease conditions, and objected to redelivering the POS to the Government. Notwithstanding the different views of owners, it should be stressed that under the lease terms, it is at the Government's sole discretion to demand redelivery of the POS on Government land. Since public accessibility to these POS on Government land is not currently obstructed, and additional recurrent resources for the relevant department is not immediately available, we see no urgency in invoking our power to recover the POS in question and will take full account of owners' views.

**(b) Existing POS on Private Land**

33. For POS on private land in private developments, there is no question of the Government resuming or taking over the POS. The principle of public accessibility to these POS should be upheld and these POS should continue to be privately managed. Later in the year, we will promulgate the management guidelines for the reference of owners and hopefully these guidelines will strike a pragmatic balance between the public's right of access and the private owners' aspirations for security and privacy. However, in *very exceptional cases*, we might consider sympathetically waiving the requirement for public accessibility in the lease for certain POS on private land, based on the individual merits of the case and subject to the following criteria -

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

34. Among the POS in private developments released by Lands Department, we have received or are made aware of such requests for exceptional treatment (i.e. waiver of the relevant lease requirement) from the Metro Harbourview, Botania Villa and Jubilant Place etc.

## **PUBLIC ACCESS IN PRIVATE DEVELOPMENTS**

35. Though discussions so far focus on POS, we opine that the same principle and arrangements may be applicable to public access in private developments required under lease, excluding those subject to a deed of dedication administered by the Buildings Department. Recently, we have received a similar request from several private residential developments in Sha Tin for waiving the requirement in the lease to open public access for public use. A case summary is at **Annex B**.

36. We consider that for public access in private developments, the principle of public use of public access as stipulated in the leases should be upheld and such public access should continue to be privately managed. Considerations for waiving such requirement for cases on private land must be exceptional and justified on a case-by-case basis, having regard to the same criteria as set out in paragraph 33 above. As a modification to criterion (c) under paragraph 33, there should be equally acceptable alternative access for public use without compromising the convenience enjoyed by the public. Also, there is no objection from Bureaux and Departments, e.g. there is no legal impediment, no fire safety concerns etc.

## **CONCLUSION AND ADVICE SOUGHT**

37. To facilitate consideration by Members, we provide a checklist summarising the issues at stake and our proposals is at **Annex C**. Subject to Members' views, we hope to be able to finalise the Administration's internal deliberations before the end of this year, so that we may –

- (a) advise relevant bureaux and departments on the incorporation of their proposed public facilities in private developments in future and the resource implications;
- (b) promulgate the design and management guidelines for POS in private developments; and
- (c) proceed to deal with the owners' request in respect of individual private developments in accordance with the proposed framework.

**Development Bureau**  
**May 2009**

**Citygate at Tung Chung**

The site where Citygate is situated (that is Tung Chung Town Lot 2, TCTL2) forms part of a large “CDA” zone on the Tung Chung Town Centre Area OZP, comprising 5 lots with a total area of 22 hectares (ha). Citygate development is in the Tung Chung Town Centre earmarked for commercial development. The master layout plan (MLP) submitted by the applicant, the then Mass Transit Railway Corporation, to the TPB on 17 May 1994, covered the entire “CDA” zone.

2. In its application, the applicant proposed to provide an area of 1.39 ha of “*local open space with public access and use*” in TCTL2. The MLP was approved by the TPB with conditions on 15 July 1994. It was clearly stated in the Development Schedule, as shown in the deposited MLP, that “*public open space not less than 1.39 ha gross area including a Town Square of not less than 0.18 ha*” should be provided in TCTL2. In view of the size and scale of the development, the boundary of the public open space (POS) was not clearly delineated in the approved MLP which is broad-brush in nature. On the submitted and approved MLP, open space provision is shown as Town Square and landscaped deck. The approved MLP was deposited by the applicant with the Land Registry and available for public inspection in accordance with the TPO, and also available for public inspection free of charge at the Planning Enquiry Counters of the Planning Department. In its subsequent applications for revising the MLP made between 1998 and 2000, the applicant has all along retained the provision of POS of area not less than 1.39 ha in TCTL2 in the Development Schedule.

3. In the building plans approved by the Building Authority, it has also been clearly stated that “*open space required (under master layout plan) = 13,900 sq. m.*”.

