

Legislative Council Panel on Development

Public Facilities in Private Developments

Purpose

This paper informs Members of the Administration's policies and measures in regard to the provision and management of open space (OS) and facilities in private developments for use by the public.

The existing policies and arrangements

2. The incorporation of public facilities in private developments for public use is intended to achieve integrated design, optimization of land use and better site planning, or to bring forward the completion of some public facilities to serve a wider district or territorial need or to match the envisaged population intake brought by the private developments. Such facilities can broadly be categorized into –

- (a) Government, Institution and Community (GIC) facilities, such as community halls, elderly centres, schools etc.;
- (b) OS;
- (c) pedestrian passage and vehicular access, e.g. walkways, footbridges and rights of way; and
- (d) Public Transport Terminus (PTT).

3. The provision of public facilities in private developments for public use may arise under the following circumstances -

- (a) land sale – Bureaux / Departments (B/Ds) may propose to include in the land sale conditions the requirement that the developer shall provide and maintain certain public facilities in the development for public use; and

- (b) private development / redevelopment – where such developments require planning permission by the TPB and land grant, lease modification or land exchange with the Government, B/Ds may propose the inclusion of some public facilities; or the developers themselves may propose such facilities in their planning applications for the purpose of securing the TPB’s approval. Such requirements may subsequently be imposed as planning conditions by the TPB in approving the planning applications. For development within a Comprehensive Development Area zone, planning applications to the TPB will need to be made in the form of Master Layout Plans (MLPs). The TPB will impose conditions in approving the MLPs. Such requirements to provide and maintain certain public facilities in the development for public use are translated into the lease conditions if this is practical, say when the development is the subject of a new or modified lease.

4. Separately, there are other circumstances where Mass Transit Railway (MTR) facilities, building set-back for street widening and pedestrian passage through the building may be provided in a private building for public use. As provided for under the Buildings Ordinance, the Building Authority may grant concessions to compensate the owners in the form of exemption of floor space from the gross floor area (GFA) calculation or bonus GFA under the following circumstances –

- (a) in return for setting aside certain floor space within a private building for MTR facilities. These floor spaces are assigned to the Government as and when required for railway facilities; and
- (b) in return for the dedication of land or floor areas of a building for use as public passage (e.g. building set-back for street widening, pedestrian passage through the building). The rights and obligations of the building owner will be set out in a deed of dedication.

If the additional GFA arising from the Building Authority’s decision exceeds what is permitted in the lease, the concerned lot owner needs to apply for a lease modification before he can achieve such additional GFA. A premium will be payable if the lease modification is approved.

5. Generally, to ensure that developers have fulfilled the relevant requirements on the construction of such facilities, the Lands Department (LandsD) and the Buildings Department (BD) will scrutinise the development projects upon completion to satisfy themselves that all the requirements in the land leases or approved building plans are complied with, before issuing the certificates of compliance, if applicable, or occupation permits.

6. GIC facilities, PTT and MTR facilities are usually handed over to the Government. As regards the remaining facilities, if they are not required to be handed over to the Government, they will be subject to the relevant provisions in the respective contractual documents, i.e. the leases or the deeds of dedication as the case may be, in respect of their management, maintenance and opening to the public on an ongoing basis. LandsD and BD will monitor the implementation of the relevant requirements concerning the discharge of such ongoing obligations by conducting spot checks and act upon receiving complaints from members of the public.

7. The rights and obligations of the owners are set out in the respective contractual documents. Generally, owners of the private developments are required to fulfill the following obligations in accordance with the provisions as prescribed in the respective contractual documents –

- (a) permit the public to lawfully use such facilities and not to allow the area to be obstructed, where applicable; and
- (b) manage and maintain such facilities to the satisfaction of the Government.

Most of the public facilities are provided for public use free of payment with some exceptions, such as public fee-paying car parks.

Measures to enhance public use

8. To ensure and enhance public accessibility to those public facilities in private developments, the Development Bureau (DEVB) has recently taken several measures.

9. Access to information and transparency are key to public accessibility. Accordingly, DEVB has asked LandsD and BD to compile lists of private developments containing public facilities. On 28 March 2008, we uploaded the following lists onto the Government's websites (www.devb.gov.hk, www.landsd.gov.hk and www.bd.gov.hk) following a press release –

- (a) LandsD's list containing 152 private developments completed in or after 1997, which are required under the leases to provide public facilities; and
- (b) BD's list of 79 private developments containing public facilities subject to deeds of dedication.

