

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: FIG Commercial Development land - Land-Banking Mitigation Measures

Paper No: 01/11

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1.0 Purpose

- 1.1 To provide Executive Council (ExCo) with details regarding mitigation measures that are intended to minimise the potential for land-banking of FIG commercial development land that has been converted to freehold.

2.0 References

- 2.1 Previous Executive Council decision Ref. ExCo dated 28th June 2007 145/07
2.2 Previous Executive Council decision Ref. ExCo dated 25th November 2010 273/10

3.0 Recommendations

- 3.1 ExCo is recommended;
- i. To note the land-banking mitigation measures already included in the original ExCo Paper (No. 273/10) and its Attachments (specifically Attachment A), which are summarised in Section 6 hereof, and;
 - ii. To approve the incorporation of an additional covenant into the Crown Grant that would prevent FIG commercial development land converted to freehold in accordance with the process as set out in ExCo Paper 273/10 from being divided up and sold to third parties without the consent of FIG.

4.0 Summary of Financial Implications

- 4.1 None.

5.0 Background

- 5.1 On the 25th of November, ExCo reviewed a Paper (273/10) entitled 'FIG-Disposal of Commercial Development Land'. The objectives of the Paper were to: (1) propose

clear and concise policy guidelines for the disposal by FIG of commercial development land to the private sector, and (2) put forward a process for such disposal for use by FIG and the private sector in accordance with the proposed policy.

- 5.2 ExCo approval of that Paper is subject to a further report regarding details of mitigation measures that would minimise land-banking. ExCo also decided that FIG commercial land prices would remain as contained in the Paper and that only lease payments from new five-year leases could be deducted from the freehold purchase price.

6.0 Mitigation Measures Contained in Original Paper

- 6.1 Attachment A to ExCo Paper No. 273/10, entitled 'FIG Commercial Development Land Disposal', proposed the following measures to deter the potential for land-banking of FIG commercial development land converted to freehold under the draft policy set out in the Paper;

- i. The freehold conversion of the five-year leases is completely dependent on the development of the plot, according to its set construction programme. Failure to do so would result in losing the right to convert the lease into a freehold title, so at the end of the 5 years the land would revert to FIG;
- ii. Set as an essential criterion, the installation of a hard standing surface and buildings suitable for the intended business use(s) over an area of no less than 50% of the total plot is required to be carried out during the initial five-year lease. Failure to do so would result in losing the right to convert the lease into a freehold title, so at the end of the 5 years the land would revert to FIG;
 - a. This criterion has been proposed as it requires the developer to invest in both the development cost of 50% of the land area, and go to the effort of setting up and operating their business from the developed section of the plot. The working group believes that a person or company whose intention is to land bank are very unlikely to relocate or set up a new business on the land in order to achieve an uncertain gain.

7.0 Further Proposed Mitigation Measures

- 7.1 To further ensure that the potential for land-banking is minimised, it is proposed that an additional covenant be inserted into the relevant Crown Grant. The proposed covenant would prevent FIG commercial development land that has been converted to freehold from being subsequently subdivided and sold to third parties without the consent of FIG.
- 7.2 This additional covenant would prevent a scenario wherein a developer has acquired commercial development land at Gordon Lines by developing the plot to the minimal level to activate the right to convert to freehold, and then sells the undeveloped sections of the plot to a third party which has no intention of developing the land for business purposes.

- 7.3 The following paragraph provides an example of how the covenant, as described in Paragraph 7.1 and 7.2, may be drafted. The clause would be inserted into Schedule 4 of the Crown Grant;

'Not to convey or otherwise dispose of part only of the Property without the consent of the Crown (which consent shall not be required for any lease not exceeding a term of ten years).'

- 7.4 The proposed covenant, as drafted above, requires the developer to seek permission from FIG to subdivide the commercial development land. This should allow for some flexibility if there is a valid reason for dividing the commercial land. This would enable the unused commercial land to be developed where there was demand, which may possibly lead to a freehold sale upon the development completion. The latter section of the covenant, in parenthesis, is in reference to the developer leasing a section of the commercial land, and states that a lease which is under a term of ten-years does not require the consent of FIG. The motivation behind this is to prevent undue interference with commercial operations, as it avoids land-owners having to apply for FIG consent for short and medium-term arrangements.

8.0 Lands Committee

- 8.1 The Paper considered by ExCo on November 25th, 2010 (Paper no 273/10) had been reviewed by the Lands Committee before submission to ExCo. The comments of the Lands Committee on that Paper were included within it.
- 8.2 Given that it is understood that ExCo approved the recommendations of the Paper subject to further assurances on mitigation to prevent land-banking, this further Paper has not been submitted to the Lands Committee.

9.0 Financial Implications

- 9.1 None.

10.0 Legal Implications

- 10.1 The incorporation of the covenant, as described in Section 7, into the Crown Grant.

11.0 Human Resources Implications

- 11.1 None.

