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1. INTRODUCTION

1.1 Hong Kong has a shortage of parking spaces in residential developments. A study carried out by the Transport Department in 1995¹ identified an overall demand for 264,699 spaces and a supply of 239,000. The overall shortfall of 10% masked the fact that in some districts the percentage shortfall was much higher. Table 2, which appears on page 8 gives the break down for individual districts.

1.2 Over a period of several years the Consumer Council has received complaints about the high cost of renting or purchasing car parking spaces in residential developments. In 1994, following a sharp increase in rents, averaging 33%, for car parking spaces, the Council, in response to the public concern, setup a working group to look into the car parking problems faced by residents. Membership of the Working Group is shown at appendix 1. The Council wishes to put on record its gratitude to the members of the working group whose previous work helped shape the conclusions of the current report.

1.3 The complaints go beyond the simple issue of price. Consumers have also complained about the way in which spaces are being sold to third parties instead of directly to residents. In particular many residents believe that car parking spaces should be reserved for the use of residents and bona fide visitors. Typical of these complaints is a case in late 1990 concerning the Beacon Heights Estate. The case was widely reported in the newspapers at the time.

1.4 In spite of the strong protest made by flat owners, the developer of the estate decided to enter into an agreement to sell the entire car park of the estate, consisting of more than 650 private car parking spaces, to a group of investors. The decision was made several years after the completion of the development. The average selling price was reported to be about \$89,000 per space. Complaints about the selling practices of the group were widely reported in early 1991. However, the group immediately sub-sold those spaces to flat owners at about \$200,000 per space. The current (July 1997) cost of a parking space on the Estate is HK\$400,000 - HK\$500,000.

Recent Complaints

1.5 More recently complaints alleging unfairness were received in respect of the sale during April and May 1997 of car parking spaces on the South Horizons Development. The Council received 83 complaints.

1.6 A major feature of the complaints was that the complainants said they were given the impression that they were being offered the opportunity to buy spaces on which two cars could be parked. They were subsequently informed that they were being offered a space where there was consent for one car to be parked but sufficient room for two cars.

1.7 Residents also complained about the conduct of the sale saying that:

- a. no details were given of the number of spaces to be sold;
- b. no overall plan showing the plots to be sold was available;
- c. no price list was available; and
- d. they were put under pressure to reach rapid decisions.

1.8 Finally, residents complained about the fact that some 500 of the spaces were sold to a company and not to residents.

1.9 The developer has disputed the version of events put forward by the complainants and believes that it did all that was necessary to give consumers adequate time and information on which to base what it agrees were significant decisions. It has said that spaces were not sold to the outside company until it had completed its previously announced car park sales programme and the sale was concluded on the understanding that the new owner would retain most of the spaces for renting out to residents.

1.10 The details of what took place are described on pages 14-15 in the next chapter. The case demonstrates how important it is that there is full and timely disclosure of information. It is clear from the volume of complaints received that, whatever the company's intention, considerable confusion surrounded the sale of these spaces.

1.11 It should also be noted that the Director of Lands wrote to the developer and said that the company had in practical terms purported to sell "double* parking spaces and that this was entirely contrary to the spirit, if not the letter, of the relevant lease conditions.

1.12 Subsequently, a complaint was received from residents at the Provident Centre in North Point. The complaint was that the developer had sold the car parking spaces to two companies without first offering residents the opportunity to buy spaces. The residents also complained that they were only informed on July 18 that the rental charges would increase to \$4,000 from \$2,800 and were under pressure to decide before July 23 whether they would continue to rent spaces. It was only when the residents expressed strong objections, that the management company extended the deadline until early August.

1.13 We have discussed the complaints concerning South Horizons and the Provident Centre in detail, but they are only the latest in a series of complaints. Between the start of 1994 and the end of July 1997 we received 162 complaints involving 43 developments (complaints against hourly car parks etc. are excluded). The two main concerns were the sale of spaces that had previously been rented out on a monthly basis and sharp increases in parking fees.

1.14 Right from the outset of our studies, we have been aware that it had been the Government's traffic management policy not to encourage the ownership of private cars, although Government now seeks to influence the number of cars through fiscal measures rather than planning constraints. It is also the case that some of those consulted take the view that the ownership of a private car is not generally one of life's necessities and that intervention in the workings of the market cannot be justified. This view does not, take full account of circumstances in the New Territories. Many residents of new towns have found it more

convenient and, in some cases, essential to depend on private cars instead of public transport. Increasing social links between Hong Kong and Guangdong Province will also increase the need for private transport.

2. THE CONTRIBUTING FACTORS

2.1 The Council has identified six factors that have contributed significantly to the problems described in the introduction:

- a. growth of private car ownership;
- b. restraints on the provision of private car parking spaces;
- c. lack of statutory rent and tenure protection;
- d. disposal of parking spaces to non-residents;
- e. lack of enforcement of conditions on use; and
- f. limited disclosure of information.

Growth of Private Car Ownership

2.2 The number of licensed private vehicles has increased by more than 100% in the last 20 years. The rapid rise in household income in recent years is generally recognized as the main factor contributing to the growing aspiration of private car ownership. Development of new towns in the New Territories is also an important factor. Many residents in new towns have found it more convenient and, in some cases, essential to depend on private cars instead of public transport.

