

## **CHAPTER 7**

**Development Bureau  
Lands Department  
Buildings Department**

**Provision of public open space  
in private developments**

**Audit Commission  
Hong Kong  
30 October 2014**

*This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.*

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# **PROVISION OF PUBLIC OPEN SPACE IN PRIVATE DEVELOPMENTS**

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# **PROVISION OF PUBLIC OPEN SPACE IN PRIVATE DEVELOPMENTS**

## **Executive Summary**

1. The policy of incorporating public open spaces (and other public facilities) into a private development has been in force since 1980, with the objectives of achieving integrated design, optimisation of land use and better site planning and utilisation; and synchronising the availability of the public facilities with the envisaged population intake of private development projects.
2. The Development Bureau (DEVB) is responsible for setting and reviewing policies on provision of public open spaces (POSs). The Lands Department (Lands D) and the Buildings Department (BD) are responsible for monitoring compliance with relevant land lease conditions and conditions under some Deeds of Dedication, including the provision and maintenance of public open spaces, by the pertinent developers or building owners. As of August 2014, according to related information uploaded onto the websites of the Lands D and the BD, there were respectively 60 and 2 public open spaces in private developments (POSPDs).
3. In recent years, the subject of POSPD has attracted significant public attention where some media reports have covered cases involving denial of public access, tight restrictions on use and other management problems relating to POSPDs. Since March 2008, the Lands D and the BD have uploaded onto their websites POSPD Lists for information of the public. Furthermore, the DEVB promulgated in January 2011 the POSPD Design and Management Guidelines for reference by property owners, management agencies and the general public. From January 2011 to August 2014, seven new POSPDs had been provided in non-industrial developments. The Audit Commission (Audit) has recently conducted a review of the provision of POSPDs with a view to identifying areas for improvement.

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### **POSPD accessibility**

4. ***Some POSPDs had low patronage.*** Audit Survey of 36 POSPDs found that 10 POSPDs recorded low levels of patronage, each of which on average only recorded less than 10 visitors during a two-hour period. In Audit's view, owing to the low patronage of some POSPDs, the objective of providing POSPDs for recreational uses to serve the needs of local residents and the general public who can enjoy and use the surroundings in a leisurely manner may not have been fully achieved (paras. 2.2 to 2.4 and 6.4).

5. ***Sites not being easily accessible.*** According to the 2011 POSPD Design Guidelines, a POSPD should be provided at a location having clear visibility, and at grade or on the ground level. However, Audit site inspections revealed that POSs 5, 6B and 7 were located on podiums high above the ground level and members of the public needed to walk up long staircases or take passenger lifts before reaching the sites. Audit also noted that two passenger lifts provided at POS 7 to facilitate public access to the public open space had ceased to be provided for public use since 2002. However, the Lands D could not compel the building owners to resume the passenger lift service for public use because such a requirement had not been included as a land grant condition. Audit Survey further found that POSs 5, 6B and 7 had low patronage, on average recording only 4, 1 and 7 visitors during a two-hour period (paras. 2.4(b) and 2.7 to 2.14).

6. ***Uninterrupted access not provided.*** The land leases of the pertinent POSPDs generally require owners of POSPDs to provide uninterrupted public access to the sites. However, Audit's seven site inspections at POS 1 from January to June 2014 found that a gate at the entrance to the POSPD was closed with a metal chain which was locked up by a padlock. Furthermore, Audit's five site inspections at POS 31 from January to August 2014 found that the gates at Entrance A to the related development and Entrance B to POS 31 were both closed and locked with a notice requesting visitors to make a phone call for assistance from the management office. The site access arrangement at POSs 1 and 31 may be at variance with the pertinent lease condition of permitting public access to and use of the open areas. Audit Survey also found no visitor at POS 1 and on average only one visitor at POS 31 during a two-hour period (paras. 2.4(b) and 2.15 to 2.23).

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### **POSPD management and maintenance**

7. ***POSPDs not always properly maintained.*** According to the DEVB, pertinent building owners are generally required under the related land leases to manage and maintain POSPDs to the satisfaction of the Lands D. However, Audit site inspections in July 2014 revealed that POS 4 was covered with long grass and fallen tree branches, and some furniture and fittings at POS 15C were not properly maintained (paras. 3.2 to 3.6).

8. ***Short opening hours of POSPDs.*** According to the 2011 POSPD Management Guidelines, the daily opening hours for public access to a POSPD should not be less than 13 hours. However, Audit examination revealed that the daily opening hours of six POSPDs under the purview of the Lands D were less than 13 hours, ranging from 6 to 12 hours. In Audit's view, the short opening hours would have reduced the public's enjoyment of the public facilities (paras. 3.10 and 3.18).

9. ***Public use of POS 40 being obstructed.*** POS 40 comprising POS 40A and POS 40B was under the purview of the BD. However, Audit site inspection in August 2014 revealed that construction materials were stored inside POS 40A and various equipment items inside POS 40B, both of which had obstructed public use of the public facilities (paras. 3.22 to 3.24).

### **Dissemination of POSPD information**

10. ***POSPDs provided before 1980 not included in POSPD Lists.*** According to the DEVB, owing to the small number of POSPDs commissioned before 1980, the POSPD Lists compiled by the Lands D and the BD only include POSPDs which have been open for public use since 1980 (para. 4.3).

11. ***Sites not included in POSPD Lists.*** According to the DEVB, the promulgation of POSPD Lists would help enhance public awareness of the existence and locations of POSPDs, and facilitate public monitoring of POSPD owners in fulfilling their responsibilities of managing and maintaining the POSPDs. However, Audit examination revealed that 3 POSPDs which had been open for public use for 7 to 14 years were not included in the Lands D's POSPD List because certificates of

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compliance had not been issued for the related developments, and 2 other POSPDs which had been open for public use for 6 and 7 years were also not included in the POSPD Lists compiled by the Lands D and the BD, owing to the absence of related conditions in the land leases or deeds of dedication (paras. 4.5 to 4.9).

12. ***POSPD provision not legally enforceable.*** Audit noted that POS 35 involved an unrestricted lease and the owner was not required to provide a POSPD under the lease. Furthermore, an undertaking of the developer of POS 35 made to the Government for providing a POSPD was not legally enforceable (para. 4.11).

13. ***Many visitors to parks and gardens not aware of nearby POSPDs.*** Audit Survey found that over half of the visitors to the majority of the public parks and gardens located close to POSPDs were not aware of the existence of the nearby POSPDs. This reflects that the pertinent POSPDs are not well known in the local districts (paras. 4.19 and 4.21).

## **Provision of POSPD facilities**

14. ***Majority of POSPD owners not aware of the POSPD Guidelines.*** Audit examination revealed that, of the 30 POSPDs covered in Audit opinion survey, the owners' incorporations and management companies of the majority of the POSPDs were not aware of the existence of the POSPD Design and Management Guidelines, with only two owners' incorporations indicating that they were aware of the matter (para. 5.12).

15. ***Some POSPDs not provided with essential facilities.*** Audit site inspections at 30 POSPDs revealed that 12 POSPDs were not provided with sheltered seating, 3 POSPDs were not provided with rubbish bins, 4 POSPDs were not provided with barrier-free-access facilities and 2 POSPDs were not provided with any sign board or notice board at the entrances (paras. 5.17 and 5.19).

16. ***Lands D instruction in conducting annual inspections not fully complied with.*** Audit examination revealed that, in 2013, three of the six pertinent District Lands Offices of the Lands D did not fully comply with the Lands D's instructions in conducting annual POSPD inspections (paras. 5.27 to 5.31).

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### **Way forward**

17. ***Planning conditions not being fulfilled.*** Audit examination revealed that the planning conditions of some private developments approved by the Town Planning Board could not be fulfilled or are not legally enforceable, mainly attributable to the fact that the planning conditions had not been incorporated into the related land leases. Examples include POS 7 and POS 35 (see paras. 5 and 12 above). Audit considers it unsatisfactory that the planning conditions of the Town Planning Board relating to the provision of POSPDs in some developments cannot be fulfilled or are not legally enforceable. The provision of information to the Town Planning Board about the uncertainty of fulfilling such planning conditions would have helped it in making informed decisions on development plans (paras. 6.7 and 6.8).

### **Audit recommendations**

18. Audit recommendations are provided in the respective sections of this Audit Report. This Executive Summary only highlights the key recommendations. Audit has *recommended* that the Administration should:

#### ***POSPD accessibility***

- (a) in providing comments on development plans submitted to the Town Planning Board for approval in future, refrain as far as practicable from recommending the acceptance of development proposals having POSPDs located in areas not easily accessible by the public (para. 2.24(a));
- (b) in accepting or requiring the provision of POSPDs in developments in future, take measures as far as practicable to ensure that the related requirements are capable of being enforced or realised through imposition of suitable conditions in the leases, or submission of legally-enforceable undertakings by the developers (para. 2.24(b));
- (c) take actions to require pertinent building owners to keep gates at entrances to POSPDs open during the POSPD opening hours according to related lease conditions (para. 2.25);

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### ***POSPD management and maintenance***

- (d) take actions to strengthen Lands D inspections of POSPDs and require the pertinent building owners to properly maintain the sites and repair broken furniture and fittings in a timely manner (para. 3.8);
- (e) take actions to require the pertinent building owners to extend the daily opening hours of POSPDs to not less than 13 hours (as specified in the 2011 POSPD Management Guidelines) when opportunities arise in future (para. 3.19(a));
- (f) arrange BD inspections to prevent POSPDs from being occupied for private use (para. 3.25);

### ***Dissemination of POSPD information***

- (g) take actions to include POSs 32, 33 and 34 and other POSPDs not having been issued with certificates of compliance in the Lands D's POSPD List (para. 4.15(a));
- (h) include, as far as practicable, all known POSPDs which are required to be provided under related land leases in the POSPD List for public information, irrespective of their year of commissioning (para. 4.15(c));

### ***Provision of POSPD facilities***

- (i) take proactive actions to encourage owners' incorporations and management companies concerned to adopt and implement the relevant provisions stated in the 2011 POSPD Guidelines (para. 5.13);
- (j) take actions to encourage the pertinent building owners to provide in POSPDs sheltered seating, rubbish bins, barrier-free-access facilities, sign boards, and essential information on notice boards as far as possible (para. 5.25(a));

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- (k) consider erecting appropriate POSPD sign boards and notice boards on nearby government land if pertinent owners refuse to erect such boards at the site entrances (para. 5.25(c)); and
- (l) strengthen actions to ensure that all District Lands Offices comply with Lands D instructions in conducting POSPD inspections (para. 5.32(a)).

## **Response from the Administration**

19. The Administration agrees with the audit recommendations.



## PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

### Background

1.2 In 1980, the Government promulgated a policy of requiring developers to incorporate certain public facilities into private developments at their own costs on sites located within zoning of “Government, Institution or Community (G/IC)” and “Open Space” under the pertinent Outline Zoning Plan (Note 1). Public facilities include public open spaces, G/IC facilities (such as community halls, elderly centres, and schools), pedestrian passages and vehicular accesses (such as walkways, footbridges and rights of way), and public transport terminus. In 1990, the Government extended the policy to cover development sites with zoning of “Comprehensive Development Area”. In considering a planning application for a private development on a site located within zonings of G/IC, Open Space or Comprehensive Development Area, the Town Planning Board (TPB) would normally expect that the developer would provide certain public facilities on the site.

1.3 According to the Development Bureau (DEVB), the objectives of incorporating public open spaces (and other public facilities) into a private development are to achieve integrated design, optimisation of land use and better site planning and utilisation, and to synchronise the availability of public facilities including public open spaces with the envisaged population intake of private development projects.

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**Note 1:** *Outline Zoning Plans are statutory plans prepared by the Town Planning Board under the Town Planning Ordinance (Cap. 131) to show the land use zonings and major road systems of individual planning scheme areas. They define the land use pattern within planning areas under broad headings such as commercial, residential, industrial, G/IC and Open Space.*

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1.4 The provision of public facilities in private developments for public use may arise under the following circumstances:

### ***Land sale***

- (a) Government bureaux/departments (B/Ds) may propose to include in the land sale conditions a requirement that the purchaser of the site (or the developer) shall provide and maintain certain public facilities in a development to meet public needs; and

### ***Private development or redevelopment***

- (b) where a development or redevelopment requires the planning permission of the TPB (Note 2):
  - (i) the responsible B/Ds may propose the inclusion of certain public facilities therein; or
  - (ii) the developer may propose providing such facilities in the development, as the TPB would take into account such a provision in considering the application.

Such requirements may subsequently be imposed as planning conditions by the TPB in approving planning applications. For a development within a “Comprehensive Development Area” zone, a planning application to the TPB will need to be made in the form of Master Layout Plans. The TPB may impose conditions in approving Master Layout Plans, such as requirements on providing and maintaining certain public facilities in the proposed development for public use. These conditions may be incorporated into the lease conditions if applicable, say when the development is the subject of a new or modified lease.

