

**Response of the Development Bureau on a Residential Development
next to Phase 8 of Mei Foo Sun Chuen (i.e. Remaining Portion of
New Kowloon Marine Lot No. 25 (NKML 25 R.P.) and Section B of
New Kowloon Marine Lot No. 25 (NKML 25 S.B))**

In recent years, some residents of Phase 8 of Mei Foo Sun Chuen have, through various channels, expressed concern over the captioned residential development. Some Members of the Legislative Council (LegCo) have also held a number of case conferences (in 2009 and 2010) with the Administration on the subject. At the District Council level, from 2009 to 2011, representatives from the Development Bureau (DEVB) and departments have also attended meetings of a working group established under the Sham Shui Po District Council on this issue, and met the representatives of residents of Phase 8 of Mei Foo Sun Chuen, with a view to responding to the residents' queries through the provision of written information and in-depth discussions. The Administration has reiterated that if the abovementioned development project completely satisfies the relevant requirements of the land lease, the Outline Zoning Plan (OZP) as well as the Buildings Ordinance (BO) and its subsidiary legislation, the Buildings Department (BD) has to approve the plans and grant its consent to the commencement of works in accordance with the established procedures.

On 3 April 2011, groups having concern over the case and the residents took street action. The DEVB also released a press release on the same day to respond to press enquiries. The recent events have also once again caught the attention of some LegCo Members and a number of Members have, in various public occasions (including the Special Finance Committee Meeting on 23 February), requested that the Government should resolve the issue being disputed by the residents of Phase 8 of Mei Foo Sun Chuen through land exchange. In addition, the press has also made different reports on this issue. To enhance the understanding of the concerned residents, LegCo and District Council, the press as well as the general public on the issue, we have consolidated the information and are disseminating the same to all in the form of questions and answers.

We have to reiterate that, for any lawful private development project, without sufficient justifications, the Government should not make any proposals to the title owner to halt the development, only because of the request of LegCo Members as well as some local resistance and drastic street actions. We are of the view that the Government should respect private property rights and uphold the rule of law, in order to protect these cornerstones that Hong Kong has all along relied upon for its success.

Development Bureau
May 2011

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(1) Do the individual owners of Phase 8 of Mei Foo Sun Chuen have land ownership over the residential development at the former liquefied petroleum gas (LPG) storage site (the development project)?

- In general, any person who owns the title of a whole lot may apply for development of the lot in accordance with the legislation on planning and building as well as lease conditions.
- As such, with respect to the above question, we need to have a clear understanding of the division of the lot concerned, sale of the divided lots, as well as ownership details of the separate lots after division. The relevant particulars of the concerned lot are as follows-
- **1971** – the developer of Mei Foo Sun Chuen acquired New Kowloon Marine Lot No. 25 (NKML25).
- **1974** – the Building Authority (BA) approved building plans (the 1974 building plans) that covered the whole NKML25, including Phase 8 of Mei Foo Sun Chuen and the building of the LPG storage.
- **1976** – while Phase 8 of Mei Foo Sun Chuen was still under construction, the developer divided the lot into four separate portions, namely Section A Remaining Portion of New Kowloon Marine Lot No. 25 (NKML25 S.A R.P. – which has been developed into Phase 8 of Mei Foo Sun Chuen), Remaining Section of New Kowloon Marine Lot No. 25 (NKML25 R.P. – which was once used to accommodate the LPG storage. The facility was relocated in 1999), Section B of New Kowloon Marine Lot No. 25 (NKML25 S.B – which forms part of a private road) and Section A sub-section 1 of NKML No. 25 (NKML25 S.A ss.1 – which forms another part of the aforementioned private road). **(Please refer to the map)**