2.3 Before the end of 1995, there were no comprehensive statistics on the distribution, types and number of available parking spaces in Hong Kong. Judging from the aggregated statistics made available to us by the Transport Department, (Table 1) the number of available parking spaces for all types of vehicles was always below the actual number of all types of vehicles. As some of the spaces were in on-residential locations it seems certain that there has long been a shortage of residential parking spaces.

TABLE 1
Number of Motor Vehicles vs. Number of Parking Spaces in HK

Year	Number of Parking Spaces*	Total Number of Registered Motor Vehicles	Number of Registered Private Cars
1984	n.a.	311,850	182,985
1985	280,066**	300,561	168,200
1986	n.a.	300,995	161,279
1987	n.a.	322,290	166,977

1988	n.a.	347,402	178,234
1989	n.a.	376,153	195,818
1990	403,105	405,407	215,709
1991	424,153	433,769	236,747
1992	n.a.	471,221	265,755
1993	n.a.	503,509	291,913
1994	460,220	524,021	311,929
1995	n.a.	526,296	318,233
1996	497,079+	532,946	325,131

Notes

* **including parking spaces for all types of motor vehicles.**
 ** **excluding parking spaces in the outlying islands.**
 + **provisional figure.**

2.4 In December 1995, the Transport Department published a report Parking Demand Study which provides a comprehensive and up-to-date inventory of Hong Kong car parking facilities in 1994. Based on the findings of the Study, we note the supply of car parking spaces falls short of the demand in the territory by a total of 25,699 car parking spaces. The shortage problem is most acute in Hong Kong Eastern and the New Towns. (Table 2)

Table 2
1994 Private Car Parking Space Demand and Supply

District	Domestic Facilities		
	Parking Space Demand (a)	Parking Space Supply (b)	Domestic Surplus/Shortage (a)-(b)
Central & Western	19,918	19,072	-846
Eastern	32,819	21,266	-11,553
Kowloon City	21,856	24,899	3,043
Kwai Tsing	12,222	13,040	818
Kwun Tong	15,493	15,900	407
North	6,433	7,104	671
Sai Kung	8,055	7,177	-878
Sha Tin	27,440	27,503	63
Sham Shui Po	12,825	9,670	-3,155
Southern	21,348	19,227	-2,121
Tai Po	11,124	9,981	-1,143
Tsuen Wan	10,723	9,285	-1,438
Tuen Mun	17,299	20,784	3,485
Wan Chai	15,456	15,942	486
Wong Tai Sin	7,244	9,040	1,796
Yau Tsim Mong	8,982	3,486	-5,496
Yuen Long	15,462	5,624	-9,838
Overall	264,699	239,000	-25,699

Source: Parking Demand Study, the Transport Department, December 1995.

Restraints on the Provision of Private Car Parking spaces

2.5 For traffic control purposes, the declared policy of the Government has been to restrain private car ownership. Prior to 1981, the Government attained this by restricting the provision of residential parking spaces. The Government later adopted fiscal measures to restrict the growth in private car ownership. The new policy can be summarized in the following

Statement of Intent contained in the Hong Kong Planning Standards and Guidelines 1992 edition issued by the Planning Department:

"Parking standards for residential development were formulated in the light of the introduction of fiscal measures to restrict directly the rate of growth in private vehicle ownership and the abandonment of restraint on car ownership by a restriction of residential parking spaces. The overall intention of the standards is to ensure that, except in special cases, future residential developments should have sufficient parking provision to match the current and anticipated car ownership of residents. Generally, therefore, minimum rather than maximum standards are set. This should enable developers to be aware from outset of the extent of parking provision they can plan."

2.6 In spite of this, the provision of car parking spaces in residential developments is still very much subject to transport interaction constraints and developers seldom make use of the flexibility to provide more than the stipulated minimum. (Table 3)

Table 3
The parking ratios of 16 Residential Developments (complaints in 1994)

Region	Developments	No. of flats (a)	Parking spaces (b)	Parking ratio (c)=(a):(b)	HKPSG* (d)	Requirement under the lease (e)
Chai Wan	1. Heng Fa Chuen	6,504	1,326	4.9:1	4:1	7:1 to 6:1
Fanling	2. Fanling Centre	2,220	270	8:1	7:1	10:1 to 8:1
Quarry Bay	3. Kornhill	8,828	1,868	4.7:1	4:1	5:1 to 3:1
	4. Taikoo Shing	12,722	4,661	2.7:1	4:1	unrestricted
Sham Tseng	5. Lido Garden	1,392	250	6:1	5:1	unrestricted
Tai Po	6. Tai Po Centre	2,704	513	5.3:1	5:1#	513
	7. Treasure Garden	480	124	4:1	5:1#	not < 96
	8. Eightland Garden	528	100	5:1	5:1#	not < 96
	9. Plover Cove Garden	800	131	6:1	5:1#	minimum 8:1
	10. Greenery Garden	504	95	5:1	5:1#	not > 5:1
	11. Tai Po Garden	280	290	1:1	1:1	not < 280
	12. Jade Plaza	704	100	7:1	5:1#	not < 96
Tsuen Wan	13. Luk Yeung Sun Chuen	4,000	651	6:1	5:1	not > 5:1
Tuen Mun	14. Greenland Garden	960	199	4.8:1	7:1	not < 5:1

	15. Rainbow Garden	579	130	5:1	7:1	not < 5:1
	16. Brilliant Garden	480	148	3:1	7:1	not < 5:1

*** Hong Kong Planning Standards and Guidelines Note :**

Before the approval of the existing standard on 11 March 1988, the old standard was 1 parking space per 5 flats for a non-metropolitan area. Since building plans for the development were submitted before 11 March 1988, the parking provision was therefore based on the old standards.

