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Clerk, Public Accounts Committee  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong  
(Attn: Mr Anthony CHU)

Dear Mr Chu,

### **Public Accounts Committee**

#### **Consideration of Chapter 7 of the Director of Audit's Report No. 63**

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

Thank you for your letter dated 16 December 2014 to the Secretary for Development. I am authorised to provide you with the following consolidated response, into which input from the other relevant departments has been incorporated. For ease of reference, our response follows the paragraph numbering in your letter.

#### Part 2: Provision of public open space in private development ("POSPD") accessibility

- (a) Provision of POSPDs is generally based on the guidelines set under the Hong Kong Planning Standards and Guidelines (HKPSG) with regard to provision of open space, which has taken into consideration the population size in the relevant area and the relative demand for open

space. Patronage is not considered to be a critical factor relevant to the need or otherwise of POSPDs. Given that POSPDs also serve other purposes such as providing visual and spatial relief in a heavily built-up area, and providing a spacious and quiet ambience for people to relax, rest and meditate, a quality open space should not be judged only by patronage and flow of people. Indeed, a packed open space would not be an enjoyable one. It would not be comprehensive to gauge the “performance” of POSPDs by patronage alone or by maintaining or promoting patronage.

The level of patronage of a particular POSPD may be influenced by a number of factors, e.g. the prevailing number of local residents in the locality. It is noteworthy that a number of POSPDs were completed some time ago, and some of them may indeed fall short of expectation in terms of design if assessed by today’s standards. Having drawn lessons from those POSPDs and with a view to improving the design of new POSPDs, we published and promulgated the POSPD Design and Management Guidelines in 2011 with a view to promoting the adoption of easily accessible designs for promoting public’s ease of use and enjoyment of POSPDs. In addition, as a means to promote public awareness of POSPDs, we have been publishing information of POSPDs on the Lands Department (LandsD) and the Buildings Department (BD)’s websites. On this, we will continue to work with relevant departments on how to disseminate information about the POSPDs more effectively.

With regard to LandsD’s inspections, where the requirement of a POSPD is incorporated into the land lease, the role of LandsD is to see to it that the lease requirement is complied with, essentially that public access is made available as required and, when a breach is detected, to seek rectification by the owners. At present, LandsD conducts regular inspections of the 60 POSPDs on an annual basis, in addition to follow-up inspections upon receipt of complaints or case referrals. The Department would keep in view the arrangements of regular inspections and consider suitable fine-tuning from time to time taking into account resources availability.

- (b) The recommendation is in relation to two POSPD cases (i.e. POS 1 and POS 31). Regarding the case of POS 1, the gate was found open by surprise checks conducted by LandsD in September and November 2014. Nevertheless, LandsD wrote to the grantee on 17 December 2014, reminding him that the POSPD should remain open

to the public at all times. As regards the case of POS 31, the lease requires the grantee to permit public access for use of the POSPD. LandsD would remind the grantee of their obligation under lease to open the POS as required under lease. This is an on-going task, and LandsD would continue to monitor the opening situation of the two POSPDs through regular and surprise checks.

- (c) Under the planning regime, if developers wish to pursue developments listed under Column 2 uses of the relevant zoning of the statutory plans, they are required to apply for the Town Planning Board (TPB)'s approval according to the Town Planning Ordinance (Cap. 131) (TPO). In particular for sites zoned "Comprehensive Development Area" ("CDA"), applicants are required to submit details of the proposed development in the form of a Master Layout Plan which would include the design and landscape proposals of the proposed POSPD (if any). The planning applications will be published for three weeks for public comments in accordance with TPO, and the public may offer views on the proposed development scheme (including the POSPD) if such is part of the scheme. All public comments received will be submitted to TPB for consideration.

Apart from the above, if there is a POSPD requirement under lease, LandsD will, upon receipt of the proposed POSPD design, seek views and comments from other relevant departments, including Planning Department (PlanD) if it relates to an approved planning scheme, and will take into account their comments in considering whether to approve the plans under lease. The relevant departments will also make reference to the POSPD Design and Management Guidelines in their consideration of the proposed design.

- (d) The Government promulgated in January 2010 the refined arrangements for provision of future POSPDs, which set out the specific conditions for the provision of POSPD and for acceptance by the TPB and relevant departments. The focus of the refined arrangements is to provide a clear framework for the provision of POSPDs in future developments. With regard to the design of POSPDs, as mentioned in (a) and (c) above, we published in 2011 the POSPD Design and Management Guidelines with a view to promoting the adoption of best practices in terms of POSPD design. Departments will make reference to the Guidelines when they consider proposed designs submitted by developers.