- **1978** – Phase 8 of Mei Foo Sun Chuen was completed and granted occupation permits (Phase 8 of Mei Foo Sun Chuen and the then LPG storage plant were constructed in accordance with the 1974 building plans. They were included in the same set of plans). According to the transaction records and the deed of mutual covenant of Phase 8 of Mei Foo Sun Chuen, owners of Phase 8 have only purchased the separate titles (undivided shares) of NKML25 S.A R.P. They also have the rights to access and pass through NKML25 S.A ss.1, but not its ownership. They obviously do not own the lots of the controversial development site (i.e. NKML25 R.P. and NKML25 S.B).
- In fact, the two lots concerning the development project (i.e. NKML25 R.P. and NKML25 S.B) were then still owned by the developer of Phase 8 of Mei Foo Sun Chuen (“Mei Foo Investments Limited”, which was later renamed as “Broadway-Nassau Investments Limited”), and has never been sold to others as in the case of Phase 8 of Mei Foo Sun Chuen.
- **2009** – Billion Star Development Limited purchased the two lots, NKML25 R.P. and NKML25 S.B.
- Hence, owners of Phase 8 of Mei Foo Sun Chuen have never possessed ownership of the lots where the development project is located (i.e. NKML25 R.P. and NKML25 S.B). In other words, they have never owned the development potential of the abovementioned lots either.

(2) It has been mentioned that the ownership/right to use the pedestrian passageway next to Phase 8 of Mei Foo Sun Chuen belongs to the owners of Phase 8 of Mei Foo Sun Chuen. Does it imply that the road cannot be included as part of the development site?

- Based on our understanding, the passageway referred to by the residents of Phase 8 of Mei Foo Sun Chuen comprises NKML25 S.A ss.1, NKML25 S.B and part of a passageway situated within NKML25 R.P. respectively.
- According to the deed of mutual covenant of Phase 8 of Mei Foo Sun Chuen, owners of Phase 8 of Mei Foo Sun Chuen possess the rights to access and pass through NKML25 S.A ss.1, but not the ownership of the lot. As for the calculation of site area of the development project, only the lots NKML25 S.B and NKML25 R.P. are included. Although the owners of Phase 8 of Mei Foo Sun Chuen have in the past used the passageway mentioned above, the ownership of the two lots belongs to the developer and has never been sold to the owners of Phase 8 of Mei Foo Sun Chuen.

(3) As the former LPG site is an independent lot, how should the development potential of the lot be calculated?

- The relevant departments processed the plan based on the actual design of the proposed building. In general, we mainly exercise control with respect to the land lease, the planning issues and the building per se.

Lease Conditions

- The lease of NKML25 (including NKML25 R.P. and NKML25 S.B after division of the lot) does not impose restrictions on the development parameters of the development project. As far as land use is concerned, it is stipulated that the site can be used for non-industrial purposes (i.e. including residential use).

Outline Zoning Plan

- On 8 November 1985, the first draft Lai Chi Kok OZP No. S/K16/1, covering area including Mei Foo Sun Chuen, was gazetted, in which the whole NKML 25 was zoned “Residential (Group A)” (“R(A)”) so as to reflect the use at that time. With regard to the LPG storage site, as a facility ancillary to the Mei Foo residential development, it was also zoned “R(A)” under the zoning of Mei Foo Sun Chuen in accordance with the established planning principle of broad land use zoning pattern. The planning process was carried out in accordance with the statutory requirements stipulated in the Town Planning Ordinance (Cap. 131), and has already included an opportunity for public inspection and objections. At the end of May 2002, the draft Lai Chi Kok OZP No. S/K16/10 was gazetted, in which the plot ratio restriction for “R(A)” zone was revised. The plot ratio restriction was specified in the Remarks of the Notes for “R(A)” zone of the OZP (i.e. the plot ratio for the building shall not be in excess of 7.5 for a domestic building or 9.0 for a building that is partly domestic and partly non-domestic, or the plot ratio of the existing building, whichever is the greater.) Subsequently, the Town Planning Board (TPB) has made several amendments to the OZP, but the land use zoning and plot ratio restrictions of the site remain unchanged.
- Apart from plot ratio restriction, there are no other restrictions for

“R(A)” zone. As such, each individual site zoned “R(A)” can be developed subject to the plot ratio restriction prescribed in the OZP.

- For this case, according to the building plans approved by the BD in October 2010, the domestic gross floor area of the proposed development at NKML25 R.P. and NKML25 S.B is 4 788.4 square metres. As far as the parameters of the OZP are concerned, based on a total area of 1 354.655 square metres of the site, the domestic plot ratio is 3.535, which is in line with the maximum plot ratio of 7.5 allowed under the OZP.

