

LEGISLATIVE COUNCIL BRIEF

Buildings Ordinance (Cap. 123)

BUILDING (PLANNING) (AMENDMENT) REGULATION 2005

INTRODUCTION

The Secretary for Housing, Planning and Lands has made under section 38(1) of the Buildings Ordinance (Cap. 123) (“the Ordinance”) the Building (Planning) (Amendment) Regulation 2005 (“the Amendment Regulation”) at the Annex. The main purpose of the Amendment Regulation is to state clearly the criteria for street for the purpose of site classification under the Ordinance.

BACKGROUND AND JUSTIFICATIONS

2. Under section 2(1) of the Ordinance, the term “street” is defined to include the whole or any part of any square, court or alley, highway, lane, road, road-bridge, footpath, or passage whether a thoroughfare or not. Under regulation 2(1) of the Building (Planning) Regulations (Cap. 123 sub. leg. F) (“the Regulations”), the term is defined to include any footpath and private and public street. However, the Ordinance is silent, and so are the Regulations, on the criteria that need to be satisfied regarding a street before it would be accepted for the purpose of site classification.

3. The permitted development intensity of a site under the Ordinance depends on its site classification. Regulation 2(1) of the Regulations defines three different classes of site (i.e. “class A site”, “class B site” and “class C site”), and its First Schedule specifies the maximum plot ratios¹ permitted for domestic and non-domestic buildings corresponding to these three classes, as shown in the table below:

¹ Plot ratio of a building shall be obtained by dividing the gross floor area of the building by the area of the site on which the building is erected.

Class of Site	Definition	Maximum Plot Ratio of Domestic Buildings	Maximum Plot Ratio of Non-domestic Buildings
Class A	A site, not being a Class B or Class C site, that abuts on one street not less than 4.5 metres wide or on more than one such street.	8	15
Class B	A corner site ² that abuts on two streets neither of which is less than 4.5 metres wide.	9	15
Class C	A corner site ² that abuts on three streets none of which is less than 4.5 metres wide.	10	15

4. In the Director of Audit's Report's No. 37 (Chapter 7) published in October 2001 entitled "The administration of sale of land by public auction", the Director of Audit considered that the change of classification of a corner site in Siu Sai Wan (which resulted in higher development intensity) after auction was attributed, inter alia, to uncertainties in the Building (Planning) Regulations concerning the definition of street for site classification. He recommended in the Audit Report that the Director of Buildings should take actions to remove such uncertainties. In response, the Government agreed to take forward the recommendations in the Audit Report and amend the Building (Planning) Regulations as appropriate.

THE AMENDMENT REGULATION

5. To set out clearly the criteria that need to be satisfied with respect to a street for site classification purpose, and to forestall such street from being extinguished to make "room" for more development, we propose to add a provision to Part III of the Regulations to state clearly that any of the circumstances mentioned in sub-paragraphs (a) to (f) below must exist with respect to a street if a site is to be regarded as abutting on the street (or on a

² Under the existing Regulations, a corner site shall not be regarded as abutting on 2 streets (for class B site) or 3 streets (for class C site) unless not less than 40% or 60% respectively of the boundary of the site abuts on those streets.

“specified street”) for such purpose -

- (a) the street is vested in the Government and maintained by the Highways Department (regulation 18A(3)(a)(i)) (Open space allocated to government departments would not meet this criterion.);
- (b) the street is a private street on land held under the same Government lease as the site, and under the terms of the lease, the lessee has to surrender (when required to do so) the land on which the street is situated to the Government (regulation 18A(3)(a)(ii));
- (c) the street is required to be constructed on unleased Government land by the lessee of the Government lease under which the site is held pursuant to the terms of that lease (regulation 18A(3)(a)(iii));
- (d) the street is on land over which the owner of the site is expressly granted, by or by virtue of an instrument, a right of way exercisable at all times (regulation 18A(3)(a)(iv));
- (e) the street is on land held by the owner of the site under a Government lease (regulation 18A(3)(a)(v)) (This would cover a private street which is under the same ownership as that of the site and therefore is also under the control of the owner of the site.);
- (f) one or more of the circumstances mentioned in sub-paragraphs (a), (b), (c), (d) and (e) above exist with respect to different parts of the street, and these parts together constitute the street (regulation 18A(3)(b)).

