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Panel on Development

Meeting on 25 June 2013

Updated background brief on public facilities in private developments

Purpose

This paper provides background information on the provision of public facilities in private developments and a summary of the views and concerns expressed by Members since the 2009-2010 legislative session on the subject.

Background

2. Public facilities within private developments can broadly be categorized into: (a) Government, Institution and Community facilities; (b) public open spaces ("POS"); (c) pedestrian passage and vehicular access and (d) public transport termini. Some of these facilities are handed over to the relevant Government departments upon completion while others are required to be managed and maintained by the private developers or owners on an ongoing basis.

3. According to the Administration, the policy requiring owners to incorporate POS or other public facilities into their private developments has been in force for decades and has helped achieve integrated design, optimization of land use, better site planning and utilization, and synchronization of the availability of open space with the envisaged population intake of private development projects. The owners' responsibilities are usually set out in the relevant contractual documents with the Government, namely the leases and/or Deeds of Dedication. Generally, the owners are required to permit the public to lawfully use such

facilities and not to allow the area to be obstructed, as well as to manage and maintain such facilities to the satisfaction of the Administration.

Policy review

4. The subject of public open space in private development ("POSPD") has attracted public attention since 2008, arising from certain contentious cases such as the use of such space at Times Square and Metro Harbour View in Tai Kok Tsui where denial of public accessibility, tight restrictions on use and other management problems were reported in the media. While members of the public generally expect free and unrestricted use of POS, individual owners show concerns over the issues of privacy and security. Conflicting interests between the public and property owners, especially those in private residential developments, have become a cause of concern. As such, in 2008, the Administration initiated a policy review on the subject matter.

Refined arrangements for the provision of public open space in private developments

5. Following the policy review, the Administration briefed members of the Panel on Development ("the Panel") at a meeting in January 2010¹ on a set of refined arrangements to guide the future provision of POSPD, one of which was to refrain from requiring the provision of POS on private land in private residential developments, lest the recurrent responsibilities would be passed onto small owners. A summary of the refined arrangements is at **Appendix I**. The Administration advised that it would continue to accept or require provision of POS on private land in commercial developments or on adjoining government land as part of the private developments in some harbourfront and green field sites for integrated design and public enjoyment.

Design and management guidelines for public open space in private developments

6. As part of the policy review, the Development Bureau ("DEVB") commissioned a consultancy study in February 2009 to help draw up a set of design and management guidelines for POSPD ("the Guidelines").

¹ In addition to the meeting in January 2010, the Administration briefed the Panel on the findings and recommendations of the policy review on 8 December 2008 and 26 May 2009. The Panel collected views from deputations on the provision of public facilities in private developments at the special meetings on 31 May 2008 and 16 February 2009.

Subsequent to a series of consultations and refinement, DEVB issued the Guidelines in January 2011². The Guidelines provide a framework for better design based on the principles of connectivity, appropriateness and quality; cover various management and operational issues and standards such as rights and obligations of owners and users; and set out guidance in respect of the three types of activities that could be held at POSPD, including the activities which are always permissible, the commercial and non-commercial activities requiring permission by management companies and relevant Government departments.

Management of existing public open space in private developments

7. While some Panel members expressed support to the policy change with respect to the provision of POS in future cases under the refined arrangements, i.e., not to require or accept the provision of POS on private land in private residential developments, they were concerned about the management of existing public facilities in private developments. As regards the effectiveness of the Guidelines in dealing with non-compliance cases, some members held the view that the Administration could only encourage owners to follow the Guidelines. Some members cast doubt on whether the Guidelines could help achieve the intended purposes of enhancing the design and management of existing POSPD.