Buildings Ordinance

- The BD will, taking into account multiple aspects, primarily based on the actual conditions of a development such as site classification, site coverage, plot ratio, etc., consider whether a project complies with the requirements of the Building (Planning) Regulations (Cap. 123, sub. leg. F) (B(P)R). In particular, s.20 and s.21, as well as Schedule 1 of the B(P)R have stipulated the methods of calculation for site coverage and plot ratio. At the same time, **the BD will also ensure that the proposed building will not affect the parameters of the completed buildings in the vicinity.**
- As pointed out in answer (1), the building plans approved by the BA in 1974 covered the whole NKML25, including Phase 8 of Mei Foo Sun Chuen and the building of the LPG storage site. As such, the BA had to deduct 590 metres (see answer (4) below for details), which was used to support the development parameters of the completed buildings of Phase 8 of Mei Foo Sun Chuen, from the site area of the development project (i.e. NKML25 R.P. and NKML25 S.B) when calculating the site coverage and plot ratio.
- According to the building plans of the development project approved by the BD in October 2010, the domestic gross floor area of the proposed development at NKML25 R.P. and NKML25 S.B is 4 788.4 square metres. Calculated using a total area of 765 square metres (i.e. after deducting, due to the restrictions on site coverage, the 590 square metres from the site’s total area of 1 354.655 square metres), the domestic plot ratio under the B(P)R is 6.26, which is in

line with the permitted plot ratio of 6.8 for this particular site as prescribed in Schedule 1 of the B(P)R.

- To conclude, as we have mentioned in the press release, the development project is in compliance with the relevant requirements of the land lease, the OZP as well as the BO and B(P)R. The BD has also approved the plans and granted its consent to commence foundation works in accordance with the established procedures.

(4) An academic has raised doubts against the DEVB's opinion that the development project is not using residual plot ratio since the former LPG site is an independent site. The calculations of plot ratio and site coverage are based on the BO. From a legal point of view, if the maximum plot ratio is not fully utilised, there exists residual plot ratio and this is a separate issue from the division of the lot. The division of the concerned lot into four separate lots is governed by the lease conditions, which is a separate system from the BO and the two have no underlying relationship. Why did DEVB deploy the above as the reason to explain that residual plot ratio was not taken up?

- First of all, since the titles of the site concerned have never been sold to the owners of Phase 8 of Mei Foo Sun Chuen, the development potential of the site is naturally owned by the developer.
- In calculating the development parameters, the Administration will take into account the area of the site per se and other restrictions. The site area of the development project (i.e. calculated based on the areas of NKML25 R.P. and NKML25 S.B) is 1 354.655 square metres.
- In general, in considering a development project of an independent site, only the relevant conditions of the site per se have to be taken into account. However, this case involves a special factor that has to be considered. In 1974, the whole NKML25 was developed as a single site (the site was then not yet divided into four subsections). It was covered in the 1974 building plans. As such, the BD, in considering whether the development parameters of the development project is in compliance with the BO and the B(P)R, is also required to take into account the scale of development of the existing buildings of Phase 8 of Mei Foo Sun Chuen to ensure that these existing buildings still complies with the conditions of the 1974 building plans.
- According to the information shown on the 1974 building plans, the then permitted percentage site coverage of the development project at the whole NKML25 is 38%. The site coverage of the completed

buildings in Phase 8 of Mei Foo Sun Chuen is 6 186.877 square metres (with a building height of 57.15 metres), and the site area required should be 16 281.256 square metres (6 186.877 square metres/38%). Nevertheless, based on calculations, the existing area of the land co-owned by the owners of Phase 8 of Mei Foo Sun Chuen (i.e. NKML 25 S.A R.P.) together with NKML25 S.A ss.1 is 15 691.211 square metres only, which is not adequate to support the site coverage of Phase 8.