6. Setting the above requirements will ensure that only streets that are under the control of either the Government or the owner of the site will qualify as specified streets for site classification purpose. Together with the enforcement mechanism described in paragraphs 9 and 10 below, the permanent status of a “specified street” is reasonably assured and there should be limited chances of an extinguishment of such street.

7. The Amendment Regulation also makes minor or consequential amendments to regulations 19 and 23. Furthermore, the definitions of “class A site”, “class B site” and “class C site” in regulation 2(1) of the Regulations are slightly modified to refer specifically to “specified” streets. The modified definitions, together with existing regulation 2(2) are moved to Part III of the Regulations (regulation 18A(1) and (2)).

8. The Building (Planning) (Amendment) Regulation 2005 is at the **Annex**.

ENFORCEMENT MECHANISM

9. The Director of Buildings (“the Building Authority”) would require that the specified street(s) of a site should be shown on the building plans submitted for approval. The land on which a “specified street” is situated will not be allowed to be included in the site area for the purpose of site coverage and plot ratio calculations.

10. If a “specified street” for site classification is not an existing one and has to be constructed, it should be completed before the occupation permit for the building on the site is issued. If such street has not been completed by the time the developer applies for an occupation permit, the Building Authority would refuse to issue the occupation permit. In addition, the “specified street” so created should remain as a street insofar as the building(s) relying on it for attaining the site coverage and plot ratio exist. Any subsequent proposal to build over or extinguish such street would result in contravention of the provisions of the Ordinance and the Building Authority would disapprove such a proposal. If any building or structure has been erected on or over the specified street so created in contravention of any of the provisions of the Ordinance, the Building Authority may serve a removal order requiring such unauthorized building or structure to be removed. Any person who, without reasonable excuse, fails to comply with such statutory order shall be guilty of an offence under the Ordinance. The Building Authority may also carry out the removal or remedial works required and then recover the cost from the responsible party.

LEGISLATIVE TIMETABLE

11. The legislative timetable is as follows :

Publication in the Gazette	30 June 2005
Tabling in the Legislative Council	6 July 2005
End of Vetting Period (28 days + 21 days)	The 1 st meeting after the 21 days from the 2 nd meeting of 2005/06 session
Commencement	31 December 2005

IMPLICATIONS OF THE PROPOSAL

12. The proposal has no financial, economic and civil service implications. The proposal is in conformity with the Basic Law, including the provisions of the human rights, and will not affect the current binding effect of the Buildings Ordinance.

PUBLIC CONSULTATION

13. We have consulted the Building Sub-Committee of the Lands and Building Advisory Committee. Members of the sub-committee generally supported the proposal. We have also circulated an information paper on the proposal to the Legislative Council Panel on Planning, Lands and Works in May 2005. Members of the Panel have not raised the need for discussion, or objections to the proposal.

PUBLICITY

14. A press release will be issued on 30 June 2005 when the amendment regulation is published in the Gazette.

ENQUIRIES

15. Enquiries about this brief may be directed to Mr. Parrish NG, Principal Assistant Secretary (Planning and Lands) of the Housing, Planning and Lands Bureau at telephone number 2848 6288.

Housing, Planning and Lands Bureau
30 June 2005

**BUILDING (PLANNING) (AMENDMENT)
REGULATION 2005**

(Made under section 38 of the Buildings Ordinance (Cap. 123))

1. Commencement

This Regulation shall come into operation on 31 December 2005.

2. Interpretation

(1) Regulation 2(1) of the Building (Planning) Regulations (Cap. 123 sub. leg. F) is amended by repealing the definitions of “class A site”, “class B site” and “class C site”.

(2) Regulation 2(2) is repealed.