Source : Data provided by the District Offices of the Planning Department.

2.7 A reason for the failure to provide more than the minimum number of spaces is that, under the current policy, the minimum provision agreed by the authority is not normally included in the gross floor area of proposed development, while any higher provision would be included. In such circumstances, developers have been unwilling to provide more parking spaces than the minimum requirement. In view of severe shortage of car parking spaces, the Government has relaxed the planning standards to provide more flexibility. This should encourage the provision of more car parking facilities.

Lack of Statutory Rent and Tenure Protection

2.8 The complaints back in 1994 reflected an average annual increase of 33% in rents for car parks. In some complaints, the annual increase was between 40%-57%, at a time when the general inflation rate was only 8%. (Table 4)

TABLE 4
The Changes of Monthly Parking Charges in 16 Residential Developments

Development	93'	94'	%increase
1. Brilliant Garden	\$900-\$1,050	\$1,250-\$1410	38
2. Eightland Garden	\$800	\$1,000	25
3. Fanling Centre	\$900-\$1,650	\$1,240-\$2,270	38
4. Greenery Garden	\$800-\$980	\$1,110-\$1,360	39
5. Greenland Garden	\$850-\$950	\$1,170-\$1,320	38
6. Heng Fa Chuen	\$1,300-\$2,000	\$1,620-\$2,550	27
7. Jade Plaza	\$950	\$1,350	42
8. Kornhill	\$1,900	\$2,350	24
9. Lido Garden	\$1,150	\$1,800	57
10. Luk Yeung Sun Chuen	\$1,250-\$1,450	\$1,570-\$1,850	27
11. Rainbow Garden	\$900-\$1,500	\$1,200-\$2,060	33
12. Plover Cove Garden	\$1,000-\$1,520	\$1,420-\$2,160	42
13. Tai Koo Shing	\$1,300	\$1,700	21
14. Tai Po Centre	\$600	\$800	33
15. Tai Po Garden	\$850-\$1,310	\$1,130-\$1,740	33
16. Treasure Garden	\$750	\$850	13

Note :

(1) Monthly parking charges were as at the beginning of the year.

(2) Percentage changes figures are compared with same period in preceding year.

2.9 Apart from the lack of statutory rent protection, car park users are also faced with the tenure problem. A car parking space, if let with a domestic unit, should form part of the domestic tenancy and be subject to statutory rent and tenure protection under the Landlord and Tenant(Consolidation) Ordinance (LTCO). This view is supported by the Court of Appeal in the case of *Winstar Development Co Ltd v Pang Yin Change, John and Broadland Ltd* (Civ App No176 of 1992).

2.10 Such protection is, in reality, of little help to most car parking space users. This is because car parking spaces in many private residential buildings are let separately (particularly, where the developer retains the ownership of the car parking spaces) and it is difficult to argue that a car parking space let separately constitutes a domestic tenancy. Nevertheless where use is granted by way of a tenancy, it is arguable that the tenant is at least entitled to protection under Part V of LTCO which requires the landlord to give six months' notice if it wants to terminate the tenancy.

2.11 This minimal protection under Part IV is absent where owners of car parking spaces grant the use of the spaces by way of a licensor an arrangement other than a tenancy. A contractual license is not subject to any form of rent and tenure control. Developers can, therefore impose increases on monthly fees or charges or terminate the use of car parking spaces with ease. If measures are taken to give protection to those who hold car parking spaces through tenancy agreements, ways should be devised to extend

protection to those who hold spaces on license or through other arrangements. This issue will be taken up by recommendation 2.

Disposal of Car Parking Spaces to Non-residents

2.12 We have found that one of the main factors contributing to the hardship now faced by users of residential car parking spaces that, in many developments, the developers are not obliged to sell or let the car parking spaces to residents. This is because the Land Grant stipulating the provision of car parking spaces for the residents of the developments is usually silent as to how developers should assign, underlet, charge, alienate or dispose of such spaces.

2.13 In the absence of any restriction on disposal in the Land Grant, developers are free to dispose of spaces as they wish. Thus such parking spaces could be sold to, or used by, anyone, regardless of whether the potential owners or users own or occupy any residential flats in the development concerned.

2.14 In view of this, owners and occupiers have to compete with potential purchasers or users from neighboring developments and business users. Consequently, they have to pay much higher prices for the parking spaces. The Government has taken steps to address the problem by introducing restrictions on the use of parking spaces but lack of enforcement has undermined their effectiveness.

