Development Control of Buildings in Hong Kong

Ch. 2 Town Planning

cyY 2012 - 2013
Contents

• -Land Use Planning - legal framework
• -Change of land use application
• -Applications and appeal
• -Waivers
• -Rezoning
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1. Legal Framework

• Town Planning Ordinance empowers Town Planning Board to control land use of zones by Outline Zoning Plans since 1939 (OZP is statutory)

• Prior to commencement of any development/ redevelopment on land, it is always necessary to check whether the proposed land use complies with the relevant OZP
Town Planning Controls

• Outline Zoning Plans
  – 3 Scenarios:
    • Proposed use in Column One
    • Proposed use in Column Two
    • Proposed use NOT in either of the two columns?
  – How to find out Columns of OZP information first?
Statutory Plans

- Introduction
- Schedule of Plans
- OZPs and DPA Plans
- Coverage of OZPs and DPA Plans
Statutory Plan

- Tai Tam & Shek O OZP (S/H18/9)
  
  Schedule of Amendment item(s) for S/H18/8: A1, A2, B1, B2, B3, B4, B5, B6, B7, B8, B9, C1, C2, D1, D2

- Yau Ma Tei OZP (S/K2/19)

  Schedule of Amendment item(s) for S/K2/18: A
## RESIDENTIAL (GROUP A)

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uses always permitted</td>
<td>Uses that may be permitted with or without conditions on application to the Town Planning Board</td>
</tr>
<tr>
<td>Ambulance Depot</td>
<td>Commercial Bathhouse/Massage Establishment</td>
</tr>
<tr>
<td>Flat</td>
<td>Eating Place</td>
</tr>
<tr>
<td>Government Use (not elsewhere specified)</td>
<td>Educational Institution</td>
</tr>
<tr>
<td>House</td>
<td>Exhibition or Convention Hall</td>
</tr>
<tr>
<td>Library</td>
<td>Government Refuse Collection Point</td>
</tr>
<tr>
<td>Market</td>
<td>Hospital</td>
</tr>
<tr>
<td>Place of Recreation, Sports or Culture</td>
<td>Hotel</td>
</tr>
<tr>
<td>Public Clinic</td>
<td>Institutional Use (not elsewhere specified)</td>
</tr>
<tr>
<td>Public Transport Terminus or Station (excluding open-air terminus or station)</td>
<td>Mass Transit Railway Vent Shaft and/or Other Structure above Ground Level other than Entrances</td>
</tr>
<tr>
<td>Residential Institution</td>
<td>Office</td>
</tr>
<tr>
<td>School (in free-standing purpose-designed building only)</td>
<td>Petrol Filling Station</td>
</tr>
<tr>
<td>Social Welfare Facility</td>
<td>Place of Entertainment</td>
</tr>
</tbody>
</table>
Land Uses

• Land use categories include
  – residential (R) - RA, RB, ...,  
  – commercial (C), 
  – industrial (I), 
  – industrial/office (I/O), 
  – government/institution/community (GIC), 
  – comprehensive development areas (CDA), 
  – village type development (V), 
  – open space (O), 
  – green belts (GB) and 
  – other unspecified (OU) uses as provided under s.4(1) of TPO.
Scenario 1 - Col. 1

• Use under Column 1 is always permitted.
  – Temporary uses may not be required to follow strictly OZP
  – Max. Plot ratio & building height may also be specified
  – Check the accompanied Explanatory Statement, and a Schedule of Notes
Schedules of Notes

• Prepared under TPO.
• Consists of 2 parts:
• Statement of uses always permitted in all zones.
• A set of column 1 and column 2 uses.
• A statutory document.
• Definitions of Terms Used in Statutory Plans (non-statutory document)
Explanatory Statement

• Non-statutory document
• Describes the context and planning proposals of the statutory town plan.
• Spells out the ‘planning intention’
• ‘planning intention’ specifies the propose of a given land use zone.
3. Application and Appeal

- Scenario 2 - Use in Col 2
  - Use under Column 2 requires permission from TPB, with or without conditions

- **TOWN PLANNING ORDINANCE - S16**: application for the grant of such permission shall be made to the Town Planning Board.
HKPSG

• For more details of the planning rationale, see HKPSG:
• All OZPs are prepared under the guidance of the Hong Kong Planning Standards and Guidelines (HKPSG).
• Outline the criteria for determining the scale, location and site requirements of different land uses and facilities.
• How many population should share a hospital, a library, etc.
Appeal and Existing Use

• If s.16 application is not successful, applicants may apply for review and/or appeal under s.17 of TPO.

• OZPs’ land use designation does not require immediate change of use of existing properties to conform to the requirements. It is applicable only when the whole or part of any building or land intended to be used for a purpose different from that existing.
s16 & s17 - different battlefields

• In an application to the Town Planning Board (TPB) under section 16 of the Town Planning Ordinance, everything is done on paper and there is no hearing.
• In an application for review pursuant to section 17 of a TPB decision made under section 16, there is a hearing but no oral evidence.
• In an appeal to the Town Planning Appeal Board (TPAB), section 17B(6) expressly provides that: 
  - ...
• “(6) Prior to or at the hearing of an appeal, an Appeal Board may –
• (b) hear evidence on oath and administer any oath necessary to swear in a witness;
• (c) admit or take into account any statement, document, information or matter whether or not it would be admissible as evidence in a court of law;”.