8. The Administration responded that it would be difficult to require owners of existing POSPD to comply with the design guidelines but such guidelines would apply to new POSPD. As for the management guidelines, the Administration could require the developers of existing POSPD to follow these guidelines if the lease conditions specified that the developer was required to manage "to the satisfaction of the Director of Lands". Given that POSPD sites were located throughout the territory and were large in number, the Administration considered that public monitoring was an effective way to ensure owners were fulfilling the responsibilities of managing POSPD. With a view to enhancing the transparency of such facilities and encouraging POSPD users to lodge complaints with the departments concerned against the malpractices of owners/developers, the Administration has made available information on private developments containing POS, including their locations, sizes and opening hours, on the

² The Guidelines were submitted to the Panel for members' reference vide LC Paper No CB(1)1085/10-11(01) in January 2011 and came into effect on 14 February 2011. The paper can be downloaded at the following hyperlink –

<http://www.legco.gov.hk/yr10-11/english/panels/dev/papers/devcb1-1085-1-e.pdf>

websites of the Lands Department and the Buildings Department³. For serious cases of non-compliance, the Administration stressed that it could take enforcement actions and re-enter the premises as a last resort whilst in most cases, serving reminders and warnings would suffice.

Public accessibility to public open space in private developments

9. Some Panel members pointed out that problems had arisen in private developments where owners were unwilling to bear the management and maintenance costs for the provision of public passage to POS (such as lifts and escalators) and developers had managed a public passage like a private one. There was concern that it would be difficult for the Administration to ensure good public accessibility to POSPD, especially those located on podiums. The Administration acknowledged that existing POS on podiums had accessibility and utilization problems. While the Administration would strive to ensure that POSPD would continue to be open for public use by requiring the owners/developers to install on site clear directory signs and location maps, it would consider waiving the public accessibility requirement in exceptional and justified cases on compassionate grounds. As regards future POSPD, the Administration assured members that with the design guidelines in place, their public accessibility would be enhanced.

Waiver of the requirement for opening public open space in private developments for public use

10. The Panel noted that in exceptional cases, the Administration might sympathetically waive the requirement in the lease for opening certain POSPD for public use based on individual merits of each case. To ensure that public interest would not be inappropriately impaired, the Administration required that the waiver request must satisfy a set of criteria including, among others, the requirement to submit the waiver request by all owners and to obtain support from the relevant District Council ("DC") and Area Committee ("AC"). Some Panel members were concerned about the practical difficulties in satisfying the criteria, in particular the requirement to obtain owners' unanimous consent before submitting the waiver request. The Administration responded that since the waiver touched upon the rights and obligations of all the owners, they should

³ At the following hyperlinks –
<http://www.landsd.gov.hk/en/legco/gic.htm> and http://www.bd.gov.hk/english/dedicated_areas.html

jointly apply for the waiver and jointly execute the waiver if approved by the Lands Department.

11. At the Council meeting of 6 February 2013, a Member raised a written question about the Administration's follow-up actions on the request of the owners' incorporation of Metro Harbour View in Tai Kok Tsui ("the OC") to waive the requirement of provision of POS for public use. It was known that the OC had failed to secure the support of the Yau Tsim Mong West AC. The Administration advised that, since a waiver, if granted, would lead to reduction in open space in the district, it was necessary for the waiver request to be supported by the relevant DC and AC. The Administration had send representatives to attend the meetings of the Yau Tsim Mong DC and the Yau Tsim Mong West AC to explain the result of the policy review conducted on POSPD as well as the criteria in considering the request of the OC.

Long-term provision of open space

12. The Panel noted that under the refined arrangements for the provision of POS in future private developments, unless there was a current or forecast shortfall of open space in the district having regard to the Hong Kong Planning Standards and Guidelines or special circumstances justifying the provision of POS as part of a private development project, the Town Planning Board should not require or accept the provision of POS in private developments in order to prevent the recurrence of the POS management problems. In this regard, some Panel members urged the Administration to consider taking forward long-term measures to ease the shortage of POS in districts, such as reducing the development density of the urban area by turning vacated land into POS and developing waterfront promenades. The Administration advised that some valuable lots at the waterfront had already been reserved for the construction of waterfront promenades. It undertook to continue its efforts in addressing the shortfall of POS.