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**Note 2:** *This occurs, for example, when a site falls within or includes some land zoned “G/IC” or “Open Space”, or the development is located within a “Comprehensive Development Area” zone.*

### ***Objectives of providing public open space***

1.5 According to the Hong Kong Planning Standards and Guidelines (HKPSG — Note 3):

- (a) a minimum of 20 hectares of open space should be provided for every 100,000 persons; and
- (b) an open space can be provided for active recreational use (such as a football pitch), or for passive recreational use (such as a park, a garden and a sitting-out area where people can enjoy the surroundings in a leisurely manner).

1.6 In December 2008, the DEVB informed the Panel on Development of the Legislative Council (LegCo) that:

- (a) the policy of incorporating public facilities in private developments for public use had been in force since 1980. It enabled the needed facilities to be provided to the public in a timely and integrated manner through private developments, provided for better planning and optimised the use of limited land; and
- (b) public open space in private developments (POSPDs) are meant for public use and enjoyment. It would also help to meet the acute shortfall of local open space in certain highly built-up or green field areas.

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**Note 3:** *The HKPSG, first issued in 1982, is a government manual of criteria for determining the scale, location and site requirements of various land uses and facilities. It includes general guidelines on the provision of open spaces.*

## **Introduction**

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### ***Monitoring of provision and maintenance of public open space***

1.7 The DEVB is responsible for setting and reviewing policies on provision of public open spaces. For private developments where the respective land leases have included provisions for providing and maintaining public open spaces, the Lands Department (Lands D) is responsible for monitoring compliance with the relevant land lease conditions by the developers, or subsequent owners of the developments who are responsible under the land leases after completion and sale of the developments. Since 2008, the Lands D has instructed its District Lands Offices (DLOs) to conduct annual inspections of POSPDs for checking compliance with the relevant lease conditions. As of August 2014, as recorded in the related POSPD List (Note 4), there were 60 POSPDs (Note 5) under the purview of the Lands D. Among the 60 POSPDs, 42 (70%) were located on private land, 17 (28%) on government land (Note 6), and one (2%) partly located on government land and partly on private land.

1.8 The Buildings Ordinance (Cap. 123) has also provided for the Government (represented by the Buildings Department — BD) to enter with a private developer into a Deed of Dedication to dedicate a piece of private land for public use. Under the Deed, the developer undertakes to provide and maintain a POSPD in the development concerned for public use in exchange for bonus Gross Floor Area or exemption of the POSPD from Gross Floor Area calculation. The BD is responsible for monitoring compliance with the Deed of Dedication by the developer or building owners. As of August 2014, as recorded in the related POSPD List, there were 2 POSPDs under the purview of the BD, both were located on private land.

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**Note 4:** *The Buildings Department's List covered public facilities under its purview, which included two public open spaces dedicated for recreational purposes. According to the DEVB, these two dedicated spaces were also POSPDs. The Lands D's POSPD List covered developments completed after 1980 and issued with certificates of compliance (see paras. 4.4 and 4.14).*

**Note 5:** *These 60 POSPDs were provided under 57 private developments, of which 3 developments each involved 2 POSPDs.*

**Note 6:** *Developers are sometimes required to construct and maintain a public open space located on government land adjacent to a private development. Such open spaces are also included in the Lands D's POSPD List.*

### ***POSPD owners' concerns***

1.9 In 2008, the subject of POSPD attracted significant public attention where there were more than ten media reports on cases involving denial of public access, tight restrictions on use and other management problems relating to POSPDs. In addition, owners of some developments providing POSPDs also expressed concerns over the financial burden of meeting the costs of managing and maintaining POSPDs. In April and December 2008, the DEVB informed LegCo Panel on Development that:

- (a) the responsibility of managing and maintaining public facilities in private developments for public use was set out in the land leases between the Government and the lessees, and reflected in the Deeds of Mutual Covenant. Such obligations were binding on subsequent assignees (i.e. flat owners upon the development falling into multiple ownerships);
- (b) when flat owners purchased their properties, it was important that such obligations were clearly understood. Such requirements should have been made known to prospective flat purchasers by their solicitors during the property conveyance process; and
- (c) under exceptional circumstances, the Government might consider sympathetically waiving the lease requirement for opening a POSPD on private land for public use based on individual merits of each case and subject to the following considerations:
  - (i) it was legally in order for the Lands D to waive the lease requirement if appropriate;
  - (ii) a request for waiver must be submitted by all owners or through its owners' corporation, and subject to the terms and conditions imposed by the Lands D including the payment of a waiver fee if a waiver was granted;
  - (iii) there was sufficient existing public open space in suitable locations within the district according to the HKPSG. Other considerations including the location and distribution of public open spaces should be taken into account;

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- (iv) the agreement of the TPB for amending the relevant plans was obtained if required; and
- (v) there was support from the relevant District Council and Area Committee, in particular their understanding that a piece of POSPD would no longer be open to the public.

### ***Recent developments***

- 1.10 In January 2010, the DEVB informed LegCo Panel on Development that:
- (a) having studied the subject and engaged various stakeholders, the Government considered that the existing policy of incorporating public open spaces into private developments for public use should be upheld, with refinements on the arrangement to guide the future provision and management of POSPDs in light of the problems encountered in implementing the policy over the years;
  - (b) the TPB had agreed that unless there was a current or forecast shortfall of open space in the district having regard to the HKPSG or special circumstances justifying the provision of a public open space as part of a private development project, it should not require or accept the provision of a POSPD in order to prevent the recurrence of the implementation and management problems;
  - (c) for residential developments, the provision of a POSPD on private land should not be required, lest the recurrent responsibilities would be passed onto the small owners. However, it might be desirable to ask developers to build a public open space on adjoining government land as part of the private developments in some harbourfront and green field sites for integrated design and public enjoyment;
  - (d) for commercial or comprehensive developments where there were obvious planning gains and little or no objection for the private developer to construct a public open space on adjacent government land, the Government would retain the flexibility to seek or accept provision of a POSPD for public enjoyment; and

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- (e) special circumstances justifying the provision of a POSPD might include:
- (i) situations where the proposed POSPD was located in a highly built-up area with an acute shortfall of local open spaces;
  - (ii) a planned waterfront promenade adjacent to a private development; or
  - (iii) the POSPD is part and parcel of an Urban Renewal Authority's project for revitalising an area.

1.11 In June 2013, the DEVB further informed LegCo Panel on Development that the Government had taken the following actions with a view to addressing the public concerns over the provision of POSPDs:

- (a) since March 2008, the Lands D and the BD had uploaded onto their websites POSPD Lists for information of the public;
- (b) in 2009, the DEVB commissioned a consultancy study to compile a set of clear and practicable guidelines on the design and management of POSPDs; and
- (c) in January 2011, the DEVB promulgated the "Public Open Space in Private Development — Design and Management Guidelines" (2011 POSPD Guidelines) for reference by property owners, management agencies and the general public.

1.12 Since the promulgation of the 2011 POSPD Guidelines, 7 sites have been sold for commercial, hotel and composite commercial and residential developments involving the provision of POSPDs (which were reflected in the land sale conditions). Among these 7 POSPDs, 2 are located on government land, 4 on private land and 1 straddling government land and private land. Therefore, POSPDs have continued to be provided in some of the private development projects.

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### **Audit review**

1.13 The Audit Commission (Audit) has recently conducted a review of the provision of POSPDs, focusing on the following areas:

- (a) POSPD accessibility (PART 2);
- (b) POSPD management and maintenance (PART 3);
- (c) dissemination of POSPD information (PART 4);
- (d) provision of POSPD facilities (PART 5); and
- (e) way forward (PART 6).

Audit has found that there are areas where improvements can be made by the Administration on the provision and monitoring of POSPDs, and has made a number of recommendations to address the issues.

### **Acknowledgement**

1.14 Audit would like to acknowledge with gratitude the full cooperation of the staff of the DEVB, the Lands D, the BD and the Planning Department (PlanD) during the course of the audit review.

## **PART 2: POSPD ACCESSIBILITY**

2.1 This PART examines the accessibility of POSPDs, focusing on POSPD patronage (paras. 2.2 to 2.5) and POSPD accessibility (paras. 2.6 to 2.27).

### **POSPD patronage**

2.2 According to the DEVB, a public open space is provided for public use and enjoyment. Furthermore, as defined in the HKPSG (see para. 1.5):

- (a) an open space (or a recreational open space) is intended primarily for the provision of an outdoor open-air space for active and passive recreational uses serving the needs of local residents and the general public;
- (b) a passive recreational open space, such as a park, a garden, and a sitting-out area, is provided such that people can enjoy the surroundings in a leisurely manner;
- (c) an open space must be planned as a land use in its own right. It should be planned in the right location and should not be the remainder when other land uses have been provided. It should also be accessible, suitable, functional and usable and not merely an area included to make up the required standards; and
- (d) in planning the location of an open space, the visibility of the open space from public roads and accessibility requirements of all segments of the population should be taken into account, including the disabled, to enhance as wide usage as possible. To enhance usage, entrances to an open space should be easily identifiable and accessible.

## **POSPD accessibility**

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### ***Audit Survey***

2.3 In January 2014, Audit commissioned a local university (Audit Consultant) to assist conducting a patronage survey and an opinion survey (Audit Survey — Note 7) on 30 Public Open Spaces (POSSs 1 to 30 — see Appendix A) of the 60 POSPDs under the purview of the Lands D (as recorded in the related POSPD List). Audit Survey involved:

- (a) counting the number of visitors to the POSPDs (patronage survey);
- (b) interviewing POSPD users, related owners incorporations or management companies, and users of nearby parks and gardens (opinion survey); and
- (c) conducting inspections of facilities provided at the POSPDs.

### ***10 POSPDs having low patronage***

2.4 Audit Survey found that, among the 30 POSPDs covered in the survey (see Appendix A):

- (a) 22 POSPDs recorded reasonable levels of patronage, each of which on average recorded 10 or more visitors during a two-hour period. Among these POSPDs, 6 had high patronage, each of which on average had more than 100 visitors during a two-hour period. Of these 6 POSPDs, 3 (POSSs 24, 28 and 29) are located in commercial developments (see Photograph 1 for POS 29); and

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**Note 7:** After conducting a preliminary survey on 60 POSPDs (provided under 57 developments), Audit Consultant classified them into high, medium and low categories based on the number of visitors observed. Among the 18 District Council districts, 4 did not have any POSPD. For each of the remaining 14 District Council districts, at least a POSPD was selected for the survey. For a district having more than 1 POSPD, 1 or more POSPDs were selected, each from different categories.

**Photograph 1**

**POS 29  
(August 2014)**



*Source: Photograph taken by Audit at 11:26 a.m. on 18 August 2014*

## **POSPD accessibility**

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- (b) 8 POSPDs (POSs 1 to 8) recorded low levels of patronage, each of which recorded less than 10 visitors during a two-hour period (see Table 1).

In addition to the 30 POSPDs, Audit also examined one POSPD (POS 31) which had opening hours shorter than 13 hours a day (a standard specified in the POSPD Management Guidelines) and 5 other POSPDs (POSs 32 to 36) which were not included in the Lands D's POSPD List. Audit found that the patronage of POSs 31 and 36 was also low (see Table 1).

**Table 1**

**POSPDs with low patronage  
(March to July 2014)**

<b>POSPD</b>	<b>Average no. of visitors in a 2-hour period</b>
POS 1	0
POS 2	1
POS 3	1
POS 4	2
POS 5	4
POS 6 (Note)	5
POS 7	7
POS 8	9
POS 31	1
POS 36	1

*Source: Audit Survey*

*Note: POS 6 comprises two parts, namely POS 6A and POS 6B. Audit Survey found that, on average during a two-hour period, there were 4 and 1 visitors at POS 6A and POS 6B respectively.*

2.5 Audit examination revealed that some POSPDs had low patronage because of one or more of the following reasons:

- (a) sites not being easily accessible (e.g. POSs 5, 6B and 7 — see paras. 2.7 to 2.14);
- (b) uninterrupted public access to POSPDs not being fully provided (e.g. POSs 1 and 31 — see paras. 2.15 to 2.23);
- (c) short opening hours (e.g. POSs 6B and 31 — see paras. 3.10 to 3.18);
- (d) site not being included in POSPD Lists (e.g. POS 36 — see paras. 4.9 to 4.13); and
- (e) POSPD sign boards not being erected at entrances (e.g. POSs 4 and 26 — see paras. 5.19 and 5.20).

## **Accessibility**

2.6 Among the 10 POSPDs shown in Table 1, with the exception of POS 5 (see para. 2.8), Audit noted that separate public access to POSPDs, which was different from the access provided to residents of the related developments, was provided.

## **Areas for improvement**

### ***Sites not being easily accessible***

2.7 According to the POSPD Design Guidelines (see para. 1.11(c)), a POSPD should be provided at a location having clear visibility, and at grade or on the ground level. Audit site inspections revealed that POSs 5, 6B and 7 were located on podiums high above the ground level and members of the public needed to walk up long staircases or take passenger lifts before reaching the sites.