• Thus, it is contemplated that the materials to be received by an Appeal Board (TPAB) may be different from those put before the TPB.
• TPAB is not working under the same legal constraints as in a formal court of appeals.
• In practice, more often than not, in appeals under section 17, there are new materials put before the Appeal Board by both sides which were not before the TPB.
Conflicts between Planning and Lease

- Restrictions by lease is contractual, but by OZP is statutory.
- Incompliance with the OZP for existing use does not matter.
- Incompliance with the OZP for redevelopment use may result in building plan being rejected; but no other enforcement provisions.
- Incompliance with the user clause of the lease can normally be modified by paying land premium (for the whole tenure) or waiver (for a period of time).
4. Waiver

• Special Waiver for Converting Industrial Buildings
• Under Practice Notes No. 1/2010 issued by the Lands Department, and valid between 1/4/2010-31/3/2013
• An owner of an industrial building locating in “Ind”; “Commercial”; “OU(B)” zone may apply for a waiver with nil payment for a change of use of the ENTIRE building for the entire life of building or upon expiry of the current lease if:
• 1) At the time of application, the building is at least 15 years old from the date of OP;
• 2) The applicant is the legal owner, or all joint owners with all mortgagees; chargees and purchasers with a valid S&P.
• 3) The proposed use is within Column One or Column Two of the relevant OZP; except for residential use
Subject to these conditions:

1) existing building frame (excluding unauthorized structures) must be maintained; i.e. no variation building height or bulk will be permitted (except where the variation will not exceed the gross GFA in the last approved building plans)

2) all conversion works will comply with the BO

3) all conversion works must be completed within 3 years from the letter approving the waiver
• 4) new buyers entering S&P after the approved waiver must undertake to comply with these conditions
• 5) during the special waiver period, no part of the building shall be used for uses other than that specified in the waiver
• 6) other approvals from other authorities such as Fire Department, remain necessary to be obtained
• 7) reversion to the original use requires an application to cancel the special waiver by ALL the owners
5. Rezoning

- Scenario 3 - Use not in both Col
- s.12A TPO
- Rezoning can be proposed
- but is a more tedious process
- and no appeal or review provisions
Compare s.16 v Rezoning

*Planning Application (s.16 of TPO)*
Submit s.16 application to TPB

- 2 months
  - Accept or reject application by TPB
  - If rejected, applicants may apply review or appeal (s.17 of TPO)

*Re-zoning Request*
Submit re-zoning proposal to TPB

- 3 months
  - Accept or reject request by TPB
  - If rejected, no appeal channel;
    - if accepted, OZP will be amended for gazetting
Rezoning

- Public consultation
  - 3weeks / 2months
- Hearings of objections
- Amendments due to objections, if necessary
Case study - Rezoning

Re–Zoning – S12A of TPO
Hypothetical Example Conversion of Existing Industrial Building to Hotel Development
PROJECT CREATION

- Government’s Policy to **Maximize Land Use** of Existing Declining Industrial Buildings
  >> Change into Higher-Value, Non-Pollution Use such as Hotels, Office Buildings, etc.

- Change of use to hotel is not found in Col. 1 or 2, → **Planning Application Re-Zoning** (S12A)

- Objective of the Project is a **3-Star Hotel** targeted for Chinese Tourists, including Small-Scale Shopping Mall and Catering Services
THE PLANNING APPLICATION TEAM

- **Developer** or **GP Surveyor** as team leader & coordinator
- **Planner** to prepare **Planning Statement**
- **Architect** to prepare **Development Scheme** of **A&A Works** Chinese Tourists, including Small-Scale Shopping Mall and Catering Services
- **Traffic Consultant** to prepare **Traffic Impact Assessment Report** (*IMPORTANT*)
- **Environmental Consultant** to prepare **Impact Reports** on Noise, Air Quality, Drainage Services, etc.
- **Structural Engineer** and **E&M Engineer** to provide **Advice** on Alteration Works (Optional)
NEW SCHEME – Upper Typical Floor
NEW SCHEME – Typical Section

Existing External Wall & Slab to be Demolished
6. CDA zoning

- Statutory plan
- Column 1 use in CDA zone is different from other zone.
- MLP must be included with a development application of a CDA zone (S.4A (2) of TPO)
- Items must be included in the MLP.
Case Study : CDA Sheung Wan

- Zoned as CDAs in early 1990s in Sheung Wan
- Large-scale redevelopment project started in in 1993
- Commercial use
The Center
(Jubilee St / Queen’s Rd C)

Grand Millennium Plaza
(Wing Lok St / Queen’s Rd C)

Source: Housing, Planning & Land Bureau
Implication of CDA zoning

• To achieve the maximum plot ratio
• To have more comprehensive public facilities
• To achieve economy of scale
• To infringe private property rights
• What is the impact of CDA zoning on the fringe area?
7. DPA

• To be explored by students
• How about areas not zoned by OZP?
• No planning control?
• See Melhado case
• Then the non-OZP areas are demarcated as DPA (Development Permission Area)
• What are the differences between OZP and DPA controls?
• Why PD has enforcement power in DPAs, but not in OZP?