

Detailed Review of Licence Clause in the Discovery Bay DMC (City Areas)

1. The Phrase “until so used” is the Key Tipping Point of the Licence Clause

Full Text of Licence Clause (Clause 8(i) of Section I. Page 12)	Comment
<p>The Registered Owner reserves the right to use such part or parts of the City Retained Areas and Village Retained Areas in such manner as it thinks fit, including but not limited to the construction of car parking spaces thereon or the paving of car parking spaces thereon or the construction of any structures thereon or the provisions of recreational or other facilities thereon Provided that any such use shall not be in contravention of the terms and conditions of the Conditions and <u>until so used</u> the Registered Owner shall be entitled to license such part or parts thereof to the Manager at a fee of \$1.00 per annum for use by the Owner as gardens and/or areas for recreational activities. In the event of such licence as aforesaid such licensed City Retained Areas or Village Retained Areas shall for the period of the licence be deemed to be part of the City Common Areas or Village Common Areas and the Owners shall contribute towards the maintenance and upkeep of the same as if they were part of the City Common Areas or Village Common Areas. The Registered Owner is entitled to terminate this licence by giving to the Manager one month's written notice, in which event the licensed City Retained Areas and Village Retained Areas or such part or parts thereof as shall be required by the Registered Owner shall be vacated by the Manager and the Registered Owner <u>shall be entitled</u> to lay out or construct or pave car parking spaces and any other structures and to lease license or sell the same or to designate the same as City Common Areas or City Common Facilities or Village Common Areas or Village Common Facilities.</p>	<p>The licence clause begins with the phrase “The Registered Owner reserves the right to use such part or parts of the City Retained Areas and Village Retained Areas in such manner as it thinks fit...” One can easily read this to mean that HKR (“The Registered Owner”) have wide powers to license any area. But it is important to note that this phrase does not refer or apply to a licence or to licensed areas; it applies to the non-licensed retained areas.</p> <p>Indeed, the way the clause is put together is misleading. The section that comes before “until so used” and the section that follows “shall be entitled” in fact refer to the exact same thing. Both refer to what HKR may do <u>after</u> they terminate a licence over an area. Once one understands this, it becomes much easier to see how the licence clause operates.</p> <p>“Until so used” is the key tipping point. An area can only be licensed “until so used”; once HKR have taken back an area to carry out some enhancement or re-designate the area in some way, HKR may not re-license the area under the special terms of this clause.</p> <p>The foregoing is the key to understanding the limits to the powers and rights of HKR under this clause. We can view the licence clause as an interim arrangement, allowing the Owners to enjoy an area until HKR commit to a formal use of that area. The clause most certainly does not offer HKR carte blanche to license any area of the Lot or City to the Manager at any time.</p>

2. HKR's powers and rights over licensed areas are strictly limited

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3. HKR's powers and rights over licensed areas are strictly limited (2)

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4. HKR may not re-license an area under this clause once it has terminated a licence over the area

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