

**Administration's response to issues raised by the
Panel on Planning, Lands and Works
regarding conversion of part of the Beauty Court
shopping arcade into residential care homes for the elderly**

**Concern that converting part of the shopping arcade would
contravene the relevant provisions in the Deed of Mutual Covenant
(DMC)**

A DMC sets out the rights, interests and obligations among owners of a building. It is a private contract between owners of a building and the developer. The Government is not a party to the contract. Hence, it is inappropriate for the Government to execute or enforce any provisions in a DMC.

2. In the event that any party to a DMC contravenes the provisions therein, the other parties may take legal action against the defaulting party by means of civil litigation. They may also lodge an application to the Lands Tribunal for interpretation and enforcement of the DMC provisions in accordance with section 45 of and the Tenth Schedule to the Building Management Ordinance (Cap. 344).

**Concern that converting part of the shopping arcade would not
comply with the Occupation Permit**

3. Under section 25 of the Buildings Ordinance (Cap. 123), subsequent to the issue of an occupation permit for a building, a person intending to carry out or authorizing the carrying out of any material change in the use of the building may make an application to the Building Authority (BA) for such change in use. The Ordinance, therefore, already provides for a mechanism for changes to the use of a building after the issue of the occupation permit.

Concern that converting part of the shopping arcade would contravene the relevant provisions in paragraph 6.2 of the “Code of Practice for Residential Care Homes (Elderly Persons)” issued by the Social Welfare Department (SWD)

4. Paragraph 6.2 of the Code of Practice for Residential Care Homes (Elderly Persons) issued by the SWD stipulates that it is the responsibility of the operator to ensure that the premises for the operation of residential care home for the elderly (RCHE) comply with the lease conditions and the DMC provisions. The purpose is to alert licence applicants to the relevant requirements of the DMC so that they can deal with the related issues, if any, at an early stage.

Concern that the Building Authority’s decision would be unfair to the other owners of the residential development concerned who had not been consulted on the conversion, and that the conversion would deprive them of their rights to use shopping facilities

5. The objectives of the Buildings Ordinance are to ensure building safety and public health and the controls are effected through objective requirements. It would be outside the scope of the Building Authority (BA) for it to be concerned with the rights, interests or views of owners or residents of buildings in exercising the Authority’s powers under the Buildings Ordinance. There are existing channels for owners of a building to resolve private disputes. The Government does not and should not interfere with this existing mechanism.

Concern that the Building Authority’s decision may lead to a change in plot ratio which may have impact on the owners/residents and may go against the reasonable expectation of the owners for the design of and the facilities in the buildings

6. The BA handles each application of change of use on a case-by-case basis, taking into account structural and design considerations including building safety and the effect on plot ratio. Each case is determined on its own merits. According to the experience of the BA,

the effect on plot ratio entailed by changing use to RCHE is minimal.

7. As regards any possible disputes arising from reasonable expectation of the owners over their contracts, the parties concerned may take legal action by means of civil litigation. In case of any dispute relating to the DMC, they may also lodge an application to the Lands Tribunal for interpretation and enforcement of the DMC provisions in accordance with section 45 of and the Tenth Schedule to the Building Management Ordinance.

Suggestion that the Government should amend the relevant Ordinance for the purpose of establishing a consultation mechanism to facilitate the access of all relevant information by both sides in a fair and reasonable manner

8. If a consultation mechanism was incorporated into the Buildings Ordinance, it would have to apply not only to change of use concerning RCHE, but also to all new development projects, alteration and addition works as well as other change of use proposals. This would alter the fundamental objective and control mechanism of the Buildings Ordinance which seeks to ensure building safety and public health by prescribing objective standards and requirements in the planning, design and construction of buildings. Moreover, this would prolong the approval process and create unnecessary hindrance to building development. It would be necessary to specify who should be consulted and under what circumstances consultation results should be deemed to be satisfactory. These are all factors extraneous to the building control regime. We consider that it is not appropriate to amend the Buildings Ordinance to build in a consultation mechanism in respect of applications for change of use.