3. Regulation added

The following is added –

“18A. Site classification

(1) In this Part and the First and Second Schedules –

“class A site” (甲類地盤) means a site, not being a class B site or class C site, that abuts on one specified street not less than 4.5 m wide or on more than one such street;

“class B site” (乙類地盤) means, subject to paragraph (2), a corner site that abuts on 2 specified streets neither of which is less than 4.5 m wide;

“class C site” (丙類地盤) means, subject to paragraph (2), a corner site that abuts on 3 specified streets none of which is less than 4.5 m wide.

(2) For the purposes of paragraph (1) –

- (a) a corner site shall not be regarded as abutting on 2 specified streets unless at least 40 per cent of the boundary of the site abuts on the streets; and
 - (b) a corner site shall not be regarded as abutting on 3 specified streets unless at least 60 per cent of the boundary of the site abuts on the streets.
 - (3) A street is to be regarded as a specified street –
 - (a) if there exists, with respect to the street, any of the following circumstances -
 - (i) the street is vested in the Government and is maintained by the Highways Department;
 - (ii) the street is a private street on land held under the same Government lease as the site and under the terms of the lease the lessee has to surrender (when required to do so) the land on which the street is situated to the Government;
 - (iii) the street is a street required to be constructed on unleased Government land by the lessee of the Government lease under which the site is held pursuant to the terms of that lease;
 - (iv) the street is on land over which the owner of the site is expressly granted, by or by virtue of an instrument, a right of way exercisable at all times;
 - (v) the street is on land held under a Government lease by the owner of the site;
- or

(b) if -

- (i) one or more of the circumstances mentioned in subparagraph (a)(i), (ii), (iii), (iv) and (v) exist with respect to different parts of the street; and
- (ii) those parts together constitute the street.”.

4. Regulation substituted

Regulation 19 is repealed and the following substituted –

“19. General provisions concerning site coverage and plot ratio

(1) The maximum site coverage permitted in respect of a building or buildings on a class A site, class B site or class C site shall be determined in accordance with regulation 20.

(2) The maximum plot ratio permitted in respect of a building or buildings on a class A site, class B site or class C site shall be determined in accordance with regulation 21.

(3) The height of a building or buildings on a site that is not a class A site, class B site or class C site, and the maximum site coverage and maximum plot ratio permitted in respect of such a building or buildings, shall be determined by the Building Authority.”.

5. Provisions supplementary to regulations 19, 20, 21 and 22

Regulation 23(1) is amended –

- (a) by repealing “street or streets not” and substituting “specified street or specified streets not”;
- (b) by repealing “on streets not” and substituting “on specified streets not”.

6. Percentage site coverages and plot ratios

The First Schedule is amended, within the square brackets, by adding “18A,” before “20”.

7. Open space about domestic buildings

The Second Schedule is amended by repealing “[reg. 25]” and substituting “[regs. 18A & 25]”.

Secretary for Housing, Planning and
Lands

2005

Explanatory Note

The main purpose of this Regulation is to amend the Building (Planning) Regulations (Cap. 123 sub. leg. F) to state clearly the criteria for site classification.

2. The definitions of “class A site”, “class B site” and “class C site” in regulation 2(1) are slightly modified and the modified definitions, together with regulation 2(2), are moved to a new regulation in Part III (Heights, site coverage, plot ratio, open spaces and lanes) (new regulation 18A(1) and (2)). The new regulation 18A further sets out clearly the circumstances that must be present with respect to a street if a site is to be regarded as abutting on that street for the purposes of site classification (new regulation 18A(3)).

3. The Regulation also amends regulation 19 to clarify that the maximum site coverage and maximum plot ratio permitted in respect of a building or buildings

on a “class A site”, “class B site” or “class C site” are to be determined in accordance with regulations 20 and 21 respectively, and that the height of a building or buildings and the maximum site coverage and maximum plot ratio permitted in respect of a building or buildings on any other site are to be determined by the Building Authority. (Note: The term “Building Authority” is defined in section 2(1) of the Buildings Ordinance (Cap. 123) to mean the Director of Buildings.)

4. The Regulation introduces consequential amendments to regulation 23(1) as well.