- Therefore, about 590 square metres (16 281.256 square metres – 15 691.211 square metres) of site area of the lot where the development project is located (i.e. NKML25 R.P. and NKML25 S.B) was then actually used for calculating the permitted percentage site coverage of Phase 8 of Mei Foo Sun Chuen. Although the title of the 590 square metre land belongs to the developer of the development project, the land cannot be used for the purpose of calculation of the percentage site coverage and plot ratio for the current residential development project.
- In other words, even if the total area of NKML25 R.P. and NKML25 S.B is 1 354.655 square metres, the actual site area which can be used for calculating the development potential of the current residential development project is only 765 square metres (1 354.655 square metres – 590 square metres), as an area of 590 square metres therein has already been used for developing Phase 8 of Mei Foo Sun Chuen.
- We have to emphasise that while the development potential (the site area which can be included for the percentage site coverage and plot ratio calculations) of the lot where the development project is located has been reduced because of the existing buildings of Phase 8 of Mei Foo Sun Chuen, the site concerned, as an independent site, still has its development potential. Since the site is owned by the developer, any development potential the site possesses is also owned by the developer. At the same time, the development project has not used the lot area of Phase 8 of Mei Foo Sun Chuen in the calculation of the development parameters of the development project.

(5) DEVB’s press release on 3 April has pointed out that “the project site is a separate site with its own development parameters”. However, the Government clearly pointed out in its letter to the Sham Shui Po District Council on 21 December last year that when considering the proposed building on the former LPG storage site, the Government “will also need to consider the development parameters of the existing buildings of Phase 8 of Mei Foo Sun Chuen”. To ensure that the site coverage of Phase 8 is compliant with the requirements of the then approved plans, the Administration has further emphasised that an area of 590 square metres cannot be developed and has to be assigned to the site area of Phase 8. Are the two statements made by the Government contradictory to each other?

- The site of the development project (i.e. NKML25 R.P. and NKML25 S.B) was then still owned by the developer of Phase 8 of Mei Foo Sun Chuen (Mei Foo Investments Limited, which was subsequently renamed as Broadway-Nassau Investments Limited) after the division of the lot and completion of Phase 8 of Mei Foo Sun Chuen. It has never been sold as in the case of Phase 8 of Mei Foo Sun Chuen. The current developer of the development project (i.e. Billion Star Development Limited) has already purchased the site of the development project in 2009. Hence, the concerned lots are still independent from Phase 8 of Mei Foo Sun Chuen. The abovementioned press release by the DEVB mainly pointed out that the development project is located on lots independent from Phase 8 of Mei Foo Sun Chuen and, same as other sites for independent development, has its own set of development parameters. A developer must independently show on its building plans whether the development parameters of the proposed building are in compliance with relevant requirements of the BO and the B(P)R.
- We must emphasise at the same time that the BD will ensure that the development of any site will not affect other completed buildings and will not result in a situation causing the completed buildings to contravene the BO. As the former LPG storage site and the now completed Phase 8 of Mei Foo Sun Chuen were developed as a

single site (NKML25 which was not yet divided into four subsections) in 1974 and were included in the same set of approved building plans, the BD, when considering whether the development parameters of the development project per se is in compliance with the BO and B(P)R, will also have to ensure that, upon the completion of the development project, the existing buildings of Phase 8 of Mei Foo Sun Chuen will still be able to comply with the conditions shown on the then approved plans of the whole NKML25. In accordance with the above considerations, 590 square metres have to be deducted in the calculation of the site coverage of the proposed building on the former LPG storage site. This is to ensure that the percentage site coverage of the existing buildings of Phase 8 of Mei Foo will be able to comply with the conditions shown on the 1974 approved plans.

- Nevertheless, the title of the 590 square metre site does not belong to the owners of Phase 8 of Mei Foo Sun Chuen and has never been transferred to Phase 8 of Mei Foo Sun Chuen.

(6) Will the development project affect the future redevelopment of Phase 8 of Mei Foo Sun Chuen?

