

For Information

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT**

Public Open Space in Private Developments

Purpose

This paper provides information on the refined arrangements for the provision of public open space in private developments (POSPD), and briefs Members of the “Design and Management Guidelines for Public Open Space in Private Developments” (“the Guidelines”) promulgated by the Development Bureau (DEVB).

Background

2. In response to public concerns over a number of cases of POSPD, DEVB undertook an in-depth policy review of the subject matter since 2008, and briefed Members of the refined arrangements for the provision of POSPD at the Legislative Council Panel on Development (“the Panel”) meeting in January 2010. In addition, DEVB commissioned a consultancy study in 2009 to draw up a set of clear and practicable design and management guidelines for POSPD for owners, management agencies and the general public to make reference to.

3. Subsequent to a series of consultation and refinement, we promulgated the Guidelines in January this year which came into effect on 14 February. We submitted the Guidelines to the Panel for Members' reference vide Information Paper No. CB(1)1085/10-11(01); The Guidelines, together with the consultancy report, have also been uploaded onto the website of DEVB.

Administrative Arrangements for Existing POSPD

4. DEVB set out the administrative arrangements for existing POSPD vide our paper submitted to the Panel in January 2010. By and

large, the Government shall continue to uphold the requirement to enable public access to POSPD, but in a few isolated cases, to address small owners' concerns over privacy and security, an exceptional measure on compassionate grounds of waiving such public accessibility requirement (where the POSPD is on private land) or the Government assuming the management and maintenance responsibility of the POSPD (where it is on Government land) could be justified. The relevant criteria for consideration are enclosed at Annex.

5. Since the promulgation of the administrative arrangements as mentioned in paragraph 4 above, the Lands Department (LandsD) and the Buildings Department (BD) have not yet received formal application from owners of private land waiving the requirement in the contractual documents (i.e. land leases and/or deeds of dedication) for opening certain POSPD for public use. LandsD has received and approved one case of waiving part of the POSPD required under lease for use as outdoor dining (please refer to paragraphs 10 and 11). Since the support of the relevant District Council (DC) and Area Committee (AC) would be taken into account during the Government's consideration of waiving the requirement in the contractual documents for opening POSPD for public use, the owners and their respective owners' corporation would first consult the views of the DC and AC. As mentioned above, when the waiver for a certain case has not yet been obtained, or the Government has not yet assumed the management and maintenance responsibility of the POSPD, its owners shall fulfil the responsibilities of permitting public accessibility as well as managing and maintaining the POSPD as required by the relevant contractual documents.

Design and Management Guidelines

6. The promulgated guidelines consist of two parts, namely the design guidelines and the management guidelines. The design guidelines provide standards and guidance on better quality design based on the principles of connectivity, appropriateness and quality. The guidelines also provide standard on design elements such as spatial, perceptual and landscape planning issues. In addition, the consultants identified five common spatial types (i.e. Public Green, Plaza, Courtyard, Pocket Space and Promenade) through analysing existing cases of POSPD, and devised design guidelines according to the design intent, characteristics and design requirements of individual spatial type. The Design Guidelines generally follow those for open space in the "Hong Kong Planning Standards and Guidelines" and similar overseas cases with flexibility allowed to cater for

the relevant circumstances for the Hong Kong planning and urban design context.

7. The management guidelines, on the other hand, cover the various management and operational issues such as the extent of permissible activities, opening hours, dissemination of information relevant to the public open space, responsibilities of owners and management companies, etc. The management guidelines will help strike the right balance between rights of the owners and the public enjoyment of these POSPD.

Permissible Activities on POSPD

8. We are of the view that activities in POSPD could be passive, including not only leisure activities such as walking, doing relaxing exercises and passive activities, but also social interactions, social activities and functions such as events, exhibitions, group gathering for a particular purpose. Activities in POSPD may also vary in nature: while some activities such as arts and cultural and civic education activities run by not-for-profit organisations should be encouraged, there is also demand from commercial organisations for using such facilities. In addition, some non-commercial or charitable activities as well as limited commercial activities (such as outdoor dining) in POSPD will help bring vibrancy and vitality to the area and promote the use of the public open space. The management guidelines therefore provide a set of guidance in respect of permissible activities, i.e. always permissible activities (e.g. passive activities and walking), non-commercial or charitable activities as well as commercial activities.

9. Regarding non-commercial or charitable activities, we consider that some non-commercial or charitable activities such as festive events and activity-based functions such as arts and cultural, civic education purposes, etc can bring vibrancy to the POSPD. While these activities are not under the always permissible category, we consider that the owners should be allowed and encouraged to permit such activities on the POSPD on a voluntary basis subject to the provisions in the contractual documents. As such, the management guidelines set out that owners of POSPD may choose to permit non-commercial or charitable activities on the POSPD subject to provisions in the contractual documents. If such activities do not comply with the relevant contractual documents, owners should first approach the LandsD and/or the BD for a waiver / permission as appropriate.