Recent development

13. At the request of the Panel, the Administration will discuss with members the issues related to regulation of use of POSPD at the meeting on 25 June 2013.

Relevant papers

14. A list of the relevant papers with their hyperlinks is at **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
20 June 2013

**Summary of Refined Arrangements
for Provision of Public Open Space ("POS")
in Future Private Developments⁴**

(a) *Provision*

- (i) Bureaux/Departments ("B/Ds") should not recommend the Town Planning Board ("TPB") to accept or require the provision of POS on private land and/or adjoining government land as part of the private developments, unless there is a current or forecast shortfall of open space in the district having regard to the Hong Kong Planning Standards and Guidelines ("HKPSG") or there are special circumstances justifying the provision following a critical appraisal in the overall planning and urban design context;
- (ii) even where the provision of POS on private land and/or adjoining government land as part of the private developments may be justified on the basis of (i) above but the development is governed by an unrestricted lease or the provision of POS cannot practically be imposed in the lease, B/Ds should not recommend the TPB to accept or require the provision of such POS, as the proposed planning gains may not be capable of being realised;
- (iii) as a rule, B/Ds should not recommend the TPB to accept or require the provision of POS on private land in private residential developments where such developments will likely fall into multiple ownership and thus result in individual owners being made responsible for the management and maintenance of the POS; and
- (iv) the same principles under (i) – (iii) should apply when B/Ds comment on a development proposal not requiring submission to the TPB but separately circulated by the Lands Department ("LandsD") for land lease purposes.

⁴ Source: Administration's paper on provision of public open space in private developments (LC Paper No. CB(1)930/09-10(03)) for discussion at the meeting of the Panel on Development on 26 January 2010

(b) *Funding responsibilities for POS justified by public needs*

- (i) whether on private land or government land, the capital cost should be met by the developer;
- (ii) as regards the recurrent cost –
 - (1) where the POS is on government land, subject to (2) below, it should be handed over to the Government upon satisfactory completion of the POS or on demand as the case may be, and the recurrent cost of managing and maintaining the POS should then be met by the Government;
 - (2) where the POS is on government land adjacent to a commercial development, the developer/owner of the commercial development may be invited to bear the recurrent cost of managing and maintaining the POS. If the developer / owner accepts the invitation, the recurrent responsibilities should be stipulated in the lease;
 - (3) where the POS is on private land in a commercial development, the developer / owner of the commercial development will be required under lease to manage and maintain the POS throughout the term of the lease; and
 - (4) however, where large or extensive POS is involved or the cost of the POS is substantial and disproportionate in comparison to the overall development cost, the Government should not take advantage of the developer and should consider meeting part or all of the costs (capital and recurrent) of the POS on a discretionary basis.

Public facilities in private developments

List of relevant papers

Date	Meeting	References
5 March 2008	Council meeting	Hansard -- oral question (No. 3) raised by Hon Margaret NG on "Compliance by Real Estate Developers with Land Lease Condition on Provision of Public Open Space" (p. 5025 to 5034) http://www.legco.gov.hk/yr07-08/english/counmtg/hansard/cm0305-translate-e.pdf
22 April 2008	Panel on Development	Administration's paper on "Public Facilities in Private Developments" (LC Paper No. CB(1)1273/07-08(04)) http://www.legco.gov.hk/yr07-08/english/panels/plw/papers/dev0422cb1-1273-4-e.pdf Minutes of meeting (LC Paper No. CB(1)1952/07-08) http://www.legco.gov.hk/yr07-08/english/panels/plw/minutes/de080422.pdf
23 April 2008	Council meeting	Hansard -- written question (No. 8) raised by Hon LEE Wing-tat on "Disclosure to Prospective Property Buyers of Requirement to Provide Facilities in Private Developments for Public Use" (p. 6258 to 6261) http://www.legco.gov.hk/yr07-08/english/counmtg/hansard/cm0423-translate-e.pdf
7 May 2008	Council meeting	Hansard -- oral question (No. 3) raised by Hon James TO on "Use of Public Facilities on Private Land by Public" (p. 7007 to 7016) http://www.legco.gov.hk/yr07-08/english/counmtg/hansard/cm0507-translate-e.pdf