Lack of Enforcement of Conditions on Use

2.15 In recent years, the Land Grant given by the Lands Department for the sale of land for private residential developments often stipulates that spaces or carports should be provided within the land lot for the parking of private motor vehicles belonging to the residents of the lot at a rate of one vehicle space for a prescribed number of residential units.

2.16 The Land Grant also often stipulates that the spaces or carports so provided:-

"shall not be used for any purpose other than for the parking of licensed private motor vehicles belonging to the residents or occupiers of the buildings erected on the lot and their bona fide visitors".

This clearly illustrates that the parking provision must appertain to the residential units.

2.17 We understand that the Buildings Department or the Districts Land Office could take enforcement action when spaces or carports provided for parking of residents' private cars have been converted into other uses without permission. However, taking enforcement action in a consistent and pro-active manner would require a significant commitment of manpower to inspect developments and check whether the regulations were being adhered to. Moreover the sanctions available to the Buildings Department or the District Lands Office, such as re-entry, might be regarded as excessively severe for infringements of this nature.

2.18 It has also been suggested that the conditions relating to the use of spaces could be enforced through the Deed of Mutual Covenant (DMC) but in practice this does not seem to be the case. The manager of development usually has powers under the provisions of the DMC of a building to control and manage the common parts and to enforce the provisions of the DMC of that building. Where management is taken over by an Incorporated Owners Association they will have powers, under the Building Management Ordinance. However, early DMCs do not usually refer to car parking spaces or regulate their use. The Building Management Ordinance does not appear to deal with the issue either. This issue is addressed in recommendation 3.

Limited Disclosure of Information

2.19 The Law Reform Commission recommended in 1995 that:

"the sales brochure should contain a description of the car park spaces within the development, including their respective numbers for sale, for rent, and those for visitors." [2](#)

2.20 Such disclosure would undoubtedly benefit potential purchasers. At present, however, developers are including in sales brochures only the total number of car parking spaces and are not specifying how the spaces are to be split between sale and rental and how many are to be retained for visitors. This lack of information is undoubtedly to the detriment of consumers.

2.21 An example of the need for full disclosure was seen in the sale during April and May 1997 of car parking spaces on the South Horizons Development. The Council received 83 complaints which is an exceptionally high number. There port describes this complaint in detail, as it raises several interesting issues but South Horizons is only one of nine developments that were the subject of complaints between 1 January 1995 and 31 July 1997 concerning the sale of parking spaces to on-residents, or increases in charges.

2.22 The complainants, who were residents in South Horizons put forward several complaints. A major feature of the complaints was that the developer identified and marked 250 larger spaces. Complainants said they were given the impression that they were being offered the opportunity to buy spaces on which two cars could be parked. Complainants said they were told that they would be given two entrance passes and would have to pay an extra service charge. They were subsequently informed that they were being offered a space where there was consent for one car to be parked and what the developer described as an appurtenant space which could not be used for car parking.

2.23 Residents also complained about the conduct of the sale saying that:

- a. no details were given of the number of spaces to be sold;
- b. no overall plan showing the plots to be sold was available;
- c. no price list was available; and
- d. they were put under pressure to reach rapid decisions.

2.24 Finally, residents complained about the fact that some 500 of the spaces were sold to a company and not to residents.

2.25 The following extracts from complaints made to the Council give the views of residents on the sale and the way in which it was handled 3 :

Resident A :

"On 8 May 1997, I was told by one of the sales staff in South Horizons that the last car parking spaces available were already sold out. The sales staff then advised me to buy a double car parking space and said that if I did not have 2 cars, I could rent one of the spaces to another person. I was told that the management company would issue 2 parking permits to me. The first permit would cost me \$300 and second one for \$150. The government could not intervene on this matter."

Resident B :

"They [sales staff] told me that all the parking spaces (except the two- three spaces that he had shown me) had been sold. They did not show me the price list and we had to ask the price of the parking space and were told verbally. "

Resident C :

"At 3:00 p.m. on 29 April 1997, I went to the sales counter to purchase a car parking space and discovered that the sale process was unfair to potential buyers. These [the unfair practices] included:

- a. Buyers did not receive sales information such as sales timetable, quantity and price of car parking spaces beforehand. They were only informed at 2:00 p.m. that the sales would be taking place.
- b. When buyers approached the sales counter, only two choices were offered to them and they were told that all other car parking spaces were sold out. This was in fact not the case."

2.26 The developer has a different view of events. In a letter to the Council it said:

- a. it believed that most if not all residents would be aware at the outset that a total of 1960 spaces were being sold;
- b. that the programme of sales followed that announced in a general letter to all owners;
- c. it does not believe consumers can be hurried into making a major purchase such as a car-parking space without giving the matter due consideration;
- d. it took care that purchasers knew that only one car could be parked on the large spaces, making specific mention of this fact in the memorandum of sale and asking purchasers to sign an acknowledgement to this effect; and
- e. the spaces sold to a company were left unsold at the end of the announced programme of sales and were sold with the understanding that the new owner would retain most of the spaces for renting out to residents.