## **POSPD accessibility**

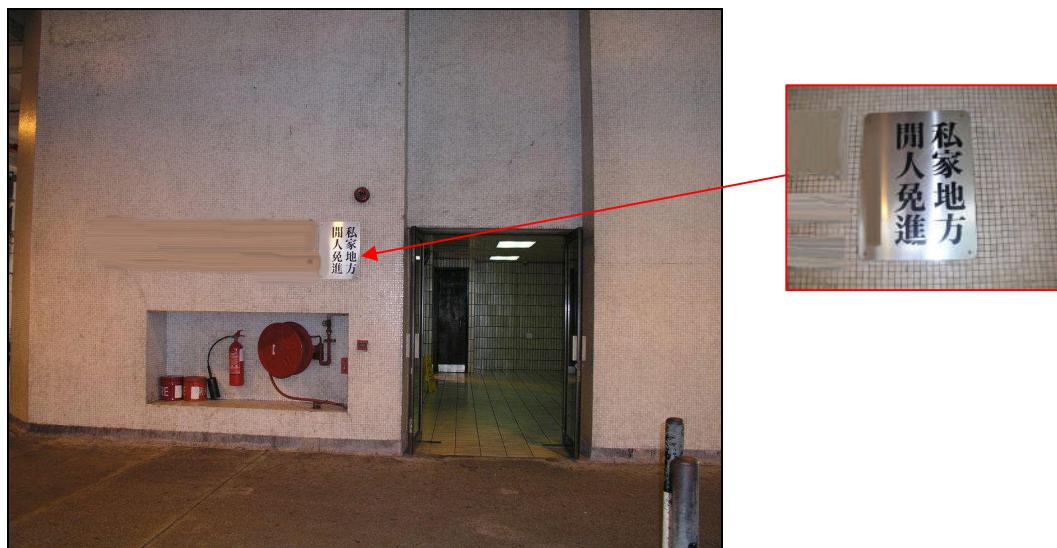
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### **POS 5**

2.8 POS 5 occupying an area of about 6,400 square metres ( $m^2$ ) is located on private land at the podium level of a residential development and on the roof of an MTR station. Visitors to POS 5 need to take passenger lifts (leading to the residential development and POS 5) provided at two entrances to the development (see Photograph 2 for one of the entrances).

**Photograph 2**

**Entrance to passenger lift lobby for access to POS 5  
(July 2014)**



*Source: Photograph taken by Audit at 3:07 p.m. on 4 July 2014*

*Remarks: English translation of the notice:*

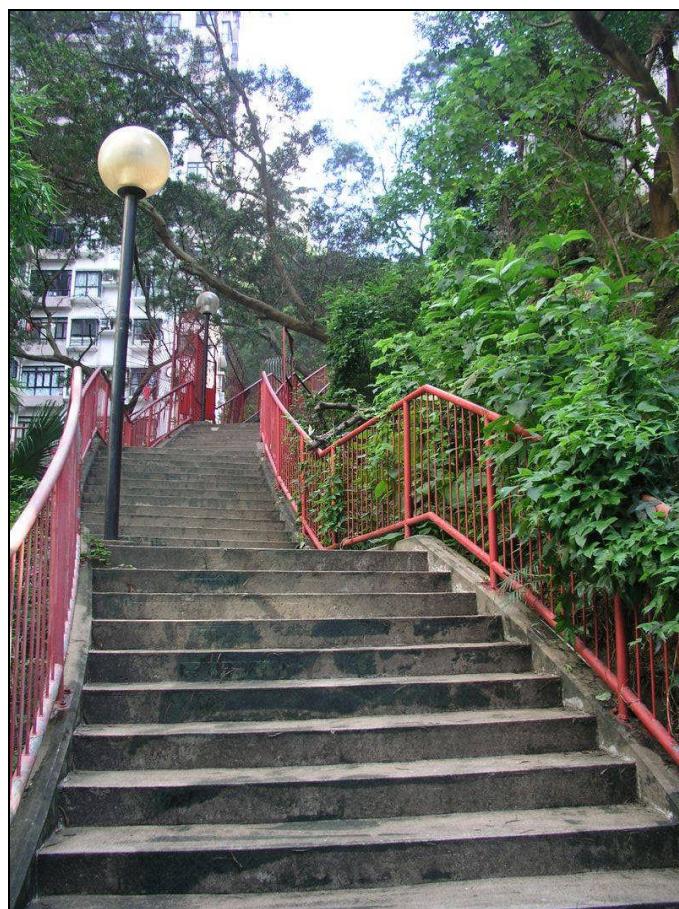
*"Unauthorised persons are not allowed to enter this private place"*

## **POS 6**

2.9 POS 6 comprises two sites, one is located on the ground level of a residential development (POS 6A with an area of 920 m<sup>2</sup>) and another on two podiums (Lower Podium and Upper Podium) where visitors need to walk up some 200 stair steps to reach the sites (POS 6B with a total area of 490 m<sup>2</sup> — see Photographs 3 to 5). Both POSs 6A and 6B are located on private land.

**Photograph 3**

**Some 200 stair steps leading to POS 6B  
(June 2014)**



*Source: Photograph taken by Audit at 4:10 p.m. on  
27 June 2014*

## **POSPD accessibility**

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**Photograph 4**

**Lower podium of POS 6B  
(June 2014)**



*Source: Photograph taken by Audit at 4:13 p.m. on 27 June 2014*

**Photograph 5**

**Upper podium of POS 6B  
(June 2014)**



*Source: Photograph taken by Audit at 4:15 p.m. on 27 June 2014*

## **POS 7**

2.10 POS 7 occupying an area of about 1,400 m<sup>2</sup> is located on private land at Levels 5 and 6 of a residential development which is accessible from local roads (at the same level of the POS site). Visitors to POS 7 from the main road (which is at the ground level of the development) need to take one of the two passenger lifts provided by the related residential development, walk up some 160 stair steps (see Photograph 6), or walk up a steep local road adjacent to the development.

### **Photograph 6**

**Stair steps leading to POS 7 from the main road  
(June 2014)**



*Source: Photograph taken by Audit at 3:01 p.m.  
on 25 June 2014*

## **POSPD accessibility**

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2.11 Audit site inspection on 25 June 2014 found that the two passenger lifts were not in service (see Photograph 7 for one of the passenger lifts). Audit examination of Lands D's records further revealed that the two passenger lifts had ceased to be provided for public use since 2002 (see Case 1).

**Photograph 7**

**Passenger lift on the main road for access to POS 7  
(June 2014)**



*Source: Photograph taken by Audit at 3:03 p.m. on 25 June 2014*

**Case 1**

**Suspension of passenger lift service at POS 7  
(1987 to 2013)**

<b>Date</b>	<b>Particulars</b>
December 1987	The TPB approved a development plan submitted by a developer for residential development on government land, subject to the provision of a POSPD.
February 1991	The Lands D granted a land lease for the development.
December 1991	Taking into account the TPB's comment at its meeting of August 1991 on the development proposal, the developer submitted a revised development plan, which included the installation of two passenger lifts to improve the pedestrian movement between the main road and the local road and facilitate public access to the public open space.
January 1992	The TPB approved the revised development plan.
October 1999	The BD issued an occupation permit.
June 2000	The Lands D issued a certificate of compliance.
July 2002	In response to a complaint that the two passenger lifts were not open for public use, The Ombudsman's investigation revealed that, as the provision of passenger lifts was not a lease condition, the building owners were not bound to provide the public lift service.
August 2003	The related owners incorporation posted a notice outside the passenger lifts informing the public that the lift service would be suspended in view of the high maintenance cost.
September 2003 and February 2004	A Committee of the pertinent District Council expressed disappointment over the suspension of the lift service, and asked the Lands D to request the building owners to resume the lift service.
March 2004	The Committee wrote to the DEVB (Note) expressing its concerns over the suspension of the lift service.

## **POSPD accessibility**

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### **Case 1 (Cont'd)**

<b>Date</b>	<b>Particulars</b>
April 2004	The DEVB informed the Committee that the Government had no authority to require the building owners to resume the lift service for public use because such a requirement was not a land grant condition.
2004 to 2013	The Lands D had received 11 public complaints concerning the suspension of the lift service.

*Source: Lands D records*

*Note: Before July 2007, the then Housing, Planning and Lands Bureau was responsible for the policy portfolio of housing, planning and land matters. In July 2007, the DEVB was formed to take over the planning and land policy portfolio. For simplicity, the related Government Bureaux before July 2007 are referred to as the DEVB in this Audit Report.*

2.12 In October 2014, the Lands D and the DEVB informed Audit that:

- (a) some of the POSPDs covered in this Audit Report had been completed long time before the promulgation of the 2011 POSPD Guidelines. While some of the POSPDs were considered acceptable at the time of construction, they might not meet current design and provision standards; and
- (b) regarding POS 7, the provision of the two passenger lifts was approved by the TPB in January 1992, when the related land grant had been executed in February 1991. Therefore the requirement for providing the two passenger lifts could not be imposed as lease conditions.

***Audit comments***

2.13 Regarding POS 7, Audit noted that the Lands D could not compel the building owners to resume the passenger lift service for public use because such a requirement was not a land grant condition. According to the TPB, the objectives of providing the public passenger lift service were to improve the pedestrian movement between the main road and the local road, as well as to facilitate public access to the public open space. In Audit's view, if the requirement to provide public passenger lift service had been included in the land lease condition of the development concerned, the Lands D could have had the authority to require the building owners to resume the lift service which would help achieve the above-mentioned objectives.

2.14 Table 1 in paragraph 2.4(b) shows that POSs 5, 6 and 7 had low patronage. A possible reason for their low patronage is that they are not located on the ground level (see para. 2.7), and visitors need to walk up long staircases or take passenger lifts to reach the sites. In Audit's view, the related B/Ds need to draw lessons in these cases and refrain from recommending the acceptance of development proposals having POSPDs located on a podium located high above the ground level which is not easily accessible by the public. Moreover, in accepting or requiring the provision of POSPDs in private developments in future, related B/Ds also need to take measures to ensure that related requirements are capable of being enforced or realised through imposition of suitable conditions in the leases, or submission of legally enforceable undertakings by the developers.

***Uninterrupted public access to POSPDs not being fully provided***

2.15 In general, related land leases require owners of POSPDs to provide uninterrupted public access to the sites. Furthermore, the Lands D has written to the owners' corporations or management companies of the POSPDs included in the Lands D's POSPD List reminding them of their obligations under the leases, including displaying notices informing the public that the facilities are open to the public, setting out the opening hours and ensuring that public access would not be obstructed or unreasonably denied. However, Audit site inspections revealed that uninterrupted public access might not have been fully provided at POSs 1 and 31.

## **POSPD accessibility**

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### **POS 1**

2.16 POS 1 occupies an area of 16,200 m<sup>2</sup> and is located on private land of a private development. A footpath is exclusively provided for public access to POS 1. The relevant lease condition of the related development is as follows:

*“The public open space together with the footpath shall remain open to public pedestrian traffic at all times.”*

2.17 From January to June 2014, Audit conducted 7 site inspections at POS 1. In all the inspections, Audit found that a gate at the entrance to the footpath and to POS 1 was closed with a metal chain which was locked up by a padlock. There was also a notice requesting visitors to seek assistance from the management office at the entrance to the development (which required a 5-minute walk from the POSPD entrance) or make a phone call (telephone number provided) for assistance (see Photograph 8).

**Photograph 8**

**Entrance to POS 1  
(January 2014)**



*Source: Photograph taken by Audit at 2:48 p.m. on 15 January 2014*

2.18 Audit also noted that, from 2008 to 2011, the Lands D had received 11 complaints regarding the alleged locking up of a gate at the entrance to POS 1. The Lands D's inspections revealed that members of the public could get access to the site by seeking assistance from the management office. In March 2012, the Lands D received another complaint about the north-eastern portion of POS 1 being occupied by the adjoining house owners for private use. In May 2012, the Lands D issued a warning letter to the owner of the development of POS 1 demanding the removal of structures not shown on the approved Layout Plan. In June 2012, the Lands D's inspection found that the unauthorised structures including a pavilion deck and a platform had been removed.

2.19 In October 2014, the Lands D informed Audit that:

- (a) during its annual spot check on 29 November 2013, the gate at the entrance of POS 1 was found open. However, noting that the gate was subsequently locked, the Lands D issued three letters to the owners on 28 February 2014, 1 April 2014 and 28 April 2014 demanding rectification;
- (b) in May 2014, the management office of POS 1 informed the Lands D that security improvement measures were being implemented to prevent burglaries and the gate had been opened. The Lands D's two surprise checks on 16 and 30 May 2014 found that the gate was open on both occasions; and
- (c) on 14 July 2014, the Lands D further reminded the owners to open the gate at POS 1. On 21 July 2014, the management company replied that they had done so.

In Audit's view, the Lands D needs to take actions to require pertinent building owners to keep gates at entrances to POSPDs open during the POSPD opening hours to facilitate public access.