The Government is of the view that the refined arrangements as mentioned above strive to strike an appropriate balance between the public's right to use and enjoy POSPD on the one hand, and the rights and obligations of the owners of the private developments in respect of these POSPDs on the other hand. We consider that the refined arrangements are working effectively, and have no plans for another review at this juncture.

### Part 3: POSPD management and maintenance

- (e) For POSPDs required under lease, the pertinent building owners are in and general obliged under the relevant lease conditions to manage and
- (f) maintain the POSPDs to the satisfaction of LandsD or other relevant approval authority. LandsD enforces the relevant conditions through regular or surprise checks, and carries out follow-up action as and when required. Apart from regular inspections, public monitoring is one effective way to ensure that POSPD owners fulfill the responsibility of properly managing and maintaining the POSPD. If a complaint relating to improper management and maintenance of POSPD is received, LandsD will investigate into the situation taking into account views from the other relevant departments as appropriate and with reference to the POSPD Design and Management Guidelines, and give advice to pertinent building owners on properly managing and maintaining the POSPD. LandsD will follow up to ensure that the irregularities are rectified. For serious cases of non-compliance, LandsD will issue warning letters and consider appropriate lease enforcement action and/or legal action if the pertinent building owners do not comply with the lease requirement after repeated advice and warnings.

During the period from 2010 to 2014, LandsD received a total of 28 complaints regarding management and maintenance issues of 12 POSPDs. All of the irregularities as reported in the complaints had been rectified or handled.

### Part 4: Dissemination of POSPD information

- (g) For POSPDs required under lease, LandsD undertook an exercise in March 2008 to gradually identify POSPDs in private developments which have been issued with Certificates of Compliance since 1980. The request for providing details of the unlisted POSPDs (i.e. POSPDs commissioned before 1980, or regardless of whether there had been

Certificates of Compliance issued) is a colossal task, since there is not a comprehensive inventory of such POSPDs at hand. Much time and resource would have to be expended to exhaustively review all old leases to determine whether POSPDs were included in each one. The cost-effectiveness is unclear, as it is unlikely that many more POSPDs will be identified.

As a pragmatic step forward, LandsD has accepted the Audit Commission's recommendation by adding POSPDs that it has become aware of, and has alerted its staff to be on the lookout during the course of their work. LandsD aims at including the details of these POSPDs at the regular updates of the list of POSPDs after they are made known. The next regular update is scheduled for publication in Q1 2015.

- (h) A Certificate of Compliance is issued upon application by the lot owner and after all the positive obligations under the lease have been complied with. For lots that are developed by phases, it is not uncommon for the Certificates of Compliance to be issued upon completion of the final phase of development when all positive obligations under lease are complied with. Moreover, there might be circumstances whereby not all positive obligations have been complied with although construction has been completed. For instance, the last phase of the lot in respect of POS 32 was only completed in 2010, but so far no application for Certificate of Compliance has been received. As for POS 33 and 34, applications for Certificates of Compliance have been received and are being processed.

The onus of meeting all positive lease obligations and submitting applications for Certificates of Compliance rests with the lot owners. LandsD will process applications for Certificates of Compliance as quickly as practicable once the lot owners comply with all positive obligations as stipulated under the leases and submit applications.

As regards information with regard to POSPDs not included in LandsD's POSPD list due to the absence of Certificates of Compliance, the Department is unable to produce such information due to reasons as set out in (g) above.

- (i) The Government has taken steps to enhance dissemination of information to facilitate public's access to POSPDs and facilitate public monitoring. Since March 2008, we have been compiling information on private developments containing public open space and making it

available through the websites of LandsD and BD. The information includes the location and area, the level at which the public open space is located, the opening hours, as well as the site plan of the public open space. We have also made available on our website the POSPD Design and Management Guidelines for the reference of members of public as well as POSPD owners.

- (j) The Government is unable to provide information as to the number of POSPDs which are not included in the List of POSPDs due to the absence of related conditions in the land leases or deeds of dedication. Similar to the reasons as set out in (g) above, obtaining the requested information would involve extensive case file reviews and entail significant workload on the part of the relevant departments to identify cases in which the requirement for the provision of POSPD formed part of planning conditions but was not translated into lease conditions.

