

Summary of Investigation Report

Complaint against Water Supplies Department and Lands Department for Refusal to Take over and Maintain Waterworks in Government Road Areas

Details of Complaint

The Owners' Corporation of a private estate ("the complainant") lodged a complaint with this Office against the Water Supplies Department ("WSD") and the Lands Department ("Lands D"). The complainant stated that there were five streets ("the Streets") owned by Government within the estate, with various types of facilities on the Streets, including the roads, road signs, street lights, sewers and road markings, taken over by the relevant Government departments concerned for management, maintenance and repairs. However, WSD and Lands D argued that they had never taken over the water supply facilities and fire hydrants in the areas of the Streets. They refused to provide maintenance and repairs and shifted their responsibilities to the complainant. The dispute has dragged on for 16 years.

Our Findings

Background

2. According to Lands D's guidelines, when the Buildings Department ("BD") receives an application for Occupation Permit ("OP"), the local District Lands Office ("DLO") will commence the procedures for issuing a Certificate of Compliance ("CoC"). BD will request the relevant Government departments to check whether the land owner has complied with the requirements and obligations stipulated by them in the land lease conditions and to advise DLO directly of the results. DLO will only issue the CoC upon confirmation from all the departments that the land lease conditions have been fulfilled to their satisfaction. The above procedures of issuing a CoC have been in place for over 30 years. In the present case, under a special condition in the land lease, the land owner was required to complete the land formation work in some areas marked on the site plan (which would become the Streets afterwards) and then return possession of those areas to Government. Upon issuance of the CoC, the Streets would be deemed to have been taken over by Government.

3. The estate concerned was developed in three phases with the CoCs issued by Lands D in 1986, 1992 and 1997. In August 1997, the Streets were taken over by Government for management and maintenance. In September 1997, WSD liaised with DLO in preparation for taking over the waterworks in the areas of the Streets (including the underground pipelines and fire hydrants).

WSD's Handling of the Case and Its Stance

4. In October 1997, the complainant provided a set of drawings to WSD upon its request. Between 1997 and 2004, WSD made repeated requests to the complainant through DLO for another set of as-built drawings with clear indications of the pipeline alignments and associated fittings because the set submitted earlier was unclear. WSD also reiterated that it would not take over the waterworks concerned without such drawings. Furthermore, WSD indicated that it had never requested the developer to install any water pipes for Government. Hence, the water pipes installed by the developer could not be regarded as public water supply facilities to be taken over by WSD. In 2010, the complainant started communicating directly with WSD in writing, but WSD remained firm in its stance and claimed that the complainant should be responsible for the maintenance and repairs of the waterworks concerned.

5. WSD indicated that accurate as-built information, such as the layout, materials used and depths of water pipelines and the locations of the valves, was necessary for operation and maintenance of the waterworks. The Department had followed Government guidelines on handing over of completed works as stipulated in the Project Administration Handbook for Civil Engineering Works as well as industry practices in requesting, through DLO, the complainant to submit as-built drawings containing the above information. WSD had also suggested the complainant to engage a licensed plumber to find out the exact locations of the underground pipelines. Since WSD had yet to take over the waterworks concerned, the complainant remained in possession of such facilities and should be responsible for their management, maintenance and repairs.

6. From an engineering perspective, the as-built drawings are essential for the management and maintenance of the water pipelines. Apart from complying with Government guidelines on handing over of public works in the Project Administration Handbook for Civil Engineering Works, the submission of such drawings is a normal arrangement in the engineering profession when the constructing party is handing over the completed works to the maintenance party. WSD considered it a responsible act to the maintenance department for ensuring proper maintenance of the relevant facilities in future.

7. WSD pointed out that the land grant conditions did not mention that Government needed to take over the pipelines. Therefore, when responding to the aforementioned consultation regarding the estate's application for an OP, WSD did not indicate at that time that the development project on the site in question failed to comply with the requirements. Neither did it ask the developer to submit the as-built drawings of the waterworks. Nevertheless, in view of the special circumstances of this case and upon intervention by this Office, WSD had taken the initiative to meet the complainant on 12 December 2013 for preparing the as-built drawings so that the problem could be resolved as soon as possible. The Department also undertook to discuss with the complainant the arrangements for taking over the waterworks upon completion of the as-built drawings. Meanwhile, WSD would, where necessary, act

on the complainant's request to repair the waterworks for them. In fact, it already repaired for the complainant a leaking pipe and replaced the valve pit cover on 30 December 2013 and 16 January 2014 respectively.

Lands D's Handling of the Case and Its Stance

8. Before issuing the CoC for Phase III of the estate, DLO had consulted the relevant Government departments, including WSD, and was confirmed of the project's compliance with the requirements. DLO had issued three CoCs in 1986, 1992 and 1997, meaning that the Streets (including the underground waterworks) had already been taken over by Government in those years. Records showed that WSD had confirmed the project's compliance with the requirements before Lands D issued a CoC for each Phase of the estate.