## **POSPD accessibility**

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### ***POS 31***

2.20 POS 31 occupies an area of about 7,000 m<sup>2</sup> and is located on private land. There is an entrance (Entrance A) to the related private development and another entrance (Entrance B) to POS 31. The relevant lease condition of the related development (a recreational centre) reads as follows:

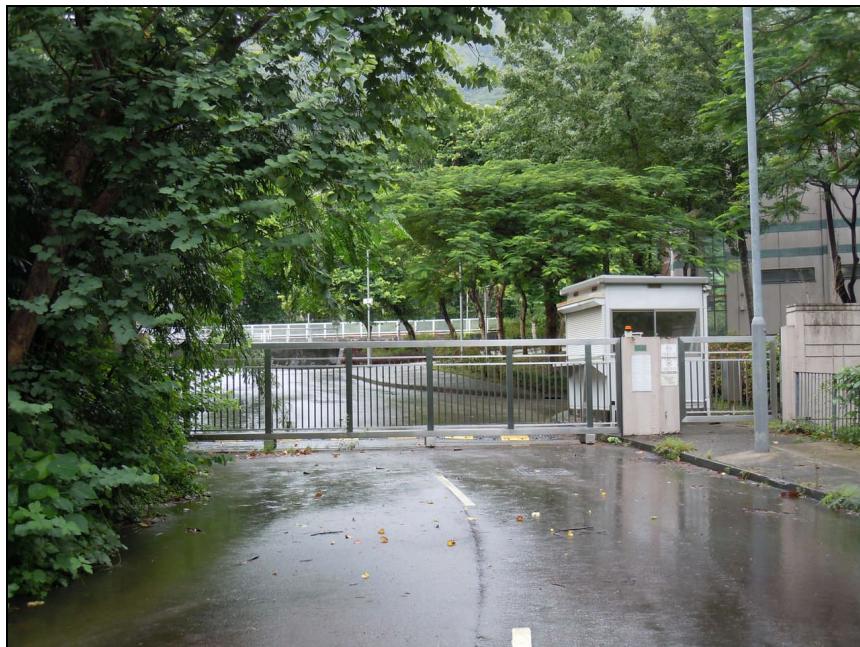
*“The Grantee shall, without levy of any charges, to permit public access to and the use by the public of the open areas ..... together with all outdoor facilities (the said open areas and outdoor facilities are hereinafter collectively referred to as “the Facilities”) provided in accordance with the Regulations for Administration and Management for the use of the Facilities (hereinafter referred to as “the Regulations”) to be drawn up by the Grantee and to be approved by the Director.”*

The carparks of the development are open for public use.

2.21 From January to August 2014, Audit conducted 5 site inspections at POS 31. In all the inspections, Audit found that the gates at Entrance A to the development and Entrance B to POS 31 (see Photograph 9) were both closed and locked. There was a notice (see Photograph 10) posting at both Entrances A and B requesting visitors to make a phone call (telephone number provided) for assistance from the management office.

**Photograph 9**

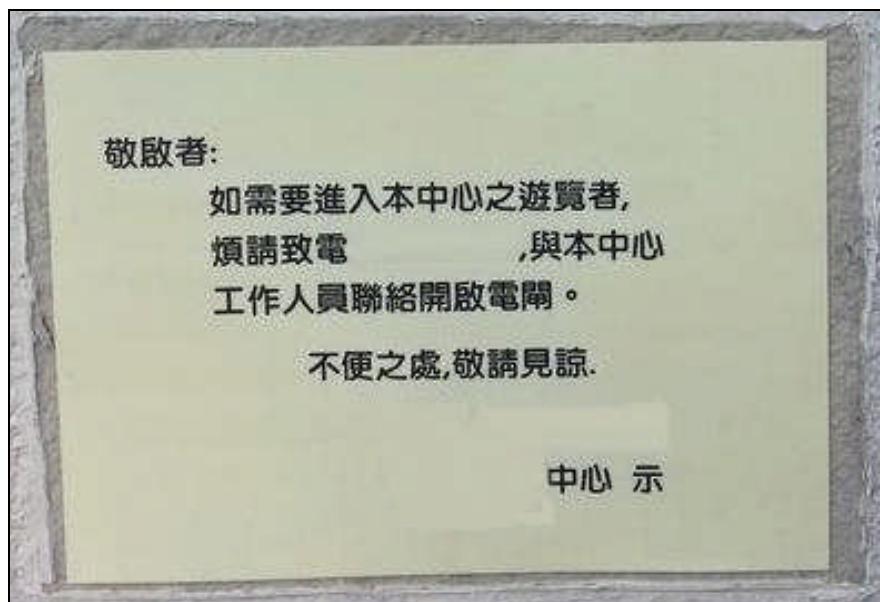
**Entrance B to POS 31  
(August 2014)**



*Source: Photograph taken by Audit at 10:15 a.m. on 20 August 2014*

### **Photograph 10**

#### **Notice at Entrance B to POS 31 (July 2014)**



*Source:* Photograph taken by Audit at 3:29 p.m. on 16 July 2014

*Remarks:* English translation of the notice:

*"To whom it may concern: Please contact staff of this centre on (telephone number) for entering and visiting the centre. Apology for any inconvenience caused."*

2.22 In October 2014, Audit made a recommendation to the Lands D that it should ascertain whether the requirement for members of the public to call up the management office of POS 31 on each occasion in gaining access to the site is a breach of the pertinent lease condition. In response, the Lands D informed Audit that:

- (a) the requirement to call up the management office of POS 31 to open the gate at the entrance to the site as stated in a notice board did not itself amount to an evidence proving that public access was denied; and

- (b) whether the requirement for members of the public to call up the related management office in gaining access to the site was a breach of the pertinent lease condition depended on whether the public would be unreasonably denied access after calling up the management office.

### ***Audit comments***

2.23 In Audit's view, in order to provide an uninterrupted public access to POSPDs, the Lands D needs to take actions to require pertinent building owners to keep gates at entrances to POSPDs open during the POSPD opening hours according to related lease conditions.

### **Audit recommendations**

2.24 **Audit has recommended that the Secretary for Development should remind pertinent B/Ds of the need to:**

- (a) in providing comments on development plans submitted to the TPB for approval in future, refrain as far as practicable from recommending the acceptance of development proposals having POSPDs located in areas not easily accessible by the public; and
- (b) in accepting or requiring the provision of POSPDs in developments in future, take measures as far as practicable to ensure that related requirements are capable of being enforced or realised through imposition of suitable conditions in the leases, or submission of legally-enforceable undertakings by the developers.

2.25 **Audit has recommended that, with a view to facilitating public access to POSPDs, the Director of Lands should take actions to require pertinent building owners to keep gates at entrances to POSPDs open during the POSPD opening hours according to related lease conditions.**

### **Response from the Administration**

2.26 The Secretary for Development agrees with the audit recommendations in paragraph 2.24. He has said that:

- (a) POSPDs located in areas not easily accessible may be to a certain extent detrimental to public enjoyment of the facilities. The DEVB will consider reminding relevant B/Ds to refrain from recommending the acceptance of development proposals with POSPDs situated on podiums high above ground level and not easily accessible by the public;
- (b) while the Government may still accept or require provision of POSPDs in certain special circumstances, the provision is subject to the POSPD requirements capable of being enforced or realised through suitable conditions imposed in the lease; and
- (c) there may be situations whereby the Government has to choose between accepting a POSPD at a less-than-ideal location, and bearing an acute shortage of open space in the area.

2.27 The Director of Lands agrees with the audit recommendation in paragraph 2.25.

## **PART 3: POSPD MANAGEMENT AND MAINTENANCE**

3.1 This PART examines the management and maintenance of POSPDs, focusing on:

- (a) some POSPDs not being properly maintained (paras. 3.2 to 3.9);
- (b) short opening hours of some POSPDs (paras. 3.10 to 3.20); and
- (c) BD's monitoring of POSPDs (paras. 3.21 to 3.26).

### **Some POSPDs not being properly maintained**

#### *Land lease requirements*

3.2 According to a paper submitted to LegCo Panel on Development in April 2008, pertinent building owners in general were required under the respective contractual documents (including land leases) to manage and maintain POSPDs to the satisfaction of the Government (generally the Lands D in case of a land lease). The POSPD Management Guidelines (see para. 1.11(c)) also state that the pertinent building owners should properly maintain and manage POSPDs to enable the public to enjoy the facilities.

### **Areas for improvement**

#### *Some POSPDs not being properly maintained*

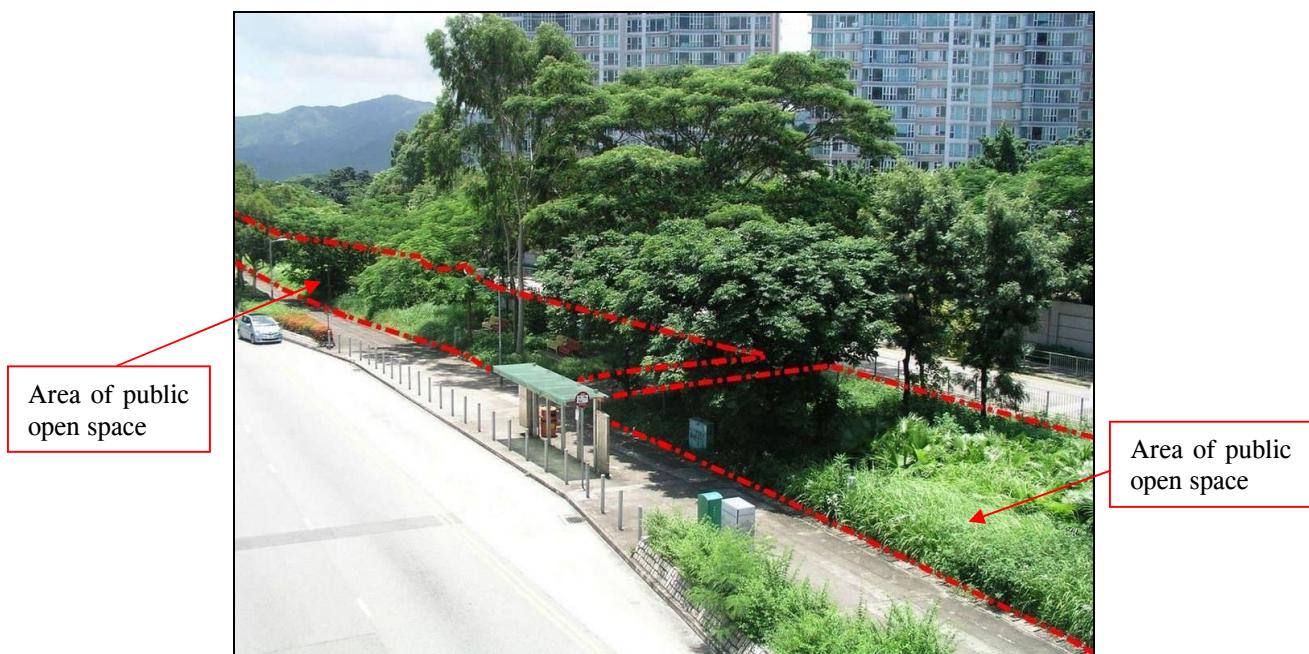
3.3 Audit site inspections revealed that the sites and some furniture and fittings provided at POSs 4 and 15 were not properly maintained.

### **POS 4**

3.4 POS 4 occupies an area of about 3,600 m<sup>2</sup> and is located on government land. The relevant lease condition of the related development states that the grantee needs to manage, maintain and repair a POSPD provided at the site. Audit site inspection in July 2014 revealed that POS 4 was covered by long grass (see Photograph 11) and fallen tree branches.

**Photograph 11**

**POS 4 covered with long grass  
(July 2014)**



*Source: Photograph taken by Audit at 11:47 a.m. on 4 July 2014*

**POS 15**

3.5 The relevant lease condition of the related development of POS 15 reads as follows:

*“The Grantee shall at his own expense at all times maintain the said public open space and the said equipment, plants, and trees in good condition”.*

3.6 POS 15 comprises three parts, namely POSs 15A, 15B and 15C, which are located on different sites and are on government land. They together occupy a total area of about 4,800 m<sup>2</sup>. Audit site inspections in July 2014 revealed that some furniture and fittings at POS 15C were not properly maintained. For example, a damaged canopy was not repaired (see Photograph 12), a missing drainage cover was not replaced (see Photograph 13), a broken electricity-cable cover was not fixed (see Photograph 14) and potted plants at the entrance were not removed to facilitate public access (see Photograph 15). Audit Survey revealed that, during the 18 hours covered in the survey, no visitor was found at POS 15C. In this connection, on average during a two-hour period, there were 33 visitors to POS 15, making up of 1 visitor to POS 15A and 32 visitors to POS 15B.

### **Photographs 12 to 15**

#### **Furniture and fittings not properly maintained at POS 15C (July 2014)**

**Photograph 12**



**Damaged canopy not repaired**

**Photograph 13**



**Missing drainage cover not replaced**

**Photograph 14**



**Broken electricity-cable cover not fixed**

**Photograph 15**



**Potted plants at entrance not removed**

*Source: Photographs taken by Audit at around 11 a.m. on 30 July 2014*

### **Audit comments**

3.7 In Audit's view, because POSs 4 and 15C were not properly maintained, this adversely affected their attraction and public enjoyment of the facilities. In this connection, on average during a two-hour period, there were 2 visitors to POS 4, and no visitor to POS 15C during an 18-hour period. Furthermore, the damaged canopy, the missing drainage cover and the broken electricity-cable cover at POS 15C might pose safety risks to visitors. Therefore, the Lands D needs to take actions to strengthen inspections of POSPDs under its purview to ensure that the sites are properly maintained. This will help improve the attraction of the POSPDs and its patronage and reduce safety risks to visitors.

