



“House” Restrictions under Government Leases

In light of the recent Court of Final Appeal judgement in *Fully Profit (Asia) Ltd v The Secretary for Justice for and on behalf of the Director of Lands* (FACV No. 17 of 2012) (“the Judgement”), this practice note is issued to supplement Lands Department Lands Administration Office Practice Note No. 3/2000 (“PN 3/2000”) to assist the consideration of building plan submissions for developments where the Government lease or land grant contains a “house” restriction. It should be noted that the contents of this practice note are as a guide only. Lease conditions and facts might vary from one case to another and it is necessary to consider each case on its own merits, and in the context of the lease as a whole.

2. The Judgement held that in the context of the Government lease concerned, the meaning of the word “house” must be taken to mean the type and characteristics of the house existing on the lot concerned at the time the Government lease was entered into. Therefore, in considering building plan submissions referred to in paragraph 1 above, apart from the guidelines set out in PN 3/2000, Lands Department (“LandsD”) will also make reference to the type and characteristics of the house which was actually standing on the lot concerned at the time the Government lease was entered into. Any building proposal not in accordance with the type and characteristics of the house standing on the lot at the time the Government lease was entered into, particularly the building height, is not permitted under the “house” restriction, and a lease modification subject to payment of premium and administrative fee would be required unless paragraph 5 below applies.

3. Paragraph 2 above is also applicable to sub-divided lots still held under the original Conditions of Grant/Sale/Exchange (i.e. no Government leases have been executed) which belong to the same parent lot of other sub-divided lot(s) with individual Government lease(s) entered into where house(s) was/were already standing on the sub-divided lot(s) at the time of the execution of the Government lease(s) and all houses in the sub-divided lots of the parent lot were erected pursuant to the terms of the original Conditions of Grant/Sale/Exchange. Accordingly, in considering building plan submissions in respect of developments on these sub-divided lots still held under the original Conditions of Grant/Sale/Exchange, apart from the guidelines set out in PN 3/2000, LandsD will make reference to the type and characteristics of the house(s) which was/were actually standing on the sub-divided lot(s) of the same parent lot with individual Government lease(s) at the time of the execution of the Government lease(s).

4. For cases where (i) no house existed on the lot concerned at the time the Government lease was entered into; or (ii) no Government lease has been executed and the house was only erected on the lot subsequent to entering into the original Conditions of Grant/Sale/Exchange except those sub-divided lots mentioned in paragraph 3 above, unless there is evidence to establish the context in interpreting the word “house” (such as correspondence between Government and the lot owner, approved building plans, pre-existing houses, etc.), LandsD will continue to make reference to the guidelines set out in PN 3/2000 in considering compliance with the “house” restriction in the Government lease or land grant.

5. If the lot or sub-divided lot mentioned in paragraphs 2 and 3 above has been redeveloped where LandsD has approved or raised no objection to the building plans for that redevelopment, the development intensity (in terms of gross floor area (“GFA”) and building height) of that redevelopment would be recognized by LandsD in determining the type of “house” to be permitted under the relevant Government lease or Conditions of Grant/Sale/Exchange, subject to such recognition not being taken as any waiver or abandonment of the “house” restriction and the Government’s rights under the terms of the Government lease or land grant, or as any estoppel against the Government. Where such recognition is to be given in the above circumstances, the lot owner may be asked to enter into or he may apply for a lease modification such that the particular development intensity (in terms of GFA and building height) as already approved by LandsD or to which LandsD has raised no objection together with the entrance requirements set out in PN 3/2000 would be specified as what may be permitted to be built under the modified Government lease or Conditions of Grant/Sale/Exchange. As the recognition and the lease modification are only for the purpose of acknowledging the redevelopment already completed pursuant to LandsD’s approval, and in turn for avoiding any doubt and for providing a clear starting point for the consideration of any further redevelopment proposals for the lot or sub-divided lot in question, the said modification would be subject to nil premium (but subject to payment of an administrative fee).

6. It must be noted that nothing in this practice note shall in any way fetter or affect the rights of the Government, the Director of Lands and their officers under the relevant Government lease or land grant or their rights as lessor/landlord, who are exercising such rights in the capacity of a lessor/landlord and who hereby reserve all such rights, and that nothing in this practice note including any words and expressions used shall in any way affect or bind the Government regarding interpretation of the terms and conditions of the relevant Government lease or land grant.

7. This practice note is issued for general reference purposes only. All rights to modify the whole or any part of this practice note are hereby reserved.

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Director of Lands
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