- In 1976, among the four divided lots, only the separate titles (undivided shares) of NKML25 S.A R.P. were sold to the owners of Phase 8 of Mei Foo Sun Chuen. In other words, if titles are assembled for the redevelopment of Phase 8 of Mei Foo Sun Chuen in future, the site area used for calculation of development potential can only include the area of NKML25 S.A R.P. The development potential of other lots (e.g. NKML25 R.P. and NKML25 S.B) not owned by the owners of Phase 8 of Mei Foo Sun Chuen will not be included.
- When NKML25 S.A R.P., where Phase 8 of Mei Foo Sun Chuen is situated, is redeveloped independently in future, it can be developed in accordance with the maximum domestic plot ratio/plot ratio for a partly domestic and partly non-domestic building under the plot ratio restriction as prescribed in the relevant OZP. According to the current Approved Lai Chi Kok OZP No. S/K16/4, in the “Residential (Group A)” zone where the lot is situated, the two abovementioned plot ratio restrictions are 7.5 and 9.0 respectively.
- Regarding the BO and its subsidiary legislation, when titles are assembled for the redevelopment of Phase 8 of Mei Foo Sun Chuen in future, the existing buildings of Phase 8 will be demolished under the redevelopment project. In other words, the buildings (i.e. buildings of Phase 8 and the LPG storage plant) shown on the 1974 approved plans will no longer exist, and the BA will no longer have to take into account the development parameters shown on the 1974 plans in processing the redevelopment application of Phase 8 of Mei Foo Sun Chuen.
- Based on the above reasons, if NKML25 S.A R.P., where Phase 8 of Mei Foo Sun Chuen is situated, is redeveloped independently in future, its development intensity should not be affected by that of the development project.

- (7) **It is said that the Government proposed the relocation of the LPG storage plant from Phase 8 of Mei Foo Sun Chuen by means of land exchange in 1995 but to no avail. Why did the Government hide the matter from the residents and not inform them of the progress?**
- **1995** – The Sham Shui Po District Board (SSPDB) proposed the relocation of the LPG storage plant from Mei Foo Sun Chuen at its meetings on 28 September 1995 and 11 July 1996 respectively. According to the papers and minutes of the meetings, the request of the District Board at that time was to hope that the Government would assist the residents to relocate the LPG storage plant as soon as possible.
 - To respond to the residents' request of relocating the LPG storage plant from Phase 8 of Mei Foo Sun Chuen, the Lands Department (LandsD) began to explore the feasibility of different options. During internal discussion, the options explored included the relocation of the LPG storage plant elsewhere by means of short-term tenancy, private treaty grant and non-in-situ land exchange. As consent of the owner of the LPG storage plant had to be obtained before finalising any option, the owner had been approached for its views during the process.
 - The owner had already told LandsD at a very early stage during the exploration process (1996) that it would not accept the options of short-term tenancy and non-in-situ land exchange. As the site was privately-owned, the Government could not force the owner to accept the land exchange option. Therefore, what the LandsD could do was to negotiate with the owner on the private treaty grant option.
 - **1998-1999** – Under the established land policy, if policy support is obtained from the relevant bureau, a public utility company could be granted a site direct at full market value to operate its business. As Mobil Oil Hong Kong Limited is a public utility company, the then Economic Services Bureau gave its policy support and thus the site at Tat Yeung Road (i.e. NKIL 6273) was granted by LandsD to

Mobil Oil Hong Kong Limited by means of private treaty grant at full market value on 2 June 1998. The LPG storage plant was then relocated to the above site in 1999.

- ***Future use of the LPG storage site*** – During the relocation process, the Administration has briefed the SSPDB and the Sham Shui Po Provisional District Board on the relocation plan and its details. In fact, some Members asked about the use of the site after the relocation of the LPG storage plant at the meeting on 28 September 1995. The LPG company only promised at that time that the site would no longer be used for storage of dangerous goods, but might be used for other purposes. Members did not discuss further on the issue. Subsequently, at the meetings on 13 November 1997, 9 January 1998 and 6 May 1999, Members were informed that relocation would take place by means of a land grant. No further discussions were made at the meetings on whether relocation by other means would be possible. Besides, at the meeting on 6 May 1999, District Councillor WONG Tak-chuen also asked about the future use of the former site of the LPG storage plant, and was informed that Mobil Oil Hong Kong Limited would consider its future use from a commercial perspective.
- The above information indicates that the so-called land exchange option was only one of the options LandsD explored with the owner of the LPG storage site. It was immediately turned down by the land owner. The proposal for land exchange was not among the topics discussed by the District Board (from 1995 to 1999). The fact that a land exchange option had been explored by LandsD was only mentioned by a representative of the department when he explained the relocation of the LPG storage site at a District Council meeting on 16 March 2004. In fact, from the minutes of the abovementioned meetings, it can be seen that the Board had at that time been informed that the owner of the LPG storage site would keep its land ownership and would consider the future use of its land from a commercial perspective.

