

**Draft Town Planning Board Guidelines for Application for Transfer of Plot Ratio
under Section 16 of the Town Planning Ordinance**

1. Purpose

The paper is to seek Members' agreement to the draft Town Planning Board Guidelines for Application for Transfer of Plot Ratio under Section 16 of the Town Planning Ordinance ("the TPB Guidelines") at **Annex 1** which seeks to incentivise private sector redevelopment and preservation of buildings with conservation value in Yau Ma Tei and Mong Kok ("YM").

2. Background

- 2.1 The District Study for Yau Ma Tei and Mong Kok ("the YM Study"), commissioned by the Urban Renewal Authority ("URA"), was completed in 2021. The Town Planning Board (the Board) was briefed on the findings and recommendations of the YM Study on 7 January 2022 and Members generally considered that the YM Study was comprehensive and had provided some good recommendations to tackle urban renewal issues in the YM Areas and incentivise private sector participation in the urban renewal process. Relevant TPB Paper No. 10795 and the minutes of the Board meeting are available at the Board's website at https://www.info.gov.hk/tpb/en/meetings/TPB/Agenda/1262_tpb_agenda.html and https://www.info.gov.hk/tpb/en/meetings/TPB/Minutes/m1262tpb_e.pdf respectively. The YM Study has proposed a Master Renewal Concept Plan Framework which identifies development nodes, major public open space and major green corridors among others in the Yau Ma Tei and Mong Kok areas. The plan is at **Annex 2**.
- 2.2 According to the YM Study, of the 3 350 existing buildings in YM as of 2017, about 65% are aged 50 years or above. Among them, 47% are in dilapidated condition, and 37% are "Three-Nil Buildings"¹. Moreover, over 800 buildings are classified as having nil or negative redevelopment potential (i.e. having an existing plot ratio ("PR") equal to or exceeding the maximum permissible level under the Outline Zoning Plan ("OZP") and/or Building (Planning) Regulations). On the other hand, numerous small sites with old buildings thereon still have unused PR but there lacks a mechanism to encourage developers to assemble such unused gross floor area ("GFA") for gainful use. It is thus difficult to rely solely on the current planning regime to carry out urban renewal effectively. Indeed, redevelopment momentum in YM has also been slow, with some 50 occupation permits (for domestic and composite buildings) issued in the past 20 years.

¹ "Three-Nil Buildings" refers to buildings which do not have owners' corporations or any form of residents' organisations or do not engage property management companies in managing their buildings.

Against the above, the YM Study recommends, among others, the Transfer of Plot Ratio (“TPR”) mechanism as a new planning tool to help address urban decay problem and preserve buildings with conservation value. The Administration supports the introduction of the TPR scheme in YM as a pilot to incentivise the private sector to participate in urban renewal with a suitable development scheme through the processing of section 16 planning application under the Town Planning Ordinance (the Ordinance)². Through the section 16 planning application system, applicants will be required to justify the development proposals with supporting technical assessments, and the Board will be able to scrutinise the development proposals having regard to the TPB Guidelines, departmental comments, public views and other relevant planning considerations.

3. **TPR Mechanism**

Benefits of TPR

- 3.1 The concept of TPR generally refers to transfer of permissible GFA from “sending sites” (“SS”) to “receiving sites” (“RS”) within the limits proposed under the pilot scheme. Examples of SS may include sites of low redevelopment potential (e.g. sites with small and isolated dilapidated buildings, or buildings with GFA exceeding the OZP level); sites with building(s) worthy of preservation; or sites suitable for conversion to open space or Government, Institution and Community (“GIC”) purpose. RS are usually larger site(s) at more strategic and accessible locations suitable for higher density development and in processing the planning applications, favourable consideration will be given to RS not less than 1 000m² in area to provide more room to accommodate the “transferrable” GFA with better layout/building design and adequate amenities. TPR could bring the following benefits –
- (a) providing incentives for redevelopment of dilapidated buildings with low redevelopment potential and for preservation of buildings with conservation value;
 - (b) maximising development potential of more sizable sites at the more strategic and accessible locations suitable for higher development intensity by transferring GFA from small and isolated sites; and
 - (c) facilitating a better restructuring and replanning in the old urban area and bringing planning gains (e.g. additional open space, GIC facