席上文件第 3 號
地政總署
九龍東區地政處
DISTRICT LANDS OFFICE/
KOWLOON EAST
LANDS DEPARTMENT

我們矢志努力不懈，提供盡善盡美的土地行政服務。
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九龍城區議會
房屋及基礎建設委員會
何顯明主席

何主席：

就吳寶強議員在 3 月 18 日的提問指地契條款上「one house」(一幢房屋) 一事和修訂契約及補地價事宜，九龍東區地政處 (下稱「地政處」) 現作以下回覆：

1. 龍城、土瓜灣及紅磡區內的私人地段眾多，而在這些區內受「one house」(一幢房屋) 地契條款限制的私人地段數目，本處並沒有資料。

2. 有關修訂地契及補地價等工作，地政處會按既定機制處理。若土地發展違反現時地契條款規定，土地業權人可向地政處申請修訂地契。如獲批核，地政處會根據修訂後地契條款上所放寬的發展限制，向申請人徵收「補地價」費用。

在闡釋地契條款中「one house」的定義，地政總署早在 2000 年已發出作業備考編號 3/2000 (附件一)，以協助業界在遇到地契條款有「one house」限制時，能夠擬定符合地契限制的發展圖則。根據上述作業備考，在一般情況下，「one house」須備有一個主要出入口及一個次要出入口。額外的出入口會令發展違反「one house」條款。所以，「one house」並不一定指一所獨立屋，若多層大廈能符合以上出入口數目的規定，亦未必違反「one house」條款。

另外，終審法院在 2013 年就裕昌(亞洲)有限公司對律政司司長訴訟案 (下稱「案件」)就「one house」作進一步的裁決，認為「one house」一詞的涵義，必須在該土地契約簽立時的情況下考慮。案件中的政府地契所容許的重建方案只限於在每個地段上建造不超過一所房屋，而所建房屋須具有在訂立有關地契時已在該幅土地上存在的房屋的特性(包括樓高五層)，任何其他類型的建築物均不符合地契條款。因此，上述案件的業權人在該等地契地段重建一座樓高 26 層橫跨該等地段的建築物的建議，是現行地契所不容許的。因應這項裁決，如業權人希望按原計劃重建，便須申請修訂地契條款，並繳付應付的地價及符合相關條款。

有關裁決雖針對案中特定的地契作出，但對同類個案亦可能有影響。然而，各地契條款和情況不盡相同，因此評估每宗個案時，需按個別情況，與所有相關因素一併考慮。

因應終審法院在裕昌(亞洲)有限公司對律政司司長一案的裁決，地政總署於 2014 年 6 月 25 日發出作業備考編號 3/2000A(附件二)補充作業備考編號 3/2000，就相關地契或批地文件載有「房屋」限制的發展計劃，在建築圖則方面提供一般指引。本處會根據既定機制及上述指引考慮受「one house」條款限制的土地的發展建議/建築圖則。

九龍東區地政專員
(陳清揚 代行)

二零一五年三月二十七日

附件

c.c. DLO/KE(P) 305/KLT/KE (VII)

附件一

Lands Administration Office
Lands Department
Practice Note Issue No. 3/2000

Number of Houses Restrictions under Government Leases

This practice note is issued to assist the concerned parties in preparing building plan submissions for developments which are subject to a restriction in the government lease or land grant on the number of houses which may be erected on the affected land.

I will henceforth accept that a building with one main entrance and one secondary entrance, together with such means of escape (MoE) as may be required under the Buildings Ordinance to serve the buildings (providing such MoE are designed and constructed to be for exit purposes only and are openable only from the inside) is one house.

For the avoidance of doubt, a multi-storey residential/commercial development with shops on the ground floor, each shop having its own separate access to and from the street, would not comply with the definition of "one house" nor would a terrace of town houses each with its own separate access. A joint development, having the characteristics of one house but constructed over two lots, the leases of which each contain a clause that the owner "shall not erect other than one house", will not be permitted. It should also be noted that free-standing outbuildings are also "houses". Thus a proposed development on a lot with a "one house" restriction comprising a building meeting the criteria set out in paragraph 2 above but with, for example, a free-standing guardhouse or E&M room, would breach the one house restriction.

N.B. The above is applicable only to those lots where the lease conditions refer to "house" or "houses" without qualification. The following summarises my interpretation of common qualifications:-

Dwelling House	:	Restricts user to residential purposes. Residential flats within a building meeting the "house" criteria are acceptable.
Private Dwelling House	:	A house designed and constructed to be occupied as a single residential unit.
European House	:	Same criteria as "house".

It should be noted that the interpretations given above are as a guide only. Lease conditions 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 conditions as a whole.

(R.D. Pope)
Director of Lands

April 2000

Lands Administration Office
Lands Department

Practice Note

Issue No. 3/2000A

"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.

Bernadette Linn

(Ms. Bernadette Linn)
Director of Lands
25 June 2014