

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.

Executive Summary

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).

Executive Summary

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

Executive Summary

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).

Executive Summary

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);**

Executive Summary

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));

Executive Summary

- (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.