(8) In fact, the Government has in recent years allowed the repurchasing of land from developers through land exchanges for some of its policies, such as the conservation of King Yin Lei.. Why does the Government now refuse to repurchase the land of the development project through a land exchange in response to the residents' requests? In addition, the residents are dissatisfied that the DEVB's recent press release, which mentioned that the land exchange was proposed by the residents, is misleading.

- We have to emphasise that non-in-situ land exchange generally requires the approval of the Executive Council on a case-by-case basis. The Executive Council will only consider such options under very special circumstances, such as when there are sufficient policy justifications and when overall public interest is at stake. An example is the protection and preservation of a historic building under Hong Kong's heritage conservation policy.
- In this case, the development complies with the planning and building legislation and residential use is permissible under the land lease. As such, there are currently no policy considerations or special circumstances which warrant the Government's interference with private property rights. Nor does the Government have sufficient justifications to bring forth any proposed non-in-situ land exchange with the owner to stop the development or to simply address some local resistance.
- The following is an excerpt of the press released issued by DEVB on 3 April this year –

"There have been suggestions that the Government should consider executing a non-in-situ land exchange with the owner of the site so as to stop the development...the spokesman added."
- DEVB was referring to the fact that, due to the residents' concern over the development project, a number of LegCo Members have, in various public occasions (including the Special Finance Committee Meeting on 23 February), requested the Government to resolve the

issue being disputed by the Mei Foo residents through land exchange. This statement is based on facts, and is not misleading in any manner.

(9) Why has the Government not altered the planning use of the former LPG storage site, such as a “Government, Institution and Community” (“G/IC”) zone, such that the site cannot be used for residential developments?

- Some residents submitted a rezoning request to the TPB in April 2004 to propose that the former LPG storage site be rezoned from "R(A)" to "G/IC".
- In June 2004, the TPB rejected the rezoning request, and the reasons are –
 1. The site is zoned “R(A)” and can be developed to residential flats without the permission from the TPB if the development intensity does not exceed the plot ratio restrictions as stipulated in the Notes of the OZP. Moreover, building plans for residential flats have already been approved by the BD, and residential development on the site is not in breach of the lease conditions. Unless there are strong justifications, to rezone the piece of private land to “G/IC” zone is undesirable because the landowner would be deprived of the development right;
 2. the proponent has not demonstrated the need for Government, institution or community (GIC) facilities in Lai Chi Kok area; and
 3. since there is no plan to develop the site for GIC uses, it would be difficult for the Government to resume the private land, and the proposed rezoning to “G/IC” would result in planning blight.

(10) Upon completion of a general building, how can members of the public check information concerning the final plot ratio, availability of residual plot ratio and whether residual plot ratio has been transferred? Will the Government announce which lots in Hong Kong have the issue of “residual plot ratio”?

- The final actual development of every site is affected by various factors, including the actual design of the building, the latest development parameters prescribed in the respective OZP of the district and the lease conditions. It is not possible for us to predict the final plot ratio of every site.
- Specifically, the available development intensity of every site, including the permitted plot ratio and the permitted site coverage, depends on various factors, such as the permitted plot ratio and percentage site coverage prescribed in the B(P)R as well as the restrictions prescribed in the OZP or other statutory restrictions. In particular, the parameters prescribed in the B(P)R will vary in accordance with the actual design of the proposed building (such as building height, site classification and site composition).
- The above calculations involve technical and legal considerations in general. Advice from relevant professionals should be sought if a precise assessment is needed.
- For completed buildings, in general, apart from New Territories Exempted Houses and those buildings already sold or disposed of by the Hong Kong Housing Authority, regarding records (such as approved building plans and occupation permits) of all private buildings, the BD keeps plans and documents submitted to the Department under the BO. If the copyright owner has not specifically expressed opposition to public access to the plans and other documents, the public may visit the BD’s Building Information Centre or submit their applications via the Building Records Access and Viewing On-line System on the Internet to inspect or place orders for copies of building records and documents, such as the approved building plans and occupation permits, upon payment of the prescribed fees.

Development Bureau
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