10. In view of particular public interest in OS, LandsD has provided in addition to the master list of 152 private developments, an abridged list of 31 private developments containing OS with location maps and photographs to help the public in identifying these facilities. LandsD is compiling similar information on private developments completed before 1997. We will release such information as and when they are available, but given the large numbers involved, the realistic way is to release the information in batches. The public facilities in BD's list are mainly public passage and road widening, etc. Only one case involves an OS for passive recreation purpose. The list is by and large comprehensive but BD will update the list as and when new deeds of dedication are entered into. LandsD will do the same.

11. These lists contain information on the public facilities involved, the present arrangements for public use and a contact telephone number for members of the public to make enquiries or file complaints. Since the release of the lists (up to 15 April 2008), the two Departments have received a total of 82 enquiries and 12 complaints¹ on which follow up action is promptly taken.

12. DEVB has written to the Real Estate Developers Association of Hong Kong (REDA), requesting their help to remind the trade that the provision of such facilities and the respective developers'/owners' management and maintenance responsibilities in respect of such facilities are clearly set out in

¹ There could be double-counting of the cases, given the duplication of the cases received by the two departments. For example, of 5 complaints received by BD, 4 were related to LandsD's list and referred to LandsD for follow up action.

the land leases or the deeds of dedication as the case may be. We have stressed that compliance at all times is essential to address any public concerns.

13. Furthermore, LandsD and BD have written individually to the owners' corporations or management companies of the private developments mentioned in paragraph 9, to require them to enhance public accessibility to those facilities by taking the following measures –

- (a) displaying notices in prominent places informing the public which public facilities are for public use, as well as the locations, opening hours of those facilities, the party responsible for managing and maintaining such facilities and their contact numbers for public enquiries;
- (b) ensuring that public access will not be obstructed or unreasonably denied; and
- (c) ensuring compliance with other lease or deed conditions as appropriate.

14. We have also provided the 18 District Councils (DCs) with the lists in respect of their districts mentioned in paragraph 9 and sought their support for monitoring the use of such facilities in their districts, and bringing to our attention any cases where follow up actions would be required. The Secretary for Development will personally brief all Chairmen and Vice Chairmen of the 18 DCs at their regular meeting on 17 April 2008 to seek their advice on how local residents' accessibility to such public facilities, particularly OS, could be improved.

Compliance with the Requirements

15. We have looked into the cases cited in an academic research paper published in February 2008 concerning planning conditions relating to the provision of public facilities in private developments, and concluded that by and large, the planning conditions have been complied with. In addition, according to recent inspections conducted on all the developments in the lists mentioned in paragraph 9, we have found that by and large, the requirements in the land leases or the deeds of dedication as the case may be have been

compiled with. Departments concerned will follow up on isolated cases as appropriate. Generally, owners will take appropriate follow-up actions upon receiving advice from the Departments. We will closely monitor the feedback from the public and DCs, and take follow up action as appropriate.

16. Separately, the Panel has asked for information concerning the liability of small property owners for non-compliance of the land leases. The obligations of the lessees, including the responsibility for managing and maintaining public facilities in their developments for public use, are set out in the land leases signed between the Government and the lessees, and reflected in the Deeds of Mutual Covenant. Such obligations are binding on subsequent assignees, i.e. flat owners upon the development falling into multiple ownership. When flat owners purchase their properties, it is important that such obligations are clearly understood. Such requirements should have been made known to prospective flat purchasers by their solicitors during the property conveyancing process. The Administration has liaised with REDA, and in 2006 REDA issued guidelines requesting their Members to use larger or coloured fonts in their sales brochures to draw prospective purchasers' attention to information on the owners' responsibilities concerning maintenance of public facilities in their developments.

Conclusion

17. Looking forward, we will review the policy on the provision of public facilities in private developments and examine the implementation issues, including exploring a mechanism under which the location, layout, design and landscaping of such OS can be delivered to meet the public's aspirations, and means for ensuring that the ongoing obligations in terms of managing and maintaining such facilities and opening them for public use are properly and effectively discharged. We will continue to work closely with LegCo, DCs, the trade and the professionals in the related fields, and all stakeholders to further our efforts on this front.

Development Bureau
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