### **Audit recommendation**

3.8 **Audit has recommended that the Director of Lands should take actions to strengthen Lands D inspections of POSPDs and require the pertinent building owners to properly maintain the sites and repair broken furniture and fittings in a timely manner.**

### **Response from the Administration**

3.9 The Director of Lands agrees with the audit recommendation.

### **Short opening hours of some POSPDs**

3.10 According to the Leisure and Cultural Services Department (LCSD), apart from some parks, gardens or facilities which are closed during night time due to security and operational reasons, most of the parks and gardens managed by the Department are open 24 hours a day. Nevertheless, according to the POSPD Management Guidelines (see para. 1.11(c)), the daily opening hours for public access to a POSPD should not be less than 13 hours. Audit examination of the opening hours of the 60 POSPDs included in the Lands D's POSPD List revealed that the daily opening hours of six POSPDs were less than 13 hours (see Table 2). The relevant lease conditions on the opening hours of the six POSPDs are shown in Table 3.

## **POSPD management and maintenance**

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**Table 2**

### **POSPDs with less than 13 daily opening hours (August 2014)**

<b>POSPD</b>	<b>Opening days</b>	<b>Number of daily opening hours</b>
POS 6B (see para. 2.9)	All year round	10.5
POS 17	All year round	12
POS 31	January to March and November to December	6 to 7
	April to October	6 to 8
POS 37B (Note)	All year round	7
POS 38	All year round	11
POS 39	Monday and special days with activities in daytime	0
	Special days with activities in night time	7
	Tuesday, Thursday and Friday	7.75
	Wednesday, Saturday and Sunday	9

*Source:* Lands D records and Audit analysis

*Note:* POS 37 comprises two parts, namely POSS 37A and 37B. POS 37A is open for 24 hours a day whereas POS 37B is open for 7 hours a day.

*Remarks:* Audit Survey did not cover POSS 37, 38 and 39.

**Table 3**

**Lease conditions on opening hours**

<b>POSPD</b>	<b>Lease condition on opening hours</b>
POS 6B	<i>“At all reasonable times”</i>
POS 17	Opening hours not specified in the lease
POS 31	<i>“To accord with the grantee’s Regulations to be approved by the Director”</i> (Note 1)
POS 37B	Opening hours not specified in the lease. The grantee was required to provide and maintain the public open space all to the satisfaction of the related B/D (Note 2)
POS 38	<i>“Daylight hours”</i>
POS 39	<i>“The extent and manner of use shall have regard to the grantee’s requirements for the security of the remainder of the lot and the grantee’s requirements for the operation of .... but shall otherwise be as agreed between the grantee and the Director of Urban Service....”</i>

*Source: Lands D records*

*Note 1: The “Director” refers to the Director of Lands. According to the Lands D, it had consulted the PlanD before approving the opening hours of POS 31.*

*Note 2: At the time of granting the lease in March 1982, the then Regional Secretary for the New Territories was responsible for land matters in the New Territories. Since April 1982, the Lands D has taken over the related responsibilities. According to the Lands D, it had consulted the relevant District Officer on the opening hours of POS 37B.*

## **Areas for improvement**

- 3.11 Of the six POSPDs, Audit selected POSs 6B and 31 for examination.

## **POSPD management and maintenance**

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### **POS 6B**

3.12 The relevant lease condition of the related development of POS 6 reads as follows:

*“The public open space after development shall be maintained and managed by the Grantee and made available for public use at all reasonable times.”*

3.13 POS 6 comprises two parts, namely POSSs 6A and 6B (see para. 2.9). POS 6A is open for public use at all times. However, POS 6B is open for public use from 6:00 a.m. to 4:30 p.m. (total 10.5 hours per day).

3.14 Regarding POS 6B, in October 2008, the Lands D sought clarifications from the management agent of the related development about the short opening hours of the site. In November 2008 and January 2009, the management agent informed the Lands D that the opening hours were based on security and management considerations and patronage of the site. The management agent also said that it would review the opening hours regularly to suit the local situation.

### **POS 31**

3.15 The lease condition of the related development of POS 31 states that the opening hours of the site should be based on the Regulations for Administration and Management (see para. 2.20). As prescribed in the Regulations, the opening hours of POS 31 are as follows:

January to March and November to December:

10:00 a.m. to 4:00 p.m. (Monday to Friday) (total 6 hours)

10:00 a.m. to 5:00 p.m. (Saturday, Sunday and public holidays)  
(total 7 hours)

April to October:

10:00 a.m. to 4:00 p.m. (Monday to Friday) (total 6 hours)

10:00 a.m. to 6:00 p.m. (Saturday, Sunday and public holidays)  
(total 8 hours)

3.16 In October 1995, the grantee informed the Lands D that shorter opening hours were required for the site because:

- (a) they had difficulty to arrange staff to attend the site without paying overtime allowance; and
- (b) staff would need to attend ceremonies in the morning and evening such that the POSPD could not be open before 10:00 a.m. and after 4:00 p.m.

In July 1997, after consulting the PlanD (Note 8), the Lands D approved the opening hours as prescribed in the Regulations (see para. 3.15).

3.17 According to the Lands D, the six POSPDs with short opening hours were developed years ago, and the opening hours imposed in the land leases were made without any general guidelines. The standard of 13 hours a day was only laid down in the POSPD Management Guidelines promulgated in 2011.

### ***Audit comments***

3.18 In Audit's view, the short opening hours of POSs 6B, 17, 31, 37B, 38 and 39 might reduce the public's enjoyment of the public facilities. Therefore, the Lands D needs to take actions to require the pertinent building owners to extend the daily opening hours of the POSPDs to not less than 13 hours as far as possible. The Lands D also needs to draw lessons in the case of POS 31 to refrain from approving the setting of the daily opening hours of a POSPD to less than 13 hours. In the event that the Lands D considers that the owners of a POSPD has strong grounds to limit the daily opening hours to less than 13 hours, it needs to take into account the views of the related District Councils as appropriate before approving the shorter opening hours. In this connection, it is relevant to note that the Government may waive a requirement for opening a POSPD for public use if the support of the relevant District Council has been obtained (see para. 1.9(c)(v)).

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**Note 8:** *According to the planning condition, the grantee needs to provide and open the space for public use to the satisfaction of the PlanD.*

## **Audit recommendations**

- 3.19     **Audit has *recommended* that the Director of Lands should:**
- (a)    **take actions to require the pertinent building owners to extend the daily opening hours of POSPDs to not less than 13 hours (as specified in the 2011 POSPD Management Guidelines) when opportunities arise in future;**
  - (b)    **remind Lands D staff, in approving the daily opening hours of a POSPD in future, take into account the standard of not less than 13 hours specified in the 2011 POSPD Management Guidelines; and**
  - (c)    **take into account the views of the relevant District Councils before approving any reduction in the daily opening hours of a POSPD to less than 13 hours in future.**

## **Response from the Administration**

- 3.20     The Director of Lands agrees with the audit recommendations. She has said that the Lands D would consider extending the opening hours of the six POSPDs when opportunities arise in future (for example when a grantee applies for lease modification or amending the opening hours of a POSPD).

## **BD's monitoring of POSPDs**

3.21 As of August 2014, as recorded in the related POSPD List, there were two POSPDs under the purview of the BD, one of which was involved in two litigations which had not been finalised. Audit selected the remaining POSPD (POS 40) for review.

## **Areas for improvement**

### ***POS 40***

3.22 POS 40 comprises two parts, namely POSs 40A and 40B, which are located on two sites on private land. They together occupy a total area of about 200 m<sup>2</sup>. As stated in the pertinent Deed of Dedication:

- (a) the dedicated areas (namely POSs 40A and 40B) shall be used for public recreational purposes only and vehicles are prohibited from entering or passing over the dedicated areas; and
- (b) the owner shall keep and maintain the dedicated areas free of all obstructions of any nature whatsoever.

3.23 Audit site inspection in August 2014 revealed that construction materials were stored inside POS 40A (see Photograph 16) and various items of equipment, including ladders, trolleys and folded-up chairs, were stored inside POS 40B (see Photograph 17). Both POSs 40A and 40B were installed with gates which were unlocked at the time of Audit inspection.

**Photograph 16**

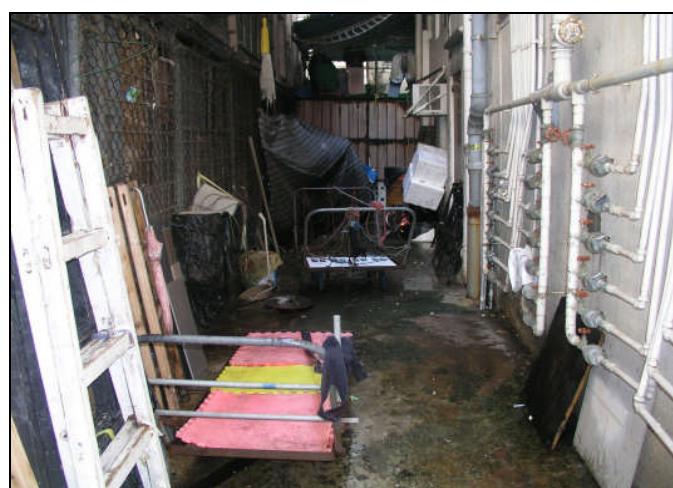
**Construction materials stored inside POS 40A  
(August 2014)**



*Source: Photograph taken by Audit at 4:53 p.m. on  
14 August 2014*

**Photograph 17**

**Equipment stored inside POS 40B  
(August 2014)**



*Source: Photograph taken by Audit at 4:55 p.m. on  
14 August 2014*

### ***Audit comments***

3.24 According to the BD, it has been engaging consultants to conduct periodic inspections of POSPDs under its purview at a frequency of not less than four inspections per year. In Audit's view, the BD needs to inspect POSPDs under its purview to prevent POSPDs from being occupied for private use which would obstruct public use of the public facilities.

### **Audit recommendation**

3.25 **Audit has *recommended* that the Director of Buildings should arrange BD inspections of pertinent POSPDs to prevent POSPDs from being occupied for private use.**

### **Response from the Administration**

3.26 The Director of Buildings agrees with the audit recommendation. He has said that the BD will follow up the irregularities identified by Audit relating to POS 40 and will continue to arrange inspections to prevent POSPDs under its purview from being occupied for private use.

## **PART 4: DISSEMINATION OF POSPD INFORMATION**

4.1 This PART examines the efforts made by the Lands D and the BD to disseminate information to facilitate public access to POSPDs, focusing on:

- (a) uploading of POSPD Lists onto Lands D and BD websites (paras. 4.2 to 4.18); and
- (b) public awareness of POSPDs (paras. 4.19 to 4.24).

### **Uploading of POSPD Lists onto Lands D and BD websites**

4.2 Since March 2008, for the purpose of enhancing public awareness, the Lands D and the BD have taken actions to disseminate information about POSPDs to the public by compiling POSPD Lists and uploading them onto their websites. The POSPD Lists include information of each POSPD on the related location and area, the level at which the public open space is located, the opening hours, the site plan, and the contact telephone number of the Government office responsible for monitoring the public open space (e.g. the related DLO of the Lands D).

4.3 As of August 2014, the Lands D's POSPD List comprised 60 POSPDs which were provided under 57 private developments and that of the BD consisted of 2 POSPDs. According to the DEVB, owing to the small number of POSPDs commissioned before 1980, the POSPD Lists only include POSPDs which have been open for public use since 1980.

## **Areas for improvement**

### ***3 POSPDs not included in POSPD Lists (for developments not having been issued with certificates of compliance)***

4.4 According to the Lands D, it would include a POSPD in its POSPD List after issuing a certificate of compliance (Note 9) for the development concerned. On the other hand, the BD would include a POSPD in its POSPD List after issuing a related occupation permit (Note 10).

4.5 Audit examination revealed that, as of August 2014, owing to the fact that certificates of compliance had not been issued for the related developments, 3 POSPDs which had been open for public use for 7 to 14 years were not included in the Lands D's POSPD List (see Table 4).

**Table 4**

**POSS 32, 33 and 34  
(August 2014)**

<b>POSPD</b>	<b>Approximate area (m<sup>2</sup>)</b>	<b>Land status</b>	<b>Date of issuing occupation permit</b>	<b>No. of years since POSPD opening for public use</b>
POS 32	17,000	Private land	December 2006	7
POS 33	8,900	Private land	February 2001	13
POS 34	7,800	Private land	February 2000	14

*Source: Lands D records*

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**Note 9:** Upon completion of a building and at the request of the developer, the Lands D will conduct checking and issue a certificate of compliance after satisfying that all the relevant obligations under the land lease have been complied with.

**Note 10:** Upon completion of a building and receipt of an application for an occupation permit, the BD will conduct examination and issue an occupation permit after satisfying that pertinent requirements under the Buildings Ordinance have been complied with.