4. Such requirement was subsequently translated into relevant lease conditions under which the Grantee of the land grant shall at his own expense and in accordance with the approved MLP and the approved landscaping proposals erect, construct and provide within the lot such area of open space as shall be required by the Director of Lands. The Grantee shall at his own expense keep the open space including all landscaped areas well cultivated, managed and maintained all to the satisfaction of the Director of Lands. The Planning Department is liaising with the owner on the provision of such POS.

5. Apart from the POS, the Grantee is also required under the land lease to provide a public passageway in its development in accordance with the approved Building Plans to connect the public transport terminus and the walkway in Coastal Skyline. Although the width of the public passageway has not been specified in the lease, its alignment and width was set out in the approved building plans. For the concerned shop structures erected at the retail bridge of Citygate, they have encroached onto the said public passageway, and are therefore in breach of the land grant. In this regard, DLO/Islands has issued a letter to the owner requiring for rectification of the situation. The owner has stated in its reply that the structures would be fully cleared by mid May 2009.

6. Furthermore, since no prior approval and consent of the Building Authority have been obtained for the building works of the three shop



structures, these structures are in breach of section 14(1) of the Buildings Ordinance (BO) and are regarded as unauthorized building works (UBWs). Under the Buildings Department's current enforcement policy against UBWs, these unauthorized structures belong to the category of priority demolition. In this regard, the Buildings Department already issued on 23 March 2009 a removal order under Section 24 of the BO requiring the owner to complete the demolition within 60 days from the date of issue of the order.

**7. The three shop structures were found removed on 14 May 2009.**

**Development Bureau**

**May 2009**

**Public Access Cases in Shatin**

A number of private developments<sup>1</sup> in Shatin have recently requested waiving the requirement to open the public access required under the leases for public use. The sites are zoned R(A) and the developments were completed in the 1980s. All of them are composite buildings with residential towers over commercial podium floors. Eight of these developments are clustered together and two other developments fall in close vicinity. A layout plan showing the locations of these developments is at **Appendix I**.

2. Under the leases of these developments, public pedestrian walkways are required on private land at the commercial podium floors (levels 1, 2 and 3). There are the following standard lease conditions -

- (a) the Grantee shall permit all members of the public at all times free access over and along the pedestrian walkways;
- (b) with the prior written consent of the Director of Lands, the Grantee shall be at liberty for the sake of security to lock any means of access to the walkways between various hours at night; and
- (c) the Grantee shall at all times maintain the pedestrian walkways in clean and tidy conditions.

3. In addition, footbridges on Government land connecting to podium level 3 are provided in five of these developments. Under the respective leases -

- (a) the Grantee shall construct the footbridges together with such access steps, stairways etc.; and

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<sup>1</sup> These private developments include Chuen Fai Centre (全輝中心), Garden Rivera (河畔花園), Green Leaves Garden (翠麗花園), Greenfield Court (田園閣), Greenwood Garden (翠華花園), Sha Tin Park Stage 1, Stage 2 and Stage 3 (花園城第一期, 第二及第三期), Springfield Garden (春暉花園) and Lai Shing Garden (勵城花園).

- (b) the Grantee shall at his expense maintain the footbridges together with such access steps and stairways etc.

