



**Imposition of Building Covenants (BC) in
Modification/Land Exchange Cases for Non-residential Developments**

Practice Note No. APSS 2/94 published in September 1994 sets out the circumstances under which a BC will be imposed in respect of lease modification and land exchange cases involving sites for residential developments. That Practice Note shall remain in full force and effect.

2. For the avoidance of doubt, the circumstances under which BC will be imposed in respect of lease modification or land exchange cases involving sites for non-residential (including industrial, commercial etc.) purposes are hereby set out as follows:-

(a) Situations where an immediate BC will be imposed i.e. the BC to be imposed will take effect upon execution of the modified lease conditions or Conditions of Exchange

(i) the lot is vacant; or

(ii) the lot is subject to an unfulfilled BC; or

(iii) the gross floor area (GFA) of the existing building is less than 30% of the GFA permitted under the lease after modification; or

(iv) other special situations that warrant the imposition of an immediate BC such as in cases where the lot is zoned CDA and planning approval has been obtained such that upon redevelopment there are public facilities required to be provided within the lot which will also be required to be constructed and brought into operation within a specified period.

(b) Situations where a deferred BC will be imposed

Subject to (c) below, a deferred BC^(note) will be imposed which will take effect on the date the Buildings Department

^{Note:} For cases where a deferred BC was contemplated during the processing of the lease modification/land exchange applications, however, pending finalization and execution of the lease modification/land exchange documents, the existing building has already been demolished, under such circumstances, the BC will take effect at the time of completion of the documentation.

issues the demolition consent, if the GFA of the existing building/buildings on the lot is 30% or more of the GFA permitted under the modified lease conditions/ Conditions of Exchange.

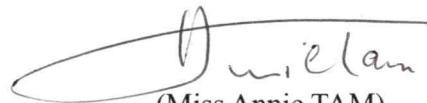
(c) Situations where no BC will be imposed

- (i) For the avoidance of doubt, cases where the existing building has already been developed to the extent that the GFA of the existing building equates to 60% or more of the maximum GFA permitted under the modified lease after modification or Conditions of Exchange and the building can be adapted or converted into the new use, no BC will be imposed.
- (ii) The current practice of not imposing a BC for modification or land exchange cases which are minor or technical in nature will continue. Cases fall within this category also include cases where adjustment of lot boundary is required but such does not give rise to increase in GFA/ plot ratio.

3. In determining the BC period, account will be taken of the existing building(s) on the lot and any potential problems associated with the demolition of the building(s), amongst other considerations.

4. For the avoidance of doubt, wherever a BC is imposed, the standard clauses relating to "restriction of alienation prior to compliance" and "one assignment prior to compliance" will also be included.

5. For cases which do not fit totally with any of the situations mentioned in paragraph 2 the District Lands Conference shall determine whether a BC should be imposed and the appropriate period if it is decided to impose one.



(Miss Annie TAM)

Director of Lands

21 November 2008