10. As regards commercial activities on POSPD, as a matter of principle, POSPD is an area that has been devoted to and designated for public use, and the owner is disentitled from making a commercial gain out of it. Nevertheless, it is recognised that limited use for certain commercial activities in the relevant site-specific context which are complementary and related to the use of a POSPD might enhance the use of the POSPD and add vibrancy to the area, as it helps drawing people to stay and use the space actively. However, given the public concern over “depriving their use of such facilities”, the paramount consideration is that such use will not give rise to any obstruction to pedestrian flow and there is sufficient capacity of the remaining POSPD for public use, such that the open space function and prevailing public use / enjoyment of such facilities will not be prejudiced.

11. Therefore, it is set out in the management guidelines that if the owners wish to permit commercial activities on the POSPD, they should first apply for a waiver and/or permission from relevant Government departments. If arrangements for public open space prescribed in the lease are involved, owners should apply to the respective District Lands Office (DLO) for waiving the relevant condition in the lease. In general, DLO may consider the area occupied by such commercial activities (generally not exceeding 10% of the area of the POSPD) and views of the relevant DC. If an application is approved, the applicant shall abide by the terms and conditions of the waiver, including the payment of a waiver fee. As mentioned in paragraph 5 of this paper, LandsD has received and approved one waiver application for use as outdoor dining. The waiver was first approved in 2003, and the most recent renewal was processed with reference to the Guidelines.

Application of the Guidelines

12. The design guidelines should apply to future POSPD with flexibility allowed to cater for site-specific circumstances of individual cases, while existing ones are strongly advised to follow on a reasonable basis. The management guidelines serve as a set of good practices and are advisory in nature. Therefore, the management guidelines should apply to future and existing POSPD insofar as permitted under the land leases or deeds of dedication.

Implementation

13. All in all, we have strived to enhance the arrangements in respect of the provision, information dissemination and management of POSPD. To ensure that the public can enjoy these POSPD, we have taken steps to enhance the transparency of such public facilities. Since March 2008, the Government has been compiling information on private developments containing public open space, and making it available through the websites of the LandsD and the BD. The information released includes the location, area, the level at which it is located, opening hours, as well as the location plans of the public open space, etc.

14. Owing to the large number of POSPD and that they are located throughout the territory, public monitoring is the most effective way to ensure owners of POSPD are fulfilling the responsibilities of managing and maintaining such public open space as well as permitting the public to access and enjoy such facilities in accordance with the requirements of the relevant contractual documents. The information which we have made public as mentioned in the preceding paragraph serves to encourage public monitoring. Members of the public should file a complaint to the relevant authorities for follow up if it is discovered that owners are not fulfilling their responsibilities.

15. In addition, we have, through the set of good practices as set out in the Guidelines, encouraged the owners and management companies of POSPD to accommodate as wide a range of permissible uses in POSPD as reasonably possible to allow the more flexible use of these public open space and enhance public accessibility to POSPD. The Administration has distributed the Guidelines to the owners / owners' corporation / management companies of POSPD, the Real Estate Developers Association of Hong Kong, and the 18 District Councils. The public can also access the website of DEVB to download the Guidelines and the relevant consultant's report.

Views Sought

16. Members are invited to take note of this paper.

Development Bureau
May 2011

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Public Open Space in Private Developments**

Criteria for Consideration

Public Open Space (POS) on Private Land

POS Required under Lease

For POS on private land in private developments whereby owners' management and maintenance responsibilities are required under lease, handling of these cases shall be in accordance with the respective leases. There is no question of the Government taking over the management and maintenance of the POS. In very exceptional cases, we may consider sympathetically waiving the requirement in the lease for opening certain POS on private land for public use, based on the individual merits of each case and subject to the following criteria:

- (a) it is legally in order for the Lands Department (LandsD) to do so;
- (b) a request for the waiver must be submitted by all the owners or through its owners' corporation, and subject to the terms and conditions as imposed by LandsD including the payment of the waiver fee for such waiver if granted;
- (c) there are sufficient existing and planned POS in suitable locations within the district according to the Hong Kong Planning Standards and Guidelines. Also, other considerations like the location, distance and distribution of the POS should also be taken into account;
- (d) in case the provision of POS has been incorporated into the Notes of the Outline Zoning Plans (OZP), agreement of the Town Planning Board for deleting the POS requirement from the relevant OZP will be required; and
- (e) there is support from the relevant District Council (DC) and Area Committee (AC), in particular their understanding that a piece of POS will no longer be open to the public.

POS Required under Deeds of Dedication

2. In cases concerning deeds of dedication, exceptional consideration should only be given to cases where no concession of bonus GFA has been granted for the dedication of private space and where the merits and circumstances of the case suggest that it is in public interest not to enforce the deed of dedication.

POS on Government Land

3. If a particular lease provides the Government with the option to take back the POS, legally the Government may exercise its discretion to take it back as it deems fit. Without prejudicing this general discretion and the Government's right under lease, the Government may consider applying the following general criteria in considering taking back a particular POS on a case by case basis:

- (a) the POS is at grade and can be alienated from the private development;
- (b) the scale of the POS is substantial relative to the scale of the private development;
- (c) there is no legal obstacle in the lease conditions for the Government to take back the management;
- (d) the availability of recurrent resources to the concerned department;
- (e) the consent of the owners (through owners' corporation) if needed; and
- (f) the support of or no objection from the relevant DC and AC.