

# From Privately Managed Public Open Space to Private Open Space: A Case Study of a Private Residential Complex in Hong Kong

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*Abstract: Privately owned and managed public open space is a key research topic. Hong Kong is not an exception. This article aims to identify the problems of public open space in private management in Hong Kong. Drawing upon a case study of a private residential development, the Metro Harbour View, the article finds that the existing mechanism is inadequate in enforcing public open space in private management and coordinating public open space provision. The article also suggests that the privatization process is a confluence of the effort from the government, the private developers and the expectation of the residents.*

*Keywords: Open space, privatization, Hong Kong, Metro Harbour View*

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Privatization of public open space is getting more popular among cities with a high population density. In the recent years, developers are urged to share social responsibilities to provide more facilities for public access in private owned land to ease the shortage of open space provision in congested urban areas. The developers, in return, may gain increased floor area ratio for development in their sites. This case study investigates the issue of public open space in a private owned and managed development, the Metro Harbour View, in Hong Kong. Through examining newspapers accounts, commentaries and interviews conducted by the media, this article attempts to find out how the podium garden of Metro Harbour View, a privately managed public open space, undergoes the privatization process. As it unfolds, the case illustrates the loophole of the existing enforcing mechanism and the threat of the residents, the developers' intention not to comply with the lease condition, and the perception of the open space as a privately shared area amongst residents. The complaint of the residents then leads to the negotiation between the residents and the government in turning the public open space into a truly private one. This article aims to reveal that privatization of open space is not a sole consequence of either the effort of the government or the private developers, but the mingled influence of the two together with the expectation of the residents. In doing so, the article will open with a brief introduction of research examining the privatization of open space. The second section highlights the policy governing public open space in private developments in Hong Kong and the policy concerns. The following section discusses the issue of the podium garden of Metro Harbour View. The article closes with a discussion and suggestions for further study.

### Privatization of Open Space Revisited

Conventional research on open space suggests that open space cannot be thoroughly evaluated by means of economic analysis. Berry (1976) proposes open space to be evaluated in six dimensions, namely utility, functional, contemplative, aesthetic, recreational, and ecological value, whether the open space is public or private, urban or rural, or large or small. In the 1980s, public utilities gradually became targets of privatization and eventually public space was considered as a possible ground for such process. Loukaitou-Sideris (1993) conducted one of the early studies, which shed light on the characteristics of privatized public open space. She attributed the privatization process of public open space to three factors: The desire to utilize private resources to ease burdens on government budgets; the willingness of private developers to provide public open space in private developments in return for additional floor area ratio; and the increasing demand of privately managed open space in view of the threat of crimes and the presence of undesired groups in conventional public open space. Development pressure to achieve sustainable urban growth and the prevailing trend of public space under support and management by corporations are some other factors suggested, resulting in the accentuated control over use in privatized open space and spatial fragmentation of urban areas (Defilippis, 1997; Schmidt, 2004). In the context of Hong Kong,

the norm of privately managed public open space with overt surveillance is particularly pervasive, owing to the absence of a democratic politics and the wealth creation mentality of traditional Chinese. Open space planning, under this circumstance, is empowered into a means of social control (Cuthbert, 1995; Cuthbert & McKinnell, 1997). The increasing surveillance and control over usage, behaviours, and access by the private management also leads to the limited function of public open space in political, social and democratic contexts, diminishing the sense of publicness (Mitchell, 1995; Németh, 2009; Németh & Schmidt, 2011).