2.27 The Council does not intend, for the purposes of this report, to examine in detail the transactions that gave rise to the conflicting views of the developer's behaviour. It is, however, clear, that if there had been full disclosure at the start of the sales programme so that, for example, prospective purchasers knew that only one car could be parked in the large spaces, many of the subsequent complaints could have been avoided. The Council notes, that the Director of Lands wrote to the developer and said that notwithstanding the disclaimers in the Agreement for Sale and Purchase, the developer had in practical terms purported to sell "double* parking spaces and that this was entirely contrary to the spirit, if not the letter, of the relevant lease conditions.

2.28 There are two stages at which information is needed. The first is at the time that the consumer takes the initial decision to buy afloat. In the case of pre-sale of flats it will often be the case that the developer is not ready to sell the car parking spaces. At that stage what is required is, as the Law Commission has proposed, details of how many spaces will eventually be sold and how many retained for rental. Subsequently, when the time comes to sell the spaces, information on size, location, and price should be published. In line with Lands Department's requirement for pre-sale of units under the Consent Scheme we believe information on size and location could be released 7 days before the date of sale and information on price 3 days before when spaces are sold prior to completion.

2.29 A longer period of notice should be given when a decision is taken to sell spaces that were previously rented out. This is to avoid the need for residents, who may not have been considering the purchase of a parking space, to make an important decision under pressure. The information required to be disclosed on location, size and price, should be the same as for spaces in uncompleted developments. Recommendations 4 and 5 deal with this point.

3. IMPROVEMENTS INTRODUCED IN THE PAST

3.1 The evolution of the provisions contained in Land Grants regarding parking requirements in residential developments shows a continuing tendency towards ensuring that the use of the parking facilities required to be provided for a development is tied to the residents of the development.

3.2 In the early sixties, a typical provision would state that:-

"Space shall be provided within the lot to the satisfaction of the Director of Public Works for the parking of (a number of) motor vehicles, and the space so provided shall not be used or allowed to be used for any other purpose".

In A.G. v Lo Hoi-ming [1965] HKLR 270, the court ruled that such provision had not shown that "the intention of the Crown was that the parking space should be available for the use of those occupying or having cause to visit the upper floors of the building...."

3.3 Subsequently, several revisions of the provisions on parking requirements evolved. More specific stipulations regarding the requirement as well as the use of the parking spaces so provided were added, e.g.:

"Spaces shall be provided.... at the rate of (i) one space per flat for flats.... each with a gross floor area of 80 square metres or more and (ii) one space per five flats for flats.... each with a gross floor area of not more than 80 square metres.... Neither the space so provided nor the said car ports shall be used otherwise than for the purpose of parking private motor vehicles belonging to the residents of the buildings to be erected on the lot".

3.4 In recent years, we have found more comprehensive stipulations in the Land Grant regarding the requirements of parking spaces and their use. Apart from stipulating the ratio of spaces to flats, the minimum dimensions, the headroom as well as the turning circle, the Land Grant would go further to spell out that:

"the space so provided shall not be used for any purpose other than for the parking of motor vehicles licensed under the Road Traffic Ordinance and belonging to the residents or occupiers of the said buildings and their bona fide invitees and visitors and in particular the said spaces shall not be used for the storage of motor vehicles *.

3.5 These provisions are in line with the policy regarding the provision of car parking spaces in the Private Sector Participation Scheme (PSPS) of public housing developments. In the Land Grant for PSPS developments, developers have agreed that they

"may not at any time assign, charge, mortgage, underlet, part with possession, alienate or otherwise dispose of the parking space to be provided in accordance with (the lease conditions) other than to the owners of residential units in the buildings"

3.6 The Land Grant for PSPS developments also provides that:

"not more than one vehicle parking space in the parking space required by (the lease conditions) may be assigned, charged alienated or otherwise disposed of or possession given of such vehicle parking space to the owner of each residential flat in the said building"

3.7 It seems from the above that developers can have only limited disposal rights regarding the car parking spaces so provided. This is reflected in the fact that they are not included in the calculation of the plot ratio for a development. We believe that developers should not treat such parking spaces as alienable parts from the residential flats of the buildings as they are excluded from gross floor area calculations. In fact, in those developments which have been provided with sufficient vehicle spaces for all residential units, a parking space is considered an integral part of a residential flat and is therefore always sold together with residential unit.

3.8 In discussions on this report a concern has been raised that strengthening the conditions of use might not be conducive to consumer interests. The concern is that limiting the use of spaces to residents is too inflexible. It is said that a situation may arise where a developer provides more spaces than residents require and, if these cannot be sold or let to non-residents, the costs will ultimately have to be born by residents. Moreover, spaces will be empty at a time when residents in neighboring developments may be looking for spaces to rent.

3.9 The Council would like to point out that the Land Grants of many developments have already imposed restriction on the disposal rights of car parking spaces. Strengthening the conditions of use does no more than ensures that existing Government policy, which is that spaces are for the use of residents, will be applied more effectively. At present, deciding how many car parking spaces should be provided in a property development is a commercial decision for developer to make within the parameters laid down by the Planning Department. Providing a larger number of spaces will limit the price that can be obtained for each space but should make the flats more desirable because parking is not a problem. If a very limited number of spaces are provided the reverse will hold true. The decision is for the developer to make keeping in mind costs and marketability.