## **Dissemination of POSPD information**

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4.6 The land leases of the developments of POSs 32, 33 and 34 required the land grantees each to provide a POSPD and the owners to make available the POSPDs for public use. In this connection, Audit site inspections revealed that the three POSPDs were open for public use and related sign boards had been erected at the entrances to the sites (see Photograph 18 for an example).

**Photograph 18**

**Sign board at entrance to POS 32  
(April 2014)**



*Source: Photograph taken by Audit at 7:38 a.m. on 30 April 2014*

4.7 In Audit's view, although the Lands D has not issued certificates of compliance for developments comprising POSs 32, 33 and 34, since the three POSPDs have been open for public use for a long time (7 to 14 years), they should have been included in the POSPD List. In this connection, according to DEVB information provided to the LegCo Panel on Development from 2008 to 2013:

- (a) access to information and transparency are keys to public accessibility, and that the public has the right to know the existence and location of a POSPD;

- (b) owing to the large number of POSPDs and their scattered locations, public monitoring is the most effective way to ensure POSPD owners fulfill the responsibilities of managing and maintaining the POSPDs, as well as permitting the public to access the POSPDs in accordance with the contract requirements; and
- (c) members of the public are encouraged to inform the relevant DLOs for follow-up actions if it is suspected that owners are not fulfilling their responsibilities.

4.8 In order that the above-mentioned objectives of compiling and publishing POSPD Lists are effectively achieved, the Lands D needs to include all POSPDs under its purview in its POSPD List once they have been opened for public use. The Lands D also needs to take actions to ascertain if there are other similar POSPDs which have not been included in its POSPD List.

## ***2 POSPDs not included in POSPD Lists (for developments not having the related lease conditions)***

4.9 Audit examination revealed that, as of August 2014, 2 other POSPDs which had been open for public use for 7 and 6 years were not included in the POSPD Lists compiled by the Lands D and the BD owing to the absence of related conditions in the land lease or deed of dedication (see Table 5).

**Table 5**

**POSS 35 and 36  
(August 2014)**

<b>POSPD</b>	<b>Approximate area (m<sup>2</sup>)</b>	<b>Land status</b>	<b>Date of issuing occupation permit</b>	<b>No. of years since POSPD opening for public use</b>
POS 35	4,100	Private land	December 2006	7
POS 36	600	Private land	September 2008	6

*Source: Lands D and PlanD records*

## **Dissemination of POSPD information**

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4.10 Audit site inspections revealed that related sign boards had already been erected at the entrance to POS 35 and inside POS 36 (see Photograph 19 for the sign board erected inside POS 36).

**Photograph 19**

**Sign board inside POS 36  
(May 2014)**



*Source: Photograph taken by Audit at 1:03 p.m. on 12 May 2014*

4.11 According to the Lands D, POSs 35 and 36 had not been included in the POSPD List because the provision of a POSPD was not a requirement under the pertinent land leases (see Cases 2 and 3).

**Case 2**

**POS 35 at Development A  
(1993 to 2014)**

1. POS 35 is part of a commercial and residential development (Development A) located on a site previously zoned as “Other Specified Use” annotated “Bus Depot”. In May 1993, the TPB agreed to the developer’s proposal of amending the zoning of the site to “Comprehensive Development Area”. In December 1993, the site was rezoned to “Comprehensive Development Area” on the draft Outline Zoning Plan. In May 1994, the Planning Brief (Note) issued to the developer stated that:
  - (a) a minimum of 1 m<sup>2</sup> open space per person (population generated by the development) should be constructed at the developer’s cost, which should be managed by the developer and open for public use; and
  - (b) the open spaces should be provided with active and passive recreational facilities and be conveniently accessible by the public.
2. In May 2004, the TPB approved the developer’s application to develop the site for comprehensive commercial/residential uses. One of the conditions of the TPB’s approval was that the developer needed to design, provide and maintain a POSPD to the satisfaction of the PlanD or the TPB.
3. In December 2006, in response to the PlanD’s comments relating to the developer’s application for an occupation permit submitted to the BD, the developer submitted an undertaking to the PlanD, stating that it would comply with the planning approval condition to design, provide and maintain a POSPD. Subsequently in the same month, upon completion of the development and the POSPD by the developer, the BD issued an occupation permit for the development.
4. In September 2008, in response to a media report that POS 35 was not included in Lands D’s POSPD List, the Lands D stated that the related land lease was an unrestricted one, and the owner was not required to provide a POSPD under the lease.

### **Case 2 (Cont'd)**

5. In October 2014, the Lands D informed Audit that:
  - (a) at the time of considering the planning application, the Lands D had informed the TPB and the PlanD that the subject lease was a virtually unrestricted lease not requiring a lease modification for the development, thus any planning condition should be enforced through the planning regime; and
  - (b) in 2008, the Lands D's in-house legal advice opined that the undertaking of the developer made to the PlanD for providing a POSPD was not legally enforceable (see para. 3).

#### ***Audit comments***

6. Audit Survey revealed that, on average in a two-hour period, there were 12 visitors to POS 35. The fact that POS 35 was not included in the POSPD Lists may have affected public awareness of the facility.

7. The related land lease was an unrestricted one under which the Government could not require the inclusion of the provision of a POSPD in the lease. In Audit's view, it is unsatisfactory that the TPB's condition of approving the development project involving the provision of a POSPD is not legally enforceable. The relevant B/Ds should seek legal advice before accepting an undertaking from a developer in future (see para. 5(b)).

*Source:* *Lands D records and Audit analysis*

*Note:* *A Planning Brief is a statement of planning intention, guidelines and requirements for the development of a site to facilitate the preparation of a Master Layout Plan for submission to the TPB for approval.*

**Case 3**

**POS 36 at Development B  
(2005 to 2014)**

1. POS 36 is part of a commercial and residential development (Development B), where the POSPD is located on an “Open Space” zone and the remaining development on a “Residential (Group A)” zone (Note) under the Outline Zoning Plan. Before August 2010, the land lease of the site was an unrestricted one with a “non-offensive trades” clause prohibiting some trades (such as sugar-baker, oilman, butcher, victualler and tavern-keeper) on the lot, and a “rate and range” clause requiring compatibility of the development with neighbouring buildings.
2. In April 2005, the developer submitted a proposal to redevelop the site for providing service apartments. According to the PlanD, since “service apartment” is within the definition of “flat” use which was permitted in “Residential (Group A)” zone, planning permission from the TPB for the redevelopment was not required.
3. In August 2008, in relation to the application for an occupation permit, the developer submitted an undertaking to the BD stating that it would make the open space available for public use. In September 2008, the BD issued an occupation permit for the development.
4. In November 2009, in response to a public enquiry, the DEVB said that:
  - (a) according to the building plans approved by the BD for Development B, part of the development was designated as “Open Space”;
  - (b) the “Open Space” zone was intended primarily for the provision of an outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public; and
  - (c) members of the public should be allowed to use this open space within reasonable hours. The space was open to the public.

### **Case 3 (Cont'd)**

5. In August 2010, the Lands D issued a licence for the removal of the restriction of five trades (see para. 1) from the land lease.

#### ***Audit comments***

6. Audit Survey revealed that, on average in a two-hour period, there was only 1 visitor to POS 36. The low patronage might be attributable to the fact that POS 36 was not included in the POSPD Lists compiled by the Lands D or the BD.

7. Similar to Case 2, the undertaking of the developer (see para. 3) to open public open space for public use may not be legally enforceable.

*Source: Lands D records and Audit analysis*

*Note: Under “Residential (Group A)” zone, commercial use was permitted in the lower three floors of the residential building.*

4.12 In January 2010, the DEVB informed LegCo Panel on Development that:

- (a) there were cases where it was not possible to translate related conditions into lease conditions. These included, for instance, where a development was held under an unrestricted lease or no lease modification was required to effect the development. Under such circumstances, the approval conditions given by the TPB could not be enforced through the leases; and
- (b) for similar cases in future, if a development was governed by an unrestricted lease or the provision of a POSPD could not be practically imposed in the related land lease, B/Ds should not recommend the TPB to accept or require the provision of a POSPD, as the planning gains might not be capable of being realised.

4.13 In Audit's view, the DEVB needs to remind B/Ds to seek legal advice on whether an undertaking proposed by a developer on the provision of a public facility is legally enforceable before accepting the undertaking. Furthermore, in the event that a planning condition cannot be incorporated into a land lease, the responsible B/Ds need to explore other measures to render the planning condition enforceable, such as requesting the developer concerned to submit an application for lease modification for incorporating the condition into the land lease, or submit a legally enforceable undertaking for the purpose.

### ***POSPDs provided before 1980 not included in POSPD Lists***

4.14 The POSPD Lists only include POSPDs opening for public use since 1980 (see para. 4.3). According to the Lands D, it has practical difficulties in identifying all POSPDs irrespective of the year of commissioning because of resource constraints. In Audit's view, the Lands D and the BD need to include, as far as practicable, all known POSPDs which are required to be provided under related land leases in the POSPD Lists for public information, irrespective of the year of commissioning (see para. 4.7(a) to (c)).

## **Audit recommendations**

4.15 **Audit has recommended that the Director of Lands should:**

- (a) **take actions to include POSs 32, 33 and 34 and other POSPDs not having been issued with certificates of compliance in the Lands D's POSPD List;**
- (b) **take actions as far as practicable to include the maintenance and provision of a POSPD for public use in the related land lease if an opportunity for making modifications of the lease arises in future; and**
- (c) **include, as far as practicable, all known POSPDs which are required to be provided under related land leases in the POSPD List for public information, irrespective of their year of commissioning.**

## **Dissemination of POSPD information**

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4.16 Audit has also *recommended* that the Secretary for Development should remind B/Ds of the need to:

- (a) seek legal advice on whether an undertaking proposed by a developer on the provision of a public facility is legally enforceable before accepting the undertaking in future; and
- (b) if a planning condition cannot be incorporated into a land lease, explore the feasibility of other measures to render the planning condition enforceable, such as requesting the developer concerned to submit an application for lease modification for incorporating the condition into the land lease, or submit a legally enforceable undertaking for the purpose.

## **Response from the Administration**

4.17 The Director of Lands agrees with the audit recommendations in paragraph 4.15. She has said that the Lands D will:

- (a) include all known POSPDs in the POSPD List; and
- (b) try to negotiate with the lessees with a view to incorporating the provision of POSPDs in lease modification documents when an opportunity arises in future.

4.18 The Secretary for Development agrees with the audit recommendations in paragraph 4.16.

## **Public awareness of POSPDs**

4.19 For each of the 30 POSPDs selected for Audit Survey, Audit also selected a nearby public park or garden which is within a ten-minute walk from the POSPD concerned to conduct interview with, where available, 30 visitors there. Of these 30 POSPDs, 28 were found to be located near 27 public parks and gardens (i.e. 2 POSPDs did not have nearby parks and gardens).

## **Areas for improvement**

### ***Many visitors to parks and gardens not aware of nearby POSPDs***

4.20 Of the 27 public parks and gardens selected for conducting interview with visitors, Audit Survey found that over half of the visitors to 19 parks and gardens were not aware of the existence of the nearby POSPDs (see Table 6).

**Table 6**

### **Visitors to parks and gardens not aware of nearby POSPDs (March to August 2014)**

<b>POSPD</b>	<b>No. of visitors (out of 30 visitors) to a park or a garden not aware of nearby POSPD</b>	<b>POSPD</b>	<b>No. of visitors (out of 30 visitors) to a park or a garden not aware of nearby POSPD</b>
POS 21	29 (97%)	POS 10	23 (77%)
POS 24	26 (87%)	POS 11	22 (73%)
POSs 29 and 30	26 (87%) (Note 1)	POS 28	21 (70%)
POS 3	26 (87%)	POS 8	2 (67%) (Note 2)
POS 5	25 (83%)	POS 17	20 (67%)
POS 6	25 (83%)	POS 25	19 (63%)
POS 22	25 (83%)	POS 13	18 (60%)
POS 27	25 (83%)	POS 15	17 (57%)
POS 7	24 (80%)	POS 26	16 (53%)
POS 16	24 (80%)		

*Source: Audit Survey*

*Note 1: POSs 29 and 30 are provided within the same private development.*

*Note 2: Audit visited a public park near POS 8 on two selected days for a total of 12 hours to conduct interviews with visitors there. However, only 3 visitors were found in the park during the period, and 2 of the 3 visitors were not aware of nearby POS 8.*

## **Dissemination of POSPD information**

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4.21 In Audit's view, the fact that many visitors to public parks and gardens are not aware of some nearby POSPDs suggests that the pertinent POSPDs are not well known in the local districts. In order to improve the situation, the Lands D needs to take actions to enhance publicity of POSPDs, which will help the effective achievement of the objectives of enhancing public awareness of the existence and availability of POSPD, and public monitoring of POSPD operations (see para. 4.7(a) to (c)). In this connection, the Lands D may consider posting POSPD Lists in appropriate district public venues (such as District Offices, DLOs, LCSD venues and venues of non-governmental organisations).