As for ensuring that an undertaking proposed by a developer on the provision of POSPD is legally enforceable before accepting the undertaking, depending on case circumstances, the relevant departments would seek legal advice as appropriate if such a case were to arise in future. As part of the refined arrangements promulgated by the Government in 2010, whether government departments would require or accept the provision of POSPDs will be subject to the POSPD requirement capable of being enforced or realised through suitable conditions imposed in the lease. Generally speaking, if a planning application is approved by TPB and the provision of POSPD is included as a condition of the planning permission, PlanD would suggest including such condition in the lease as appropriate. Besides, PlanD will scrutinise the development scheme through the relevant general building plan submission referred by BD to ensure such planning approval condition is fulfilled.

- (k) The Government's main intention is to promote public awareness and ensure accessibility of POSPDs. To this end, we have published information relevant to POSPDs on LandsD and BD's websites. Also, as mentioned in (a) above, we will continue to consider more effective means of promotion in conjunction with relevant departments.
- (l) LandsD can mandate the provision of sign boards for POSPDs only where the provision of such has been prescribed under the leases. Where the leases have not provided for such, LandsD may at best encourage but not mandate the owners to so provide. In the event that

the pertinent building owner refuses to erect sign boards after LandsD's suggestion, the Department may consider approaching relevant departments to explore the possibility of erecting sign boards on nearby government land.

- (m) The POSPD Design and Management Guidelines promulgated in 2011 are intended to be applicable to new POSPD cases with flexibility allowed to cater for a range of different levels of provision standard justified on the practical circumstances of individual developments. If the Guidelines were to be incorporated into lease conditions, LandsD's enforcement action in the event of non-compliance would essentially be re-entry, which would either be disproportionate (if the whole lot was re-entered) or deviate from the intent of integrating the POSPD into the private development and for the lot owner to take up the recurrent responsibilities (if only the POSPD portion was re-entered or vested). Moreover, there are practical constraints on the level of detail to be included into land leases, which may last for as long as 50 years, when the Guidelines are meant to serve as references and are subject to review from time to time.

As a matter of fact, the existing drafting of POSPD conditions in land leases normally requires the lot owners' provision of POSPD "to the satisfaction of the Director of Lands", while the planning condition(s) relevant to POSPD often require(s) the provision of POSPD to the satisfaction of Director of Planning. The relevant departments, in considering proposals and relevant plans submitted by lot owners with regard to POSPDs for approval, will make reference to the Guidelines as appropriate.

- (n) With the promulgation of the POSPD Design and Management Guidelines in 2011, we have distributed the Guidelines to owners' incorporations and management companies of private developments with POSPDs, professional bodies, trade organisations including the Real Estate Developers' Association of Hong Kong, as well as the 18 District Councils. There have been indications of developers and POSPD owners making reference to the Guidelines through their submissions, including proposed POSPD design and opening hours, application for waivers for activities, etc. The Government accepts Audit's recommendation and will consider how to further promote POSPD owners' awareness and adoption of the Guidelines.

- (o) In 2013, three District Lands Offices (DLOs) did not fully comply with LandsD's instructions in conducting annual POSPD inspections due to resources constraints. In order to ensure the relevant instructions are fully complied with, LandsD has strengthened the monitoring mechanism by requesting DLOs to submit annual returns to LandsD Headquarters reporting the progress of the POSPD inspections conducted, together with key observations and the follow-up actions taken.
- (p) An action plan in respect of the recommendations made under the Audit Study is enclosed at Annex for Members' reference.

Yours sincerely,



( Derek Lai )  
for Secretary for Development

cc (w/ encl)

SFST  
D of Audit  
D of Lands  
D of Buildings  
D of Planning



**Chapter 7 of the Director of Audit's Report No. 63  
Provision of Public Open Space in Private Developments (POSPDs)**

**Follow-up Action Plan for Audit's Recommendations**

Paragraph No.	Audit's Recommendation	Proposed Action by the Government
2.24	<p>The Secretary for Development (SDEV) should remind pertinent B/Ds of the need to:</p> <p>(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</p> <p>(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.</p>	<p>On (a), DEVB will remind other relevant departments to refrain as far as practicable from recommending the acceptance of development proposals with POSPDs situated on podiums high above ground level and not easily accessible by the public within the first half of 2015.</p> <p>On (b), as part of the refined arrangements promulgated by the Government in 2010, whether government departments would require or accept the provision of POSPDs will be subject to the POSPD requirement capable of being enforced or realised through suitable conditions imposed in the lease.</p>
2.25	<p>With a view to facilitating public access to POSPDs, the Director of Lands (D 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.</p>	<p>As at early January 2015, the relevant District Lands Office (DLO) issued a letter to the owners of POS 1 reminding them of the owners' obligation under lease to open the POSPD. The letter to the owners of POS 31 will be issued by end January 2015.</p>
3.8	<p>D of Lands should take actions to strengthen Lands Department (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.</p>	<p>The relevant DLOs will issue letters to the owners of POS 4 and 15 by end-January 2015 requesting them to properly maintain the POSPDs and repair damaged facilities in a timely manner. DLOs to continue follow-up with the owners of the two POSPDs.</p>