3.10 On the other hand, the Council recognizes that there might be some rare cases where a developer has provided more spaces than residents require. If these excessive car parking spaces cannot be sold or let to non-residents, it would not be conducive to alleviating the acute shortage of supply. Having looked into the need for more efficient use of car

parking spaces in residential developments, the Council considers it desirable to allow developers to sell or let the excessive spaces to non-residents. Before they do so, developers must apply to the Lands Department to vary the requirements of the Land Grants by proving that the supplies of car parking spaces in their developments are genuinely excessive. The onus of proof lies with the developer. However, the Lands Department might consider it desirable to lay down some guidelines to follow, e.g. developers are required to prove that they have offered to sell the car parking spaces to flat owners on a number of occasions but not enough interest from them have been shown.

4. RECOMMENDATIONS

4.1 It is clear that there is a great imbalance between the supply of and demand for car parking spaces in private residential developments. It is tempting to argue that in future developments one parking space should be provided for each flat. To advance this argument would, however, be to ignore the need to ensure that Hong Kong's road system can cope with the number of private cars that wish to use it and the need to prevent the harmful effects on the environment that canaries when a city has an excessive number of cars.

4.2 It would also increase the cost of new developments to the detriment of those residents who have no wish to own a car and who would be forced to pay for an unwanted car space.

4.3 The Council believes a better balance is needed between the supply and demand for spaces and looks to Government and developers to cooperate to make use of flexible planning standards . In order to guarantee that residents have priority in the use of car parking spaces, we put forward the following recommendations which we believe will improve the transparency and fairness of the way in which the limited parking spaces available are allocated.

4.4 These recommendations are made to set out the important principles that should be reflected when changes in legislation and contracts are made. The unifying theme behind them is that more needs to be done to protect users of car parking spaces. The precise detail of the changes is best addressed in the light of subsequent discussion.

Recommendation 1

4.5 The Lands Department already requires in most land grants that only vehicles belonging to residents or occupiers or their visitors may use the car parking spaces. This clearly demonstrates that residence and the right to occupy parking spaces are linked but, as past experience shows, concentration only on the right to occupy is not sufficient. We believe that the Government should take a further step and spell out in future Land Grants in any residential development that;

- a. only the owners of undivided shares who have the right to exclusive occupation of residential flats may buy those car parking spaces which are intended for the use of residents of the developments;
- b. only owners and/or residents may rent such parking spaces if they are not for sale; and

- c. developers might apply to the Lands Department for permission to sell such car parking spaces to non-residents only when they (the developers) could prove to the satisfaction of the authority that the supplies of such spaces are genuinely excessive.

The Grant should also require that these conditions are brought to the attention of prospective purchasers of flats and parking spaces.

4.6 The Lands Department should ensure that these clauses are brought to the attention of the prospective buyers of the residential units by requiring that the sales and purchase agreements of the units and parking spaces must include such conditions mentioned above.

4.7 In proposing the above mentioned requirements, the Council has considered the following concerns raised by some parties:

- a. the proposed requirements interfere the free disposal rights of the developers;
- b. developers would be discouraged to provide adequate car parking spaces; and
- c. the inflexibility of the requirements renders the inefficiency usage of private car parking spaces which are already in shortage.

4.8 The Council does not find the arguments for the first two concerns raised above persuasive. In fact, the Council's proposal does no more than to ensure the existing Government policy to provide car parking spaces for the use of residents, will be applied more effectively. The Council recognises that the provision of car parking spaces is a commercial decision for the developer to make within the parameters laid down by the Planning Department.

4.9 In response to point (c), the Council considers it necessary to address the rare cases where a developer provides more spaces that residents require. The Council considers it desirable to allow developers to sell or let some spaces to non-residents on condition that developers must apply to the Lands Department to vary the requirements of the Land Grants by proving that the supplies of car parking spaces in their developments are genuinely excessive.

4.10 Recommendation 1 addresses the problem at its root but can only affect new developments. The Council believes that that combining the ideas contained in all three parts of paragraph 4.4 will provide a balanced improvement. It thinks it best, however, to spell out only the general intention and to leave the drafting to the Government's experts in this field. In order to improve the position for residents in existing developments, the Council calls upon the Government and developers to adopt the other recommendations shown below.

Recommendation 2

Introducing Statutory Rent and Tenure Protection

4.11 The Council's recommendation on the introduction of new clauses into the land grant will help the residents of new developments. There remains the problem of how to deal with existing developments. The Council considers that the protection afforded to users of car parking spaces is inadequate. Protection under Parts II & IV (security of tenure and fair market rent) of the Landlord and Tenant (Consolidation) Ordinance (LTCO) is only afforded to parking spaces which are let with residential units. If, however, as is increasingly the case, car parking spaces are leased separately from developers, the users are not protected under those parts of the LTCO. Further, as the use of car parking spaces in residential buildings is frequently granted by way a contractual license, the users are not even entitled to protection under Part V (notice of termination) of the LTCO.

4.12 In view of the fact that there is an acute shortage in the supply of car parking spaces in some residential developments and that such spaces are usually controlled by developers, the hardship faced by car owners in these developments, in the leasing of car parks is in fact greater than in the leasing of domestic premises. In some cases, the alternative of leasing a car parking space away from the residential development is not feasible. Further, it is very unlikely that the acute shortage of car parking spaces existing in some districts will end in the foreseeable future.