## **Audit recommendation**

4.22 Audit has *recommended* that the Director of Lands should seek assistance from relevant government departments (such as the Home Affairs Department and the LCSD) to enhance publicity of POSPDs.

## **Response from the Administration**

4.23 The Director of Lands agrees with the audit recommendation.

4.24 The Director of Leisure and Cultural Services has said that the LCSD has no objection to assisting the Lands D to post POSPD Lists at the LCSD's venues subject to the availability of sufficient space and appropriate place in the relevant venues.

## PART 5: PROVISION OF POSPD FACILITIES

5.1 This PART examines the provision of facilities at POSPDs and the Government's monitoring of compliance with POSPD requirements by the pertinent building owners, focusing on:

- (a) implementation of 2011 POSPD Guidelines (paras. 5.2 to 5.14);
- (b) provision of POSPD facilities (paras. 5.15 to 5.26); and
- (c) monitoring of compliance with POSPD requirements (paras. 5.27 to 5.33).

### Implementation of 2011 POSPD Guidelines

5.2 In January 2009, in the wake of public concerns over public accessibility and standards of provision in POSPDs, and the conflicting interests between public users and private owners (see para. 1.9), the DEVB commissioned a consultant to, in collaboration with a local university, draw up a set of guidelines for the design and management of POSPDs (see para. 1.11(c)). After consulting the stakeholders (including professional bodies and trade organisations), in January 2011, the DEVB promulgated the POSPD Design and Management Guidelines (2011 POSPD Guidelines) for reference by relevant owners, management agencies and the general public.

5.3 The 2011 POSPD Guidelines comprise:

- (a) ***Design Guidelines.*** The Guidelines aim at enhancing public access and enjoyment at POSPDs. The Guidelines provide a framework of better design based on the principles of connectivity, appropriateness and quality. According to the DEVB, the Guidelines should apply to future POSPDs with flexibility allowed to cater for the merits of individual cases, while the existing POSPDs are strongly advised to follow the Guidelines on a reasonable basis; and

## **Provision of POSPD facilities**

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- (b) ***Management Guidelines.*** The Guidelines aim to strike a reasonable balance between POSPD owners' obligations and responsibilities and the public use and enjoyment of POSPDs. According to the DEVB, the Guidelines:
- (i) serve as a set of good practices for users, management agencies and owners of POSPDs to follow, and are advisory in nature;
  - (ii) do not override any of the provisions in land leases or deeds of dedication; and
  - (iii) should apply to new and existing POSPDs insofar as permitted under the leases or the deeds of dedication.

5.4 According to the Design Guidelines, a POSPD should be provided with:

- (a) ***Lighting, seating and universal access facilities.*** These facilities are intended to provide the users with a sense of place which is safe and comfortable; and
- (b) ***Sign boards.*** Clear sign boards and notice boards to show a POSPD's location would help inform the public of the available space for public use and help them identify the space. Notice boards should contain information on the related boundary, rules and regulations, opening hours and contact information of pertinent management agencies.

5.5 Regarding the Management Guidelines, *inter alia*, they cover the permissible activities, opening hours, dissemination of information relevant to a POSPD, and responsibilities of the owners and management companies concerned.

## **Areas for improvement**

### ***2011 POSPD Guidelines not enforceable on existing POSPDs***

5.6 In May 2011, the DEVB informed LegCo Panel on Development that:

- (a) the Design Guidelines should apply to future POSPDs with flexibility to cater for site-specific circumstances of individual cases, while existing ones were strongly advised to follow the Guidelines on a reasonable basis; and
- (b) the Management Guidelines served as a set of good practices and were advisory in nature, and they should apply to future and existing POSPDs insofar as permitted under the land leases.

5.7 Audit examination of the pertinent land leases revealed that owners of POSPDs were normally required to fulfill the following obligations:

- (a) permitting the public to lawfully use the POSPDs and avoiding any obstruction to the sites; and
- (b) managing and maintaining the POSPDs to the satisfaction of the Government.

5.8 Audit noted that the existing land leases generally did not include the provision of facilities stated in the POSPD Design Guidelines (see para. 5.4) as well as the permissible activities, dissemination of information relevant to the POSPDs, and responsibilities of the related owners and management companies as stated in the Management Guidelines (see para 5.5).

5.9 In October 2014, the DEVB informed Audit that, in considering proposals and relevant plans submitted by lot owners on the provision of POSPDs for approval, the relevant government departments (including the Lands D and the PlanD) could make reference to the 2011 POSPD Guidelines as appropriate.

## **Provision of POSPD facilities**

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5.10 Audit considers it unsatisfactory that the essential requirements as mentioned in paragraph 5.8 are not included in the existing land leases which involved the provision of POSPDs. As a result, the Government cannot compel the pertinent building owners to comply with the relevant 2011 POSPD Guidelines.

### ***Majority of POSPD owners not aware of Guidelines***

5.11 Furthermore, the Lands D needs to take actions to encourage the owners and management companies of existing POSPDs to adopt and implement the relevant provisions stated in the two POSPD Guidelines as far as possible. In this connection, in May 2011, the DEVB informed LegCo Panel on Development that the two POSPD Guidelines had been:

- (a) distributed to the owners' incorporations and management companies of POSPDs, the Real Estate Developers Association of Hong Kong (Note 11) and the 18 District Councils; and
- (b) uploaded onto DEVB website for access and download by members of the public.

5.12 However, Audit found that, of the 30 POSPDs covered in Audit Survey (see para. 2.3), the owners' incorporations and management companies of the majority of the POSPDs were not aware of the existence of the two POSPD Guidelines, with only two owners' incorporations said that they were aware of the matter. In Audit's view, the DEVB needs to take proactive actions to encourage the owners' incorporations and management companies concerned to adopt and implement the relevant provisions stated in the two POSPD Guidelines, such as holding meetings with them and periodically sending them the two POSPD Guidelines with highlight of the relevant provisions.

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**Note 11:** *The Association, formed by a group of property developers in Hong Kong, is one of the main Government consultative bodies on land matters.*

## **Audit recommendation**

5.13 Audit has *recommended* that the Secretary for Development should take proactive actions to encourage owners' incorporations and management companies concerned to adopt and implement the relevant provisions stated in the 2011 POSPD Guidelines.

## **Response from the Administration**

5.14 The Secretary for Development agrees with the audit recommendation.

## **Provision of POSPD facilities**

5.15 According to the Design Guidelines:

- (a) primary seating (such as chairs and benches) and secondary seating (such as steps and planter ledges) should be provided at POSPDs;
- (b) appropriate covers should be provided over the seating as shades and rain-shelters (sheltered seating); and
- (c) moveable tables and chairs could provide flexibility, and linear benches or ledges and circular benches could achieve different design effects.

5.16 In October 1984, relevant provisions in the Buildings Ordinance were amended, under which all newly constructed or substantially altered private buildings were required to provide barrier-free-access facilities (Note 12). In August 1995, the Disability Discrimination Ordinance (Cap. 487) was enacted which sets out provisions to prohibit discrimination against persons with a disability by failing to provide them with means of access to any premises that the public is entitled to use.

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**Note 12:** *In 1997 and 2008, the Government extended the barrier-free-access requirement to additional categories of buildings and enhanced the design standards.*

### **Areas for improvement**

#### ***Some POSPDs not provided with essential facilities***

5.17 Audit site inspections at the 30 POSPDs covered in Audit Survey revealed that 12 POSPDs were not provided with sheltered seating, 3 POSPDs were not provided with rubbish bins, and 4 POSPDs were not provided with barrier-free-access facilities (see Table 7).

**Table 7**

#### **Essential facilities not provided in POSPDs (March to June 2014)**

<b>Facilities not provided</b>	<b>Number of POSPDs involved</b>	<b>POSPD involved</b>
Sheltered seating	12	POSS 1, 3, 8, 10, 11, 13, 14, 16, 17, 21, 24, 26
Rubbish bin	3	POSS 1, 3, 21
Barrier-free-access facilities	4	POSS 1, 5, 6, 15

*Source: Audit Survey*

5.18 In Audit's view, in order to provide quality leisure and recreational spaces and facilitate user access, the Lands D needs to take action to encourage pertinent owners' corporations and management companies to provide sheltered seatings, rubbish bins and barrier-free-access facilities in the pertinent POSPDs as far as possible. According to the "Design Manual: Barrier Free Access 2008" promulgated by the BD, the provision of barrier-free-access facilities (such as visual-free walking areas and ramps with handrails) will facilitate greater independence of persons with a disability and of the elderly, as well as people with other forms of physical infirmities or limitations such as pregnant women, and families with young children. The Lands D should also incorporate the provision of sheltered seating, rubbish bins and barrier-free-access facilities in POSPDs into pertinent land leases in future. The availability of such facilities in each POSPD should also be shown on the POSPD List published on Lands D website.

***2 POSPDs not provided with any sign board or notice board***

5.19 According to the Design Guidelines, POSPDs hidden from public view may result in low patronage, while identifiable POSPDs with clear, visible and legible sign boards would invite people to use the spaces. Audit site inspections found that, of the 30 POSPDs covered in Audit Survey, 2 POSPDs (namely POSS 4 and 26) were not provided with any sign board or notice board at the entrances (Note 13).

5.20 In Audit's view, in order that POSPDs are easily identifiable by members of the public, the Lands D needs to encourage owners of the POSPDs concerned to erect related sign boards and notice boards, or to explore whether the owners could be mandated under related land leases to erect such sign boards at the site entrances. Otherwise, the Lands D needs to consider erecting appropriate sign boards and notice boards on nearby government land, such as on public walkways, to inform the public of the existence of such POSPDs.

***Essential information not provided on notice boards of some POSPDs***

5.21 According to the Design Guidelines and the Management Guidelines, information on related rules and regulations, opening hours, contact information of management offices and location maps of POSPDs should be provided on notice boards erected at prominent areas of POSPDs. Such information is provided in the POSPD List published on Lands D website.

5.22 Audit site inspections found that, of the 30 POSPDs covered in Audit Survey, with the exception of the two POSPDs which were not provided with any sign board and notice board (see para. 5.19), the notice boards erected at 18 of the remaining 28 POSPDs were not provided with one or more of the required information stated in the 2011 POSPD Guidelines (see Table 8).

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**Note 13:** *Audit survey found that, on average during a two-hour period, 2 and 129 visitors were found visiting POSS 4 and 26 respectively. Moreover, POS 26 is located in a residential cum commercial development.*

## **Provision of POSPD facilities**

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**Table 8**

### **Essential information not included in notice boards of POSPDs (March to June 2014)**

<b>Information not included in notice board</b>	<b>Number of POSPDs involved</b>	<b>POSPD involved</b>
Opening hours	7	POSs 1, 3 (Note 1), 13, 14, 21, 24, 27
Contact information of management office	4	POSs 7 (Note 2), 14, 21, 24
Location map	16	POSs 3, 5, 6, 7 (Note 2), 8, 11, 14, 15, 16, 17, 19, 21, 22, 24, 27, 28

*Source: Audit Survey*

*Note 1: In October 2014, the Lands D informed Audit that the opening hours had been subsequently provided on the notice board at POS 3.*

*Note 2: In September 2014, Lands D informed Audit that the contact information of the management office and location map had been subsequently provided on the notice board at POS 7.*

5.23 According to the Lands D, the need for and practicality of providing all the related information on notice boards depend on the scale, location and nature of individual POSPDs.

5.24 In Audit's view, the Lands D needs to encourage owners of the POSPDs concerned to provide the essential information on notice boards erected on site. Otherwise, the Lands D needs to consider erecting appropriate notice boards on nearby government land, such as on public walkways, to inform the public of the essential POSPD information.

## **Audit recommendations**

- 5.25     **Audit has recommended that the Director of Lands should:**
- (a)    **take actions to encourage the pertinent building owners to provide in POSPDs sheltered seating, rubbish bins, barrier-free-access facilities, sign boards and essential information on notice boards as far as possible;**
  - (b)    **include in the POSPD List published on Lands D website information on whether sheltered seating and barrier-free-access facilities are provided at each POSPD; and**
  - (c)    **consider erecting appropriate POSPD sign boards and notice boards on nearby government land if pertinent owners refuse to erect such boards at the site entrances.**

## **Response from the Administration**

- 5.26     The Director of Lands agrees with the audit recommendations.

## **Monitoring of compliance with POSPD requirements**

- 5.27     POSPDs are subject to the relevant provisions in the land leases in respect of their management, maintenance and opening to the public. The Lands D will check and satisfy itself that all relevant obligations contained in the land lease of a development, including that of the provision of a POSPD where applicable, have been complied with before issuing a certificate of compliance for the development. In March 2008, the Lands D Headquarters issued instructions (2008 Instructions) to the 12 DLOs (Note 14) requiring them to:

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**Note 14:** *The 12 DLOs are the DLO/Hong Kong East, the DLO/Hong Kong West and South, the DLO/Kowloon East, the DLO/Kowloon West, the DLO/Islands, the DLO/Tsuen Wan and Kwai Tsing, the DLO/Shatin, the DLO/Sai Kung, the DLO/Tai Po, the DLO/North, the DLO/Tuen Mun and the DLO/Yuen Long.*

## **Provision of POSPD facilities**

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- (a) maintain a register of public facilities (including POSPDs) provided in private developments under the purview of the DLO concerned;
- (b) conduct annual inspections of the public facilities in (a) to ensure that the pertinent land lease conditions are complied with; and
- (c) record the results of inspections in a standard inspection form provided by the Lands D Headquarters.

