

Background Information on Provision of Public Facilities within Private Developments

Public facilities within private developments can broadly be categorized into: (a) Government, Institution and Community (“GIC”) facilities such as community halls, elderly centres, etc.; (b) public open spaces (POS); (c) pedestrian passage and vehicular access, e.g. walkways, footbridges and rights of way; and (d) Public Transport Terminus (PTT). As governed by the specific conditions in the land leases or deeds of dedication where appropriate, some of these facilities are handed over to the relevant Government departments upon completion while others are required to be managed and maintained by the private developers or owners on an ongoing basis.

2. The provision of public facilities within private developments for public use may arise under the following circumstances –

- (a) land sale – Bureaux / Departments may propose the inclusion of such facilities to meet public needs;
- (b) land grant and private development / redevelopment (involving planning permissions and lease modification / land exchange) -
 - (i) Bureaux / Departments may propose the inclusion of such facilities to meet public needs; or
 - (ii) Developers may propose such facilities in their planning applications to the Town Planning Board (TPB). Such requirements may subsequently be imposed as planning conditions by the TPB in approving the planning applications. For development within a “CDA” zone, planning applications to the TPB will need to be made in the form of a Master Layout Plan (MLP). The TPB will impose conditions in approving a MLP.

Such requirements are translated into the lease conditions if this is practical (say the development is the subject of a new or modified lease).

3. The incorporation of public facilities in a private development is intended to achieve integrated design, optimization of land use and better site planning or to bring forward the completion of some facilities to serve a wider district or territorial need and match with population intake in development proposals.

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

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

5. Generally speaking, GIC facilities, PTT and MTR facilities are handed over to the Government upon completion. As regards the remaining facilities, if they are not required to be handed over to the Government, they will be subject to the relevant provisions in the respective contractual documents in respect of their management, maintenance and opening to the public as follows –

- (a) for POS, pedestrian passage and vehicular access, they will be subject to the relevant requirements in the land leases administered by the Lands Department if such requirements have been specified in the leases; and
- (b) for building set-back for street widening and pedestrian passage through the building, they will be subject to the relevant requirements in the deeds of dedication administered by the Buildings Department.

6. To ensure that developers have fulfilled the relevant provisions, the Lands Department and the Buildings Department will scrutinise the development projects upon completion to satisfy themselves that all the requirements in the land leases or building plans are complied with, before issuing the certificates of compliance, if applicable, or occupation permits. The two departments will monitor the implementation of the relevant provisions by conducting spot checks and act upon receiving complaints from members of the public.

7. The rights and obligations of the owners are set out in the land leases or deeds of dedication, as the case may be. Generally, owners of the private developments are required to fulfill the following obligations -

- (a) permit the public to lawfully use such facilities and not to allow the area to be obstructed, where this is applicable, in accordance with the provisions as prescribed in the land leases or the deeds of dedication; and
- (b) manage and maintain such facilities to the satisfaction of the Government.

Most of the public facilities are provided for use by the public free of payment with some exceptions, such as public fee-paying car parks or outdoor restaurant seating as specified in the land leases; and the charges for temporary exhibition and display in the Times Square case under the deed of dedication.

8. Being responsible for making such facilities accessible for public use under the land leases or the deeds of dedication, it is reasonable for owners of such developments to adopt a set of reasonable, clear and transparent guidelines for all users to comply with, just as the Government or other public bodies adopt certain rules and regulations in managing public facilities.

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