Date	Meeting	References
7 May 2008	Council meeting	Hansard -- oral question (No. 5) raised by Hon SIN Chung-kai on "Management of Public Facilities on Private Land" (p. 7023 to 7033) http://www.legco.gov.hk/yr07-08/english/counmtg/hansard/cm0507-translate-e.pdf
7 May 2008	Council meeting	Hansard -- written question (No. 8) raised by Hon Audrey EU on "Management of Public Open Space in Private Developments" (p. 7048 to 7051) http://www.legco.gov.hk/yr07-08/english/counmtg/hansard/cm0507-translate-e.pdf
31 May 2008	Panel on Development	The Panel discussed with the Administration and deputations the subject of "Public facilities in private developments" http://www.legco.gov.hk/yr07-08/english/panels/plw/papers/plw_g.htm Minutes of meeting (LC Paper No. CB(1)2321/07-08) http://www.legco.gov.hk/yr07-08/english/panels/plw/minutes/de080531.pdf
8 December 2008	Panel on Development	Administration's paper on "Public facilities in Private Developments" (LC Paper No. CB(1)319/08-09(03)) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev1208cb1-319-3-e.pdf Minutes of meeting (LC Paper No. CB(1)611/08-09) http://www.legco.gov.hk/yr08-09/english/panels/dev/minutes/dev20081208.pdf Supplementary Note on "Provision of Public Facilities in Private Developments" (LC Paper No. CB(1)367/08-09(01)) http://www.legco.gov.hk/yr08-09/english/pa

Date	Meeting	References
		nels/dev/papers/dev1208cb1-367-1-e.pdf Follow-up paper (LC Paper No. CB(1)770/08-09(01)) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev1208cb1-770-1-e.pdf
16 February 2009	Panel on Development	The Panel discussed with the Administration and deputations the subject of "Public facilities in private developments" http://www.legco.gov.hk/yr11-12/english/panels/dev/papers/dev_g.htm Minutes of meeting (LC Paper No. CB(1)1374/08-09) http://www.legco.gov.hk/yr08-09/english/panels/dev/minutes/dev20090216.pdf
26 May 2009	Panel on Development	Administration's paper on "Provision of Public Facilities in Private Developments -- The Way Forward" (LC Paper No. CB(1)1634/08-09(08)) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0526cb1-1634-8-e.pdf Minutes of meeting (LC Paper No. CB(1)2717/08-09) http://www.legco.gov.hk/yr08-09/english/panels/dev/minutes/dev20090526.pdf
26 January 2010	Panel on Development	Administration's paper on "Provision of Public Open Space in Private Developments" (LC Paper No. CB(1)930/09-10(03)) http://www.legco.gov.hk/yr09-10/english/panels/dev/papers/dev0126cb1-930-3-e.pdf Minutes of meeting (LC Paper No. CB(1)1508/09-10) http://www.legco.gov.hk/yr09-10/english/panels/dev/minutes/dev20100126.pdf

Date	Meeting	References
January 2011	-	The Administration's information paper to Panel on Development on "Design and Management Guidelines for Public Open Space in Private Developments" (LC Paper No. CB(1)1085/10-11(01)) http://www.legco.gov.hk/yr10-11/english/panels/dev/papers/devcb1-1085-1-e.pdf
May 2011	-	The Administration's information paper to the Panel on Development on "Public Open Space in Private Developments" (LC Paper No. CB(1)2270/10-11(01)) http://www.legco.gov.hk/yr10-11/english/panels/dev/papers/devcb1-2270-1-e.pdf
6 February 2013	Council meeting	Hansard -- written question (No. 15) raised by Hon Claudia MO on granting of a waiver to a private housing estate on a land lease condition requiring the provision of public open space (p. 6566 - p. 6569) http://www.legco.gov.hk/yr12-13/english/counmtg/hansard/cm0206-translate-e.pdf