Paragraph No.	Audit's Recommendation	Proposed Action by the Government
		DLOs will issue letters within Q1 2015 to owners of all POSPDs under lease drawing their attention to properly maintaining their POSPDs.
3.19	<p>D of Lands should:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) remind LandsD 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</li> <li>(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.</li> </ul>	LandsD will issue guidelines to DLOs to reflect Audit's recommendations within Q1 2015.
3.25	The Director of Buildings (D of Buildings) should arrange Buildings Department (BD) inspections of pertinent POSPDs to prevent POSPDs from being occupied for private use.	BD will continue to arrange inspections to prevent POSPDs under its purview from being occupied for private use. For POS 40, as at early January 2015, the building management had already posted notices at relevant locations of the POS indicating that the area is open to the public.
4.15	<p>D of Lands should:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(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</li> </ul>	<p>On (a) and (c), LandsD will include POSs 32, 33 and 34 and similar known POSPDs under lease in the next update of the POSPD List in Q1 2015. It will continue to update the list based on known information.</p> <p>On (b), LandsD will instruct DLOs to take future opportunities to include conditions regarding the maintenance and provision of a POSPD for public use into the lease (e.g. when the lot owner applies for a lease modification).</p>

Paragraph No.	Audit's Recommendation	Proposed Action by the Government
	(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.	
4.16	<p>SDEV should remind B/Ds of the need to:</p> <p>(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</p> <p>(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.</p>	As part of the refined arrangements promulgated by the Government in 2010, whether government departments would require or accept the provision of POSPDs will be subject to the POSPD requirement capable of being enforced or realised through suitable conditions imposed in the lease.
4.22	D of Lands should seek assistance from relevant government departments (such as the Home Affairs Department (HAD) and the Leisure and Cultural Services Department (LCSD)) to enhance publicity of POSPDs.	LandsD will liaise with HAD and LCSD by Q1 2015 to explore the possibility of enhancing publicity of POSPDs.
5.13	SDEV 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.	DEVB will consider in conjunction with relevant departments how to further promote POSPD owners' awareness and adoption of the POSPD Guidelines in the first half of 2015.
5.25	<p>D of Lands should:</p> <p>(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;</p>	<p>On (a), LandsD will issue advisory notes / letters within Q1 2015 to owners of the POSPDs in Tables 7 and 8 suggesting them to provide as far as possible the said facilities.</p> <p>On (b), LandsD will include information on whether sheltered seating and barrier-free-access facilities are provided at each</p>

Paragraph No.	Audit's Recommendation	Proposed Action by the Government
	<p>(b) include in the POSPD List published on LandsD website information on whether sheltered seating and barrier-free-access facilities are provided at each POSPD; and</p> <p>(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.</p>	<p>POSPD in the POSPD List at the next update in Q1 2015.</p> <p>On (c), LandsD will negotiate with owners of POSs 4 and 26 in Q1 2015 to erect notice boards at site entrances. LandsD will also consider approaching relevant department to explore the possibility of erect sign boards on nearby government land on a case-by-case basis.</p>
5.32	<p>D of Lands should:</p> <p>(a) strengthen actions to ensure that all DLOs comply with Lands D instructions in conducting POSPD inspections; and</p> <p>(b) require DLOs to submit annual returns to the LandsD Headquarters to report the progress of POSPD inspections conducted, together with major observations and the follow-up actions taken.</p>	<p>On (a), LandsD will issue guidelines to DLOs to remind staff to implement the annual inspection requirement. Regular reminders will be incorporated into the LandsD Headquarters' half-yearly calls for updates to the POSPD List.</p> <p>On (b), LandsD will request DLOs to submit annual returns to report progress of POSPD inspections, together with major observations and follow-up actions taken. The new arrangement has been implemented in December 2014.</p>
6.11	<p>With a view to improving the administration and management of POSPDs under the BD's purview, D 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.</p>	<p>BD will prepare an internal instruction for the purpose by end-January 2015.</p>