### Public Open Space in Private Developments: An Overview

The incorporation of public facilities in private developments has been put into practice since the 1980s. The policy intends to integrate design and optimize land use for better planning of development, to utilize public facilities for the need of the wider public, and to envisage residents brought by a private development (Panel on Development, Legislative Council, 2010). Public facilities in private developments can be categorized fourfold: government, institution and community facilities, public open space, public transport terminus, and public access facilities. Where provision of public facilities in



View of the Podium Garden



View of the Podium Garden

private development is applicable, the corresponding Government Bureaux/ Departments may propose to include planning conditions for a specific site in the statutory town plan, or to include land sale conditions in the land lease (Ibid). A recent study finds that social facilities, including open space, and public access facilities have the highest percentage to be incorporated into leases (Yung, 2011). The effectiveness of planning and lease condition, in particular the provision of privately managed public open space, has been widely discussed in academic researches. One aspect of research focuses on the issue of non-compliance of conditions and the planning enforcement. Most researches seem to stress on the uncertainty of planning enforceability of the Town Planning Ordinance and the ambiguity of liability in case of non-compliance (Lai, Ho, & Leung, 2005; Tang & Leung, 1998). It is also believed that in the absence of direct enforcement measures, developers will comply with the planning conditions as far as compliance can enhance the values of the development, while mere negligence may also be a possible reason for non-compliance (Lai, Yung, Li, & Ho, 2007). Apart from the compliance issue, the quality of privately managed public open space is another focus of research. Evaluation on the existing policy suggests that developers tend to provide corridors and passageways without

adequate pedestrian facilities and greening. In most cases, the open space within private developments is designed to fulfil merely the minimum requirements of the conditions and maximize gains in development potential (Luk, 2009). Despite these early academic concerns, the issue of public open space in private developments did not draw much public attention in Hong Kong. This rapidly changed when two incidents were reported in 2008. Specifically, Times Square, a shopping mall providing public open space for public access in an old district in Hong Kong, has abused the user rights by renting out part of the public open space for profit, whereas Metro Harbour View has not opened the public open space since the completion of the development (e.g. Kwan, 2011; Tse, 2008).

### **Metro Harbour View: Public Space or Private Amenity?**

In 2003, a private housing estate was developed in Tai Kok Tsui, West Kowloon, a densely populated urban area in Hong Kong. As a popular residential complex design in Hong Kong, the estate is situated on a shopping composite with a podium garden on the roof. With no less than 9,800 square metres in size, the podium garden is regarded as well designed with maintenance, comprising a garden plaza, fountains, two playgrounds and two clubhouses in which various leisure and recreational facilities are provided. Covered

walkways are built to connect each residential block to the podium garden. There is also a stairway connecting the garden (located on the 4th floor) to the neighbouring street, and a gate installed to bar entry from the street. The podium garden was for long conceived as a private area dedicated only to the enjoyment of local residents. While many studies have pointed out that proximity to permanent open space will significantly increase property values (e.g. Geoghegan, 2002), empirical study shows that Hong Kong property buyers are willing to pay higher prices for private space and publicly accessible space is considered undesirable and to exert downward pressure to property values (Chan, So, Tang, & Wong, 2008). As such, it is probable that the podium garden is designed purposely by the developers as a private area to maximize revenues from the residential development.

Nonetheless, it was not until early 2008 that the developers were found by a local newspaper for not complying with the lease condition. The news discovered that the developers achieved an agreement with the government to provide public open space in exchange for the land exchange application to be approved for the development of Metro Harbour View. Under the lease condition, the developers of Metro Harbour View are required to construct and maintain no less than 9,800 square metres of public open



Podium Garden at a Glance

space for public access (i.e. the podium garden is thus reserved for the purpose of public open space) (The Government of the Hong Kong Special Administrative Region, 2007), but the podium garden was closed for private access only since the development had been completed. Upon the report of the misconduct, the Lands Department immediately requested the property management of Metro Harbour View to open the podium garden.

