

**Legislative Council
Panel on Planning, Lands and Works**

**Amendments to Outline Zoning Plans Made by the
Town Planning Board to Impose Development Restrictions**

Purpose

The purpose of this paper is to provide Members with information regarding amendments to Outline Zoning Plans (OZPs) made by the Town Planning Board (TPB) to impose development restrictions.

Policy Objectives of Stipulating Development Restrictions in OZPs

2. The TPB is a statutory body established under the Town Planning Ordinance (TPO). It is charged with the statutory function, under section 3 of the TPO, to prepare statutory town plans for the layout of areas of Hong Kong as well as for the types of building suitable for erection therein with a view to promoting the health, safety, convenience and general welfare of the community. OZPs prepared by the TPB set out, among other things, the land use zonings and development restrictions for individual areas.

3. In general, plot ratio restrictions are stipulated to delineate areas of different development intensities to ensure that the permitted levels of development could be sustainable in terms of infrastructural, environmental and traffic capacities, and compatible with the character of the surrounding areas. Restrictions on building height are imposed to protect important ridgelines, public views to the harbour and other valuable attributes of our landscape; to preserve the special character of some neighbourhoods; and to achieve compatibility with the surrounding developments and natural setting.

Land Use Zones Subject to Development Restrictions

4. It is a well-established practice of the TPB to stipulate development restrictions, where appropriate, on OZPs to provide open, clear and unambiguous development parameters to guide developments. This also enhances certainty and transparency in the planning and development process. There are currently a total of 108 OZPs in force, of which 49 have incorporated development restrictions on plot ratio/gross floor area and building height in all appropriate land use zones. The vast majority of the remaining OZPs also

have such restrictions in some of the land use zones.

5. In recent years, community awareness and aspirations for a better living environment have intensified. The effect of high-rise and high-density development is keenly felt. There is a pressing need to address and respond to the community calls for lower development intensity, less congested building layouts and more open space. The TPB has thus been taking a more comprehensive approach in progressively updating OZPs with appropriate development restrictions.

6. Development restrictions are normally imposed on an area-wide (instead of individual lot) basis covering various land use zones. In considering the areas within the scope of an OZP which should be subject to appropriate development restrictions, the TPB takes into account factors such as development/redevelopment pressure, the local character (e.g. zones along the Victoria Harbour waterfront and zones within view corridors to important ridgelines) and planning reviews undertaken to meet changing community aspirations and needs.

7. Where OZPs do not have comprehensive development restrictions on the land use zones, imposition of development restrictions in respect of specific land lots through OZP amendments may be necessary. These land lots are basically potential Government land sale sites, the imposition of development restrictions on which would provide certainty of the permissible development intensity.

Public Consultation

8. The TPO clearly stipulates the statutory public consultation procedure the TPB has to follow in preparing or amending OZPs. Any draft or amendment OZP will be exhibited for public inspection under the TPO. Any person, including the affected landowners, can make representations to the TPB. The representations will be published for comments. The representations and comments on representations so received will be considered by the TPB in accordance with the provisions of the TPO. Any proposed amendment to the OZP to meet the representations will be published for further representations. After consideration of the further representations, the OZP together with any representations, comments and further representations as well as the amendments proposed by the TPB will be submitted to the Chief Executive in Council (CE in C) for consideration and approval.

9. To better reach out to the public to solicit their views, on top of the

statutory requirements of publishing notices on the OZPs in newspapers and the Gazette, additional administrative measures are adopted by posting notices at the Secretariat of the TPB, the Planning Enquiry Counters of the Planning Department, the relevant District Planning Office, local community centre, District Office, Rural Committee Office and the TPB website.

10. As an established practice, public consultation on OZPs involving the imposition of development restrictions is conducted during but not prior to the exhibition period of the OZPs. This aims to avoid any premature public knowledge of the intended planning control, which may nullify the effectiveness of the development restrictions, before the OZPs come into effect.

Development Rights under Land Leases

11. In determining whether to impose development restrictions and the appropriate levels to be imposed, the TPB will take all relevant considerations into account, including the land rights of affected private properties under leases which are balanced against the general interest of the community. As mentioned in paragraph 8 above, any person, including landowners of private sites subject to new development restrictions, can make representations to the TPB. All representations will be duly considered by the TPB and CE in C in accordance with provisions of the TPO.

12. In general, existing buildings will not be affected by development restrictions newly imposed on OZPs. However, when an existing building is to be redeveloped, the redevelopment would be subject to the new development restrictions, or the bulk and height of the existing building, whichever is the greater if the OZPs so provide.

Articles 6 and 105 of the Basic Law^{Note}

13. Whether the development restrictions in OZPs are in breach of Articles 6 and 105 of the Basic Law is a subject of dispute in the *Fine Tower Associates Ltd. v. TPB* [2006] case. In the judgment of the Court of First Instance, it is stated that zoning restrictions imposed in public interest will not normally

^{Note} Article 6 reads “the Hong Kong Special Administrative Region shall protect the right of private ownership of property in accordance with law.” Article 105 reads “the Hong Kong Special Administrative Region shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property. Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay. The ownership of enterprises and the investments from outside the Region shall be protected by law.”

amount to a “deprivation of property” within the terms of Article 105. When a person acquires land, he takes the property subject to an implied condition that, for the public good, the Government may by regulation (including OZPs) limit the uses to which such land might be put in the future. The OZP does not constitute a de facto taking of property and it follows that there has been no contravention of Article 105. Although the case is now subject to appeal, the said court judgment is still valid unless it is overturned.

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