4.13 To remove this hardship, statutory rent and tenure protection should be afforded to residents in respect of their use of car parking spaces. The Council finds that the protection afforded to domestic tenants under Part Ivo the LTCO represents very basic, effective and reasonable protection. The Council considers that such protection in respect of matters such as right to notice and first right to purchase should be provided for the users of car parking spaces. This will also remove the complaint of car park users that they are given insufficient notice of major changes such as the sale of the spaces they have previously rented.

4.14 The Consumer Council recommends that certain provisions relating to 'domestic premises*' and 'domestic tenancy*' under the Landlord and Tenant (Consolidation) Ordinance should be amended to provide some forms of statutory protection e.g. notice period, first right to purchase, in respect of private car parking spaces for residents* use in domestic buildings, whether use is granted through tenancy agreements, contractual licenses or any other arrangement of a similar nature. The Council recognizes that extending protection to spaces occupied under likeness a new step, but because so many car parking spaces are occupied under licenses, rather than by way of a tenancy agreement, this protection will not be effective unless these other forms of occupation are included. It should also be noted that not all the protections granted under the Ordinance in respect of residences will be appropriate for car parking spaces. It is for Government to decide which protections may safely be extended to achieve the objective of providing some level of security of tenure for parking space users.

Recommendation 3

Empowering Management or Incorporated Owners (IO) to Enforce Condition on the Use of Parking Spaces

4.15 Theoretically speaking, any breach of the Land Grant conditions is actionable by the Government and might lead to re-entry. It is, however unrealistic to expect the Government to take enforcement action against each and every breach, particularly when

the breaches are of a minor nature, e.g. when a parking space in a residential building is let to a non-resident. We therefore see it as a viable alternative to empower the manager or the Incorporated Owners of a development to enforce the conditions on the use of parking spaces in residential buildings.

4.16 The manager or IO is the most appropriate body to enforce these because it has full knowledge of the Land Grant conditions. Further such persons have close contact with the residents so that any complaints from residents can be thoroughly investigated. The enforcement action available to the manager or IO (namely, injunction, charge on the property etc.) is likely to be a more effective deterrent against breach. Many modern DMCs contain provision for the manager or IO to enforce restrictions but this is not universally the case. There is also a small element of doubt in the minds of some experts as to whether IO have the legal ability to enforce conditions on the use of parking spaces. There is a need to remove any ambiguity that maybe found to exist.

4.17 The Consumer Council recommends that:

- a. the DMC of all new developments should include provisions relating to the conditions on the use of car parking spaces and enabling the manager or Incorporated Owners to take action in the case of breach; and
- b. the Building Management Ordinance should be amended to put beyond doubt the ability of Incorporated Owners to enforce the conditions on the use of parking spaces.

Recommendation 4

Disclosure in Respect of Disposal of Car Parking Spaces

4.18 The Law Reform Commission has called for greater disclosure in respect of car parking spaces in sales brochures but at present most developers do no more than list the total number of spaces in the development. The Consumer Council recommends: a requirement for disclosure of number of spaces to be sold and to be rented should be included in Land Grants, Building Covenants and Pre-sale Consent Conditions.

4.19 In addition, the disclosure requirements at the time of disposal for spaces in uncompleted developments should include details of parking spaces including information on size, location and price. In line with Lands Department's requirement for pre-sale of units under the Consent Scheme, information on size and location of the parking spaces available for sale should be published 7 days ahead of the date of sale and information on price 3 days ahead when spaces are pre-sold.

4.20 A longer period of notice should be given when a decision is taken to sell spaces that were previously rented out. This is to avoid the need for residents, who may not have been considering the purchase of a parking spaces, to make an important decision under pressure. The information required to be disclosed on location, size and price, should be the same as for spaces in uncompleted developments.

Recommendation 5

Creation of a Code of Best Practice for developers to include Car Parking Spaces

4.21 In its report, 'How Competitive is the Private Residential Property Market?*', the Council called on the Government to work together with the Real Estate Developers Association of Hong Kong to develop a code of best practice for the residential property industry to improve consumer Information. In its response to the report the Government proposed legislation to improve disclosure in respect of uncompleted flats 4 .

4.22 Although there must be a legislative underpinning to ensure that companies respect the interests of consumers voluntary codes also have a part to play. They can provide a flexible and a fast response to new developments in the market. The Consumer Council recommends that developers should endeavor to provide accurate information to consumers and to adopt the best practice. The Consumer Council considers it desirable for the Real Estate Developers Association of Hong Kong to devise a code of best practice in respect of sales of residential property which should extend to the sale and management of car parking spaces.

4.23 The code of practice should incorporate, on a voluntary basis, recommendations 1- 4 and should also provide that:

- a. accurate information is provided,
- b. to protect consumers' interest, purchasers of parking spaces should be free to choose their legal representation and should not be required to bear the vendor's legal costs; and
- c. developers must accept responsibility for the sale practices of their agents.