The opening subsequently aroused discontent of residents. From the residents' view, they thought they were deceived by the developers without clear notice that the podium garden is a public open space during the time they purchased the flats. Others were concerned about the rising maintenance costs of the podium garden, and wondered if safety and hygiene of the environment would deteriorate. Some even worried that the prices of their property would drop drastically. The representative of the residents also claimed that it was unreasonable to transfer the rise of maintenance costs to the residents, while government subsidies were not guaranteed (Ho, 2008a). Despite these views, the developers denied responsibilities for the opening. They claimed that all the flats were sold by that time and it was completely the residents' decision whether to open the podium garden for public access; the management simply acted in accordance with the requi-

rements of the lease to open the podium. The issue of privately managed public open space was eventually laid down for discussion in the Legislative Council in December 2008. In the meeting, the government proposed to exempt Metro Harbour View from the lease condition, saying that the design of the podium is difficult for public access, and security problems may arise as the podium cannot be separated from the residential blocks (Ho, 2008b). In order for the podium to be exempted and turned completely private, the residents have to first gain support from the District Council and then the approval of the Town Planning Board. Upon the agreement of the two bodies, the residents are required to pay an administrative fee and waiver fee for the privatization of the podium.

Since the opening, the owners of Metro Harbour View claimed that annually an additional one million Hong Kong dollars were spent for maintenance and insurance of the podium with the introduction of more surveillance advices and security patrol, despite there have only been about 150 outsiders, mostly food couriers, entering the podium (Lee, 2011). The lack of outsiders visiting the podium garden may also be attributed to the fact that there are a large public park and two smaller public parks surrounding the residential complex. In June 2011, the residents finally submitted the ap-

plication to the Town Planning Board under the assistance of the developers (Owners' corporation of Metro Harbour View applied for podium privatization, 2011). While the result of the application is still pending, the podium has always appeared to be a privatized one regardless of the privatization process.

### Discussion

From the planning perspective, the case study illustrates the weakness of open space planning in Hong Kong. Given that the provision of public open space within the site of Metro Harbour View was proposed voluntarily by the developers, this public open space was considered planning gain (Metro Harbour View Quietly Opened Podium, 2008) and regarded necessary due to the open space shortage in the old district. The case thus reflects the government's mentality in encouraging open space provision within private development in order to satisfy merely the quantity requirements stipulated under the Hong Kong Planning Standards and Guidelines (HKPSG) of Hong Kong (Tang & Wong, 2008). While three public parks, each of which is zoned under different town plans, have been constructed around the residential complex to serve public needs of the individual districts, it also implies that there is not an adequate coordination of public open space provision, leading to the

clustered and fragmented open space pattern in the urban fabrics.

In addition, the closure of the podium garden once again challenged the enforceability of privately managed public open space. This case study per se shows that the closure of the garden is not due to the negligence of the developers. It appears to be an intentional closure in order to maximize the property values. There is also little evidence suggesting that the government intends to monitor and enforce the open space provision before the news released in 2008. As land sale serves as the most important revenue for the Hong Kong Government, there is economic reason for the government indeed to neglect the enforcement of open space provision within lands owned by private developers. The approval of the enclosed layout of the podium garden further implies the lack of evaluating mechanism for privately managed open space and the government's negligence to conduct comprehensive evaluation.

Furthermore, the case of Metro Harbour View reveals that the result of privatization of public open space is not a sole process led by the developers, but also led by the self-interests of the local residents. Regardless the residents may be deceived by the developers and the sales brochures and view the podium garden as a private amenity when they purchased the flats, the residents appear to be neglectful of any potential defects in their properties during the transaction, arguing for the protection of their property rights without careful inspection of the responsibilities as required by the lease condition. The rationale employed to urge on the closure of podium garden also seems unjustifiable in which rare outside visitors were matched with an extreme increase in maintenance costs and groundless worry of crime. In any case, it is clearly shown that the podium garden is perceived, in addition to the developers' intention and design, as a private amenity by the local residents throughout the exposure of the issue.

The privatization process as illustrated is led by the confluence of the

lack of will in enforcement by the government, the intention of the developers and the perception of the residents. To further address the dynamics of open space privatization, further research on the perception of private amenity versus public amenity of residents, the supply and planning of both public and privately managed open space, as well as the location and the management of public open space is suggested.

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