9. According to the land grant conditions, upon issuance of the CoC, the Streets and the responsibility for their maintenance and repairs were taken over by the relevant Government departments. In October 1997, the complainant submitted the underground piping layout plans to WSD via DLO. When transferring those layout plans to WSD, DLO pointed out in its memorandum that the estate had been issued a CoC. So legally, the Streets had been taken over by Government. WSD, therefore, had to take over the waterworks concerned.

10. Since WSD refused to take over the waterworks on the grounds that the drawings submitted by the complainant were unclear, DLO therefore followed up the matter at WSD's request and conveyed WSD's demand to the complainant. It also wrote to the complainant time and again, reiterating WSD's stance and stating that if the complainant failed to submit the drawings required, the maintenance responsibility for the waterworks would still rest with them.

11. Lands D explained that the maintenance and repairs of waterworks were not within its purview and the Department did not have the technical expertise and resources to handle waterworks projects. Therefore, it could only ask the complainant to comply with WSD's demand and submit the drawings required for WSD to consider taking over the installations. Lands D was currently discussing with WSD regarding the processes of issuing CoC and taking over of waterworks, with a view to identifying areas for improvements such that similar situations would not recur.

Our Comments

WSD

12. As stated in para. 4 above, WSD asserted that the pipelines concerned could not be regarded as public water supply facilities to be taken over by WSD. We consider that had this been the case, WSD should have made it clear in its reply to

DLO that it would not take over such waterworks, rather than just requiring the complainant to submit the as-built drawings. Moreover, in its letter to WSD in October 1997, DLO pointed out that prior to issuance of the CoC, WSD had confirmed the relevant conditions, and so it should take over the water pipes according to established guidelines. However, WSD did not make any clarification at that point and it only reiterated that submission of the as-built drawings was necessary. This inevitably gave the public an impression that WSD was trying to shirk its responsibility without making an effort to identify the problems. While the other relevant Government departments had taken over their responsibilities for the Streets, WSD still refused to do so on the grounds that no as-built drawings of the facilities was available. WSD obviously failed to follow the guidelines and its handling procedures were not appropriate.

13. Since WSD had all along stayed aloof from the matters, it missed the opportunities to request the as-built drawings from the estate developer. It was not until 1997 that WSD suddenly realised that it had to take over the facilities concerned. WSD then requested the as-built drawings from the individual flat owners, who never possessed such drawings, and even asked them to hire professionals at their own expense to survey the distribution of pipelines, putting an unnecessary burden on those individual owners without helping to resolving the problem. Despite the long delay of the matter, the senior management of WSD seemed to take no notice of it. We have doubts about WSD's claim that the responsible engineer and senior engineer had brought it to the attention of their supervisor because they could not provide any records to prove this. Given that the case had dragged on for years, the complainant's dissatisfaction with WSD was justified.

Lands D

14. When Lands D transferred the drawings provided by the complainant to WSD in October 1997, it did point out that the responsibility for the Streets was taken over by Government since the CoC had been issued. Nevertheless, when WSD refused to take over the underground pipelines, Lands D failed to uphold this stance or discuss with WSD to resolve their differences. Rather, Lands D left the problem to the complainant. When the complainant refused to accept this, Lands D only reiterated WSD's incorrect views.

Conclusion

15. This case had dragged on for 16 years. We can hardly imagine how long it would have continued if the complainant had not lodged a complaint with this Office. The complaint about WSD's shifting of responsibility to the complainant was not unjustified. The Ombudsman, therefore, considers the complaint against WSD **substantiated**.

16. Lands D was initially taking the right stance. However, when WSD denied its responsibility, Lands D just conveyed WSD's request to the complainant instead of upholding its own stance. There was impropriety on the part of Lands D. As such, The Ombudsman considers the complaint against Lands D **partially substantiated**.

Recommendations

17. The Ombudsman has made the following recommendations to the two departments:

WSD

- (1) to take over immediately all the waterworks and fire service installations within the site and consider requesting the as-built drawings from the estate developer. Professional surveys should be arranged for preparing the as-built drawings if necessary;
- (2) to draw up guidelines on taking over of waterworks and fire service installations built by developers in order to provide clear handling procedures and workflow, contents of which should include the consultation exercise prior to issuance of the CoC by Lands D, the actions and measures regarding the taking over of facilities, as well as when and in what circumstances should a case be escalated to a more senior level for handling; and

Lands D

- (3) to review the consultative arrangements prior to issuance of any CoC and to discuss with WSD and other relevant departments on the demarcation of responsibilities among all the departments concerned. Where necessary, Lands D should draw up relevant guidelines to avoid recurrence of similar incidents.

**Office of The Ombudsman
October 2014**