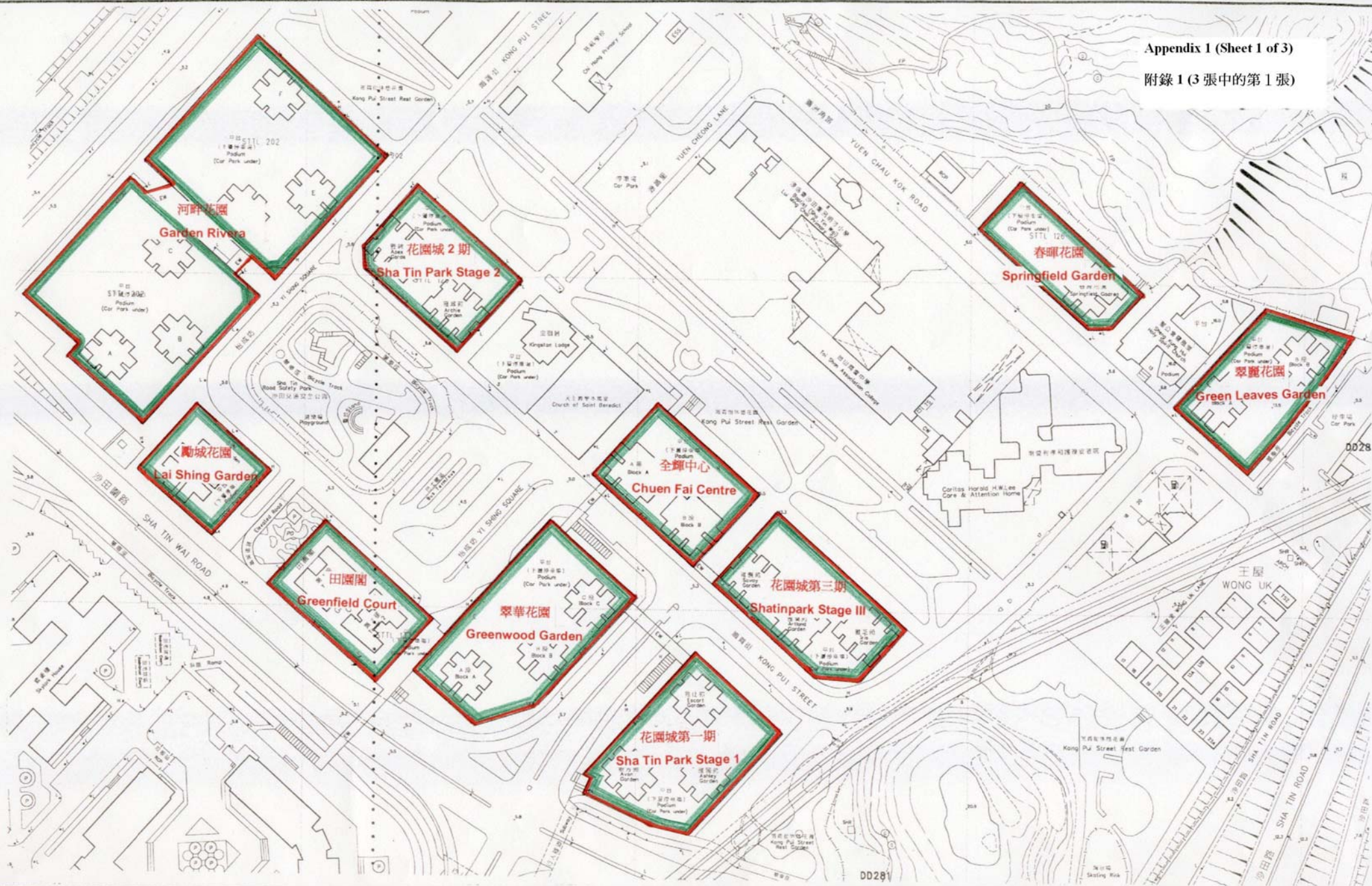
Some on-site photos of the pedestrian walkways and the footbridges are at **Appendix II**.

4. At present, some of the pedestrian walkways required under the leases are blocked. Owners have expressed concerns over potential security problems and their privacy for opening up these pedestrian walkways, and considered it unfair for them to bear the recurrent responsibilities. They have requested that except the pedestrian walkways at the street level (i.e. level 1) and those pedestrian walkways connecting to the public footbridges, the Government should consider waiving the opening requirement under the land leases for all other pedestrian walkways not leading directly to the public footbridges.

5. According to file records, the original intention for imposing such requirements under the leases were to connect these buildings to a proposed centrally located community complex comprising market, hawker bazaar, multi-storey carpark with landscaped podium deck and bus terminus etc. However, the complex has now been replaced by a local open space at grade and bus terminus. Hence, some of these developments have not been connected by any footbridges which are supposed to be built together with the complex.