## **Areas for improvement**

### ***DLOs not fully complying with Lands D instruction in conducting annual inspections***

5.28 In 2010, the Lands D's Management Services Team (Note 15) carried out an investigation into the conduct of POSPD inspections by 6 of the 12 DLOs which were responsible for monitoring 47 of the 55 POSPDs (Note 16) as recorded in the Lands D's POSPD List at that time. The Management Services Team found that the 6 DLOs had not fully complied with Lands D instructions on conducting the annual POSPD inspections in 2009 (see Table 9).

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**Note 15:** *The Management Services Team was established in May 2007 for the purpose of promoting the operational efficiency and effectiveness of the work of the Lands Administration Office.*

**Note 16:** *The number of POSPDs (as recorded in the Lands D's POSPD List) increased to 60 as of August 2014.*

**Table 9**

**POSPD annual inspections conducted by 6 DLOs  
(2009)**

<b>DLO</b>	<b>No. of POSPDs involved</b>	<b>No. of POSPDs inspected in 2009</b>	<b>No. of POSPD inspections recorded in standard form</b>
Hong Kong West and South	12	2	0
Hong Kong East	10	2	0
Kowloon West	9	5	0
Tsuen Wan and Kwai Tsing	8	5	0
Tuen Mun	4	4	0
Islands	4	1	0
Total	47	19	0

*Source: Lands D records*

5.29 In the light that some DLOs did not fully comply with the Lands D instructions in conducting POSPD inspections, since December 2011, the Lands D Headquarters has sent half-yearly reminders to the DLOs reiterating the need to comply with the 2008 Instructions (see para. 5.27).

## **Provision of POSPD facilities**

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5.30 Audit examination in 2014 revealed that some DLOs still did not fully comply with the 2008 Instructions in conducting annual POSPD inspections (see Table 10).

**Table 10**  
**POSPD annual inspections conducted by 6 DLOs**  
**(2011 to 2013)**

DLO	No. of POSPDs involved	No. of POSPDs inspected in (Note 2)		
		2011	2012	2013
Hong Kong West and South	13 (Note 1)	5 (5)	4 (4)	8 (8)
Hong Kong East	10	10 (10)	10 (10)	10 (10)
Kowloon West	9	2 (0)	2 (0)	5 (3)
Tsuen Wan and Kwai Tsing	8	8 (5)	8 (8)	8 (8)
Tuen Mun	4	3 (1)	4 (4)	4 (3)
Islands	5 (Note 1)	4 (4)	5 (5)	5 (5)
Total	49	32 (25)	33 (31)	40 (37)

*Source: Lands D records*

*Note 1: Between 2009 and 2011, a new POSPD had been added to each of DLO/Hong Kong West and South and DLO/Islands.*

*Note 2: Numbers in brackets represent the number of inspections having been recorded in the standard form.*

5.31 Audit examination revealed that, in 2013, three DLOs (namely DLO/Hong Kong West and South, DLO/Kowloon West and DLO/Tuen Mun) still did not fully comply with the 2008 Instructions in conducting POSPD inspections. In Audit's view, the Lands D needs to strengthen actions on the issue. In this connection, the Lands D should require DLOs to submit annual returns to the Headquarters to report the progress of the POSPD inspections conducted, together with major observations and the follow-up actions taken.

## **Audit recommendations**

5.32 **Audit has *recommended* that the Director of Lands should:**

- (a) **strengthen actions to ensure that all DLOs comply with Lands D instructions in conducting POSPD inspections; and**
- (b) **require DLOs to submit annual returns to the Lands D Headquarters to report the progress of POSPD inspections conducted, together with major observations and the follow-up actions taken.**

## **Response from the Administration**

5.33 The Director of Lands agrees with the audit recommendations.

## **PART 6: WAY FORWARD**

6.1 This PART outlines the major audit observations and examines the way forward.

### **Achievement of objectives of providing POSPDs**

6.2 The objectives of providing POSPDs are:

- (a) achieving integrated designs, better site planning and utilisation, optimising land use, and synchronising the availability of public open spaces with the envisaged population intake of private development projects; and
- (b) providing outdoor open-air spaces for active and passive recreational uses serving the needs of local residents and the general public who can enjoy the surroundings in a leisurely manner.

6.3 As of August 2014, as recorded in the POSPD Lists of the Lands D and the BD, 62 POSPDs have been provided, of which 60 and 2 are under the purview of the Lands D and the BD respectively. The objectives in paragraph 6.2(a) might have been largely achieved following the proper design and construction of the POSPDs.

6.4 Regarding the objectives in paragraph 6.2(b), Audit Survey of 30 POSPDs found that the patronage of 8 POSPDs (see para. 2.4(b)) was low. As a result, the objective of serving the needs of local residents and the general public who can enjoy the surroundings in a leisurely manner may not have been fully achieved.

6.5 Audit examination revealed the following areas for improvement in providing POSPDs:

- (a) some sites were not easily accessible by the general public. For example, POSs 5, 6 and 7 were provided on podiums high above the ground level where members of the public needed to walk up long staircases or take passenger lifts before reaching the sites (see paras. 2.7 to 2.14);
- (b) uninterrupted public access was not fully provided at some sites. For example, members of the public needed to seek assistance from the management offices to open locked gates at the site entrances to gain access to POSs 1 and 31 (see paras. 2.15 to 2.23);
- (c) some sites were not properly maintained. For example, POS 4 was covered by long grass and fallen tree branches, and at POS 15C, a damaged canopy was not repaired, a missing drainage cover was not replaced, a broken electricity-cable cover was not fixed and potted plants at the site entrance were not removed to facilitate public access (see paras. 3.2 to 3.7);
- (d) some sites were having short opening hours. For example, although the POSPD Management Guidelines specify that the POSPD daily opening hours should not be less than 13 hours, the opening hours of POSs 6B, 31, 37B and 39 were significantly less than 13 hours (see paras. 3.10 to 3.18);
- (e) some sites were not included in the POSPD List owing to:
  - (i) certificates of compliance not having been issued, such as POSs 32, 33 and 34 (see paras. 4.4 to 4.8);
  - (ii) the provision of POSPDs not having been included as a lease condition, such as POSs 35 and 36 (see paras. 4.9 to 4.13); and
  - (iii) the provision of POSPDs had taken place before 1980 (see para. 4.14);
- (f) many members of the public were not aware of the existence of POSPD sites due to insufficient publicity (see paras. 4.19 to 4.21); and

## **Way forward**

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- (g) some sites were not provided with sheltered seating, rubbish bins, barrier-free-access facilities, POSPD sign boards and notice boards with essential information (see paras. 5.17 to 5.24).

6.6 With a view to better achieving the objective of serving the needs of local residents and the general public who can enjoy the surroundings in a leisurely manner, Audit has made recommendations in PARTs 2 to 5 to the Administration on related issues.

## **Fulfillment of TPB planning conditions**

6.7 Audit examination also revealed that the planning conditions of some private developments approved by the TPB could not be fulfilled or are not legally enforceable, mainly attributable to the fact that the planning conditions had not been incorporated into the related land leases. The following are some examples:

- (a) for POS 7, although one of the conditions of the TPB's approval of the related development plan was that passenger lifts would be provided to facilitate the pedestrian movement between the main road and the local road and to improve public access to the public open space, the Government could not compel the building owners to resume the passenger lift service for public use. According to the DEVB, the passenger lift requirement was not included in the land lease because the lease had been executed before the imposition of the related planning condition (see paras. 2.10 to 2.13); and
- (b) for POS 35, although one of the conditions of the TPB's approval of the related development plan was that the developer needed to design, provide and maintain a POSPD, such a requirement had not been translated into a lease condition. According to the DEVB, the lease was an unrestricted one where no lease modification was involved for the development proposal. Furthermore, it is questionable whether an undertaking on the issue submitted by the developer is legally enforceable. In the event, POS 35 is not included in the Lands D's or the BD's POSPD List (see paras. 4.9 to 4.13).

6.8 Audit considers it unsatisfactory that the planning conditions of the TPB relating to the provision of POSPDs in some developments cannot be fulfilled or are not legally enforceable. The provision of information to the TPB about the uncertainty of fulfilling such planning conditions would have helped it in making informed decisions on development plans. In this connection, Audit has made recommendations in PARTs 2 and 4 to the Administration on related issues.

## **Implementation of POSPD Design and Management Guidelines**

6.9 In January 2011, the DEVB published the POSPD Design Guidelines which aim at enhancing public access and enjoyment at POSPDs, and the POSPD Management Guidelines which aim to strike a reasonable balance between POSPD owners' obligations and responsibilities and the public use and enjoyment of the POSPDs concerned.

6.10 As of August 2014, there were only two POSPDs as recorded in the BD's POSPD List (see para. 3.21). The BD may wish to keep in view new POSPDs falling under its purview in future and take measures to ensure that the relevant POSPD Design Guidelines and Management Guidelines are enforceable on such POSPDs.

## **Audit recommendation**

6.11 Audit has *recommended* that, with a view to improving the administration and management of POSPDs under the BD's purview, the Director of Buildings should keep in view new POSPDs falling under BD purview in future and take measures to ensure that the relevant POSPD Design Guidelines and Management Guidelines are enforceable on such POSPDs.

## **Response from the Administration**

6.12 The Director of Buildings agrees with the audit recommendation. He has said that the BD will prepare an internal instruction for the purpose.

**Appendix A**  
 (paras. 2.3 and  
 2.4 refer)

**Patronage of POSPDs revealed in Audit Survey**  
**(March to July 2014)**

POSPD	Weekday (12 hours) (No. of visitors) (a)	Weekend and public holiday (6 hours) (No. of visitors) (b)	Total (18 hours) (No. of visitors) (c)=(a)+(b)	Average in a 2-hour period (No. of visitors) (d)=(c)÷9
<b>(A) POSPD covered in patronage and opinion survey</b>				
POS 1	0	0	0	0
POS 2	4	4	8	1
POS 3	5	4	9	1
POS 4	10	7	17	2
POS 5	27	10	37	4
POS 6	23	20	43	5
POS 7	57	2	59	7
POS 8	59	26	85	9
POS 9	30	116	146	16
POS 10	108	41	149	17
POS 11	93	78	171	19
POS 12	91	81	172	19
POS 13	125	82	207	23
POS 14	157	71	228	25
POS 15	46	250	296	33
POS 16	130	190	320	36
POS 17	284	59	343	38
POS 18 (Note 1)	211	135	346	38
POS 19	218	146	364	40
POS 20	311	179	490	54
POS 21	455	89	544	60
POS 22	542	63	605	67

**Appendix A**  
 (Cont'd)  
 (paras. 2.3 and  
 2.4 refer)

POSPD	Weekday (12 hours) (No. of visitors) (a)	Weekend and public holiday (6 hours) (No. of visitors) (b)	Total (18 hours) (No. of visitors) (c)=(a)+(b)	Average in a 2-hour period (No. of visitors) (d)=(c)÷9
POS 23	446	303	749	83
POS 24	309	667	976	108
POS 25	655	324	979	109
POS 26	768	390	1,158	129
POS 27	1,194	111	1,305	145
POS 28	671	818	1,489	165
POS 29 } (Note 2) POS 30 }	322	2,558	2,880	320
	30	57	87	10
<b>(B) POSPD covered in patronage survey</b>				
POS 31	0	8	8	1
POS 32	762	685	1,447	161
POS 33	421	245	666	74
POS 34	76	26	102	11
POS 35	39	72	111	12
POS 36	2	3	5	1

Source: Audit Survey

Remarks: For residential sites, visitor counting was conducted from 8:00 a.m. to 10:00 a.m., 4:00 p.m. to 6:00 p.m. and 6:00 p.m. to 8:00 p.m. For commercial sites, counting was from 8:00 a.m. to 10:00 a.m., 12:00 noon to 2:00 p.m. and 4:00 p.m. to 6:00 p.m. For each POSPD, visitor counting was conducted on two or more weekdays (total 12 hours) and on one or more weekends or public holidays (total 6 hours).

Note 1: The owners incorporation of POS 18 had once submitted a proposal to the relevant District Council on waiving the requirement of opening the related public open space for public use. However, the pertinent Area Committee did not support the proposal and no waiver application had been made to the Lands D.

Note 2: POSs 29 and 30 were provided in two locations under the same commercial development.

**Acronyms and abbreviations**

Audit	Audit Commission
BD	Buildings Department
B/D	Government bureau/department
DEVB	Development Bureau
DLO	District Lands Office
G/IC	Government, Institution or Community
HKPSG	Hong Kong Planning Standards and Guidelines
Lands D	Lands Department
LCSD	Leisure and Cultural Services Department
LegCo	Legislative Council
m <sup>2</sup>	square metres
PlanD	Planning Department
POS	Public open space
POSPD	Public open space in private development
TPB	Town Planning Board