4.24 Finally, the council suggests that the Government should look at the feasibility and the acceptability to both public and developers of having car parks held in trust by management or Incorporated Owners for the benefit of all residents. The Council can see arguments both for and against this proposal.

4.25 In this manner, the manager or Incorporated Owners could hold the parking spaces in trust for all the owners of the developments and exercise complete authority to manage the leasing of the spaces to flat owners or occupiers who need to park their cars there. An advantage is that this body is on site to ensure that all the parking spaces are used by owners or occupiers of the development, making enforcement much easier. Another advantage is that the right to use spaces can pass easily between owners if a space is no longer needed.

4.26 Such a concept is not entirely new as the Land Grant for PSPS developments have already made similar provisions regarding the management of goods vehicle spaces as follows:

"The (developer) may not assigndispose of the goods vehicle space and the service vehicle space required to be provided in accordance with (the lease conditions) other than to a Manager approved by the Director of Housing or a corporation incorporated under the Buildings Management Ordinance, which Manager or corporation shall hold the undivided shares attributable to the said spaces in trust for all the owners of undivided shares in the lot. The spaces are to be included in the common areas and the Deed of Mutual Covenant and Management Agreement shall provide accordingly."

4.27 Similar arrangements involving an annual ballot to allocate car parking spaces have operated for several years in blocks owned by co-operatives of civil servants.

4.28 This proposal represents an innovative measure for private residential developments. Although it offers advantages some issues warrant further consideration. The fact that purchasers will jointly own the car park spaces could increase the price of the property. Also, if the car park did not produce a sufficient yield, the cost of maintaining the facility would fall on the owners. The Council believes the question would benefit from informed debate.

Appendix 1

CAR PARKING IN PRIVATE RESIDENTIAL DEVELOPMENTS

Membership of the Working Group formed in 1994

- Dr. Anthony NG Sung-man (Convenor)
 - Mr. Chan Yan-leung
 - Dr. LAW Cheung-kwok
 - Dr. LO Chi-kin
 - Mr. Clement TAO Kwok-lau
 - Mr. Herman TO Yung-sing
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Extracts of the Complaints received by the Consumer Council

– Sale of South Horizons Car Parking Spaces

Resident A:

本人於 8.5.97 到海怡半島售賣車位處查詢購買車位之情況。當時代理說其公司連餘下的一個單車位亦已售完，故此代理游說本人去購買一些所謂「雙車位」，他說就算本人沒有兩輛車，亦可將其中一車位租出，並堅稱將來管理公司一定可以發出兩張停車証給本人，第一張收費三百，而第二張收費一百伍拾元，並稱政府無法干預。」

English Translation:

“On 8 May 1997, I was told by one of the sales staff in South Horizons that the last car parking spaces available were already sold out. The sales staff then advised me to buy a double car parking space and said that if I did not have 2 cars, I could rent one of the spaces to another person. I was told that the management company would issue 2 parking permits to me. The first permit would cost me \$300 and second one for \$150. The government could not intervene on this matter.”

Resident B: (complaint made in English)

“They [sales staff] told me that all the parking spaces (except the two-three spaces that he had shown me) had been sold. They did not show me the price list and we had to ask the price of the parking space and were told verbally.”

Resident C:

本人於九七年四月二十九日下午三時往地產商位於海怡半島東翼商場的車位銷售處認購車位，發覺售賣車位過程，出現不公平情況。這些包括：

- (1) 銷售之前，不能獲得關於開售時間，銷售車位數量和價格的資料。對方只在早上通知下午二時開售。
- (2) 到櫃位時，銷售員只給予兩個選擇，說其他車位已經售出（事後發覺並非只餘兩個車位）。」

English Translation:

“At 3:00 p.m. on 29 April 1997, I went to the sales counter to purchase a car parking space and discovered that the sale process was unfair to potential buyers. These [the unfair practices] included:

a) buyers did not receive sales information such as sales timetable, quantity and price of car parking spaces beforehand. They were only informed at 2:00 p.m. that the sales would be taking place.

b) when buyers approached the sales counter, only two choices were offered to them and they were told that all other car parking spaces were sold out. This was in fact not the case.”

Complaint Figures of Private Residential Carparks

Nature of Complaint	No. of Complaints received**				
	1994	1995	1996	1-7/1997	Total
Sales Tactics (銷售手法) #	4	6	4	112	126
Excessive Increase of Rental (租金大幅增加)	16	5	1	2	24
Management (管理)	3	5	4	0	12
TOTAL	23	16	9	114	162
No. of Developments Involved	23	15	9	5	43

#Sales tactics refer to:

- I. Insufficient notice to consumer for purchase of car park.
- II. not offering opportunity for tenants to purchase car park.
- III. bulk sales to another company.
- IV. inaccurate information regarding use/size of car park.

**One complaint may involve a substantial number of individuals from the same development.

Footnotes:

1. Parking Demand Study, the Transport Department, December 1995.
2. "Report on description of Flats on Sales", the Law Reform Commission of Hong Kong, April 1995.
3. Resident A and Resident C made their complaints in Chinese. The original language version of their complaints is at Appendix 2.
4. Government's response to the Consumer Council's Report "How Competitive is the Private Residential Property Market?" Housing Branch, Government Secretariat, May 1997.