**Development Bureau**  
**May 2009**







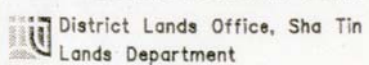
FOR IDENTIFICATION PURPOSES ONLY

District Lands Office, Sha Tin  
Lands Department

平面圖 - 第一樓層  
LAYOUT PLAN - LEVEL 1

 Pedestrian Walkways  
 Lot Boundary





平面圖 - 第二樓層  
LAYOUT PLAN - LEVEL 2

 **Lot Boundary**





FOR IDENTIFICATION PURPOSES ONLY

District Lands Office, Sha Tin  
Lands Department

平面圖 - 第三樓層  
LAYOUT PLAN - LEVEL 3

Pedestrian Walkways

Lot Boundary



行人通道 - 沙田  
Pedestrian Walkways - Sha Tin



行人通道 - 沙田  
Pedestrian Walkways - Sha Tin





行人天橋 - 沙田  
Footbridges - Sha Tin



行人天橋 - 沙田  
Footbridges - Sha Tin



**Public Facilities in Private Developments**  
**Checklist of Issues and the Administration's Proposals**

Issues	The Administration's Proposal	Legislative Council Members' Views
Policy	<p><b><u>General</u></b></p> <ul style="list-style-type: none"><li>• The policy on the incorporation of public facilities in private developments for public use in general should be upheld.</li><li>• However, some issues and concerns have emerged in the implementation of the policy over the years. Public facilities, other than POS and public access, in private developments should not present any major problems, under the entrustment and reimbursement approach applicable to GIC facilities and PTT. The arrangements applicable to POS and public access in private developments warrant greater attention.</li></ul>	



Issues	The Administration's Proposal	Legislative Council Members' Views
	<p><b><u>POS in private developments</u></b></p> <ul style="list-style-type: none"> <li>• The Town Planning Board (TPB) has agreed that unless there is a shortfall of existing and planned open space provision in the district or special circumstances justifying the provision of public open space (POS) as part of private development projects, Bureaux/Departments would not in future recommend the TPB to accept or require the provision of POS in private developments, especially in residential developments or on Government land adjacent to such developments.</li> <li>• For private developments on unrestricted lease or cases where planning conditions cannot be translated into or implemented through lease conditions, Bureaux/Departments would not recommend the TPB to accept or require the provision of POS in these developments.</li> <li>• The TPB has also concluded that it would carefully consider the location, design and implementation prospects of public facilities proposed under any future planning applications before deciding whether such provision would</li> </ul>	

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	<p>be accepted as a planning gain.</p> <ul style="list-style-type: none"> <li>• We would explore a mechanism whereby reference to some design guidelines can be made and views from the professional bodies and relevant sectors of the community can be drawn, during the process of considering design proposals arising from future planning applications.</li> <li>• For POS in private developments, we should promulgate design guidelines for future cases.</li> </ul>	
<b>Transparency</b>	<ul style="list-style-type: none"> <li>• Lists of private developments containing public facilities have been released to the public, providing information on the public facilities involved, the present arrangements for public use and a contact telephone number for members of the public to make enquiries or file complaints. We will continue to update such lists from time to time, by including new cases when their Certificates of Compliance (for cases required under lease) or Occupation Permits (for deeds of dedication cases) are issued.</li> </ul>	

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<b>GIC facilities and PTT</b>	<ul style="list-style-type: none"> <li>There is a case for the developer to be reimbursed the capital costs for providing GIC facilities and PTT, other than POS and public access, which are needed to meet the Government policy objectives and are immediately handed back to the Government upon completion. The only exception would be the reprovisioning of existing public facilities arising from the redevelopment.</li> </ul>	
<b>POS</b>	<p><i>Future Cases – POS on Government Land</i></p> <ul style="list-style-type: none"> <li>We propose to ask the developer to construct the POS at his own cost without reimbursement by the Government.</li> <li>We propose that as a matter of principle the relevant recurrent responsibilities for managing and maintaining such POS on <b>Government land</b> for public use should be met by the Government. Upon completion, the POS should be handed over to the relevant Government departments for management and maintenance.</li> <li>We will build in flexibility for POS in commercial developments. We consider it reasonable to invite the developers / owners of commercial developments or</li> </ul>	

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	<p>non-domestic portion of composite developments to bear the management and maintenance responsibilities for such POS on <b>Government land</b>.</p> <p><i>Future Cases – POS on Private Land</i></p> <ul style="list-style-type: none"> <li>• Following the TPB's new approach to generally <b>avoid</b> accepting POS on <b>private land</b> in private developments, <b>particularly for residential projects</b>, the current controversy of asking small owners to bear such ongoing responsibilities should not arise.</li> <li>• Where there may be well-intended cases of POS <b>on private land</b> incorporated in large scale private commercial developments where there is little objection for the private developer to construct and manage such POS for public use, we recommend that the Administration should have the flexibility to seek such provision of POS for public enjoyment.</li> </ul>	
	<p><i>Existing Cases - General</i></p> <ul style="list-style-type: none"> <li>• In fulfillment of the contractual spirit, we are of the view</li> </ul>	

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	<p>that existing POS in private developments should continue to be managed and maintained in compliance with the requirements in the leases.</p> <p><i>Existing Cases - POS on Government Land</i></p> <ul style="list-style-type: none"> <li>• For POS on Government land, instead of requiring individual owners to shoulder the recurrent costs, we consider it reasonable for the Government to recover the POS (the authority for which is normally provided for in the land lease) subject to resource availability. Considerations will be given on a case-by-case basis but the general criteria are as follows - <ul style="list-style-type: none"> <li>(a) the POS is at grade and can be alienated from the private development;</li> <li>(b) the scale of the POS is substantial relative to the scale of the private development;</li> <li>(c) there is no legal obstacle in the lease conditions for Government to take back the management;</li> </ul> </li> </ul>	



Issues	The Administration's Proposal	Legislative Council Members' Views
	<p>(d) the availability of recurrent resources to the concerned department;</p> <p>(e) the consent of the owners (through owners' incorporation) if needed; and</p> <p>(f) the support of the relevant District Council and Area Committee.</p> <p><i>Existing Cases - POS on Private Land</i></p> <ul style="list-style-type: none"> <li>• For POS on private land, there is no question of the Government resuming or taking over the POS. The principle of public accessibility to these POS should be upheld and these POS should continue to be privately managed.</li> <li>• In <i>very exceptional cases</i>, we might consider sympathetically waiving the requirement for public accessibility in the lease for certain POS on private land, based on the individual merits of the case and subject to the following criteria -</li> </ul>	

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	<p>(a) it is legally in order for Lands Department to do so;</p> <p>(b) a request for the waiver must be initiated by and with the consent of the owners through its owners' incorporation and subject to payment of the relevant financial consideration for such waiver;</p> <p>(c) there is sufficient existing POS in suitable locations within the district according to the Hong Kong Planning Standards and Guidelines. Also, other considerations like the location and distribution of the POS should also be taken into account;</p> <p>(d) the agreement of TPB for amending the relevant plans if required; and</p> <p>(e) there is support from the relevant District Council and Area Committee, in particular their understanding that a piece of POS will no longer be open to the public.</p>	
	<p><i>Management Guidelines</i></p> <ul style="list-style-type: none"> <li>• We will promulgate later this year a set of management</li> </ul>	

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	<p>guidelines applicable to POS in private developments for compliance and reference by private owners where we are empowered under the lease to do so.</p>	
<b>Public access</b>	<ul style="list-style-type: none"> <li>• We will continue the prevailing arrangements whereby the construction costs are in general not items of development costs to be taken into account in premium calculation, unless these could be justified as works contingent on development.</li> <li>• We consider that the principle of public use of public access as stipulated in the leases should be upheld.</li> <li>• Considerations for waiving such requirement must be exceptional and justified on a case-by-case basis, having regard to the same criteria applicable to existing POS on private land. As a modification to criterion (c) (i.e. sufficient existing POS in suitable locations within the district), there should be equally acceptable alternative access for public use without compromising the convenience enjoyed by the public. Also, there is no objection from Bureaux and Departments, e.g. there is no legal impediment, no fire safety concerns etc.</li> </ul>	

Issues	The Administration's Proposal	Legislative Council Members' Views
<b>Compliance and Enforcement</b>	<ul style="list-style-type: none"> <li>• The Lands Department and the Buildings Department will monitor the implementation of the relevant requirements concerning the discharge of such ongoing obligations by conducting checks.</li> <li>• We have sought the support of the 18 District Councils and welcome the efforts made by the mass media and the general public to help monitor the use of such facilities, and to bring to our attention any cases where follow-up action is required.</li> </ul>	

**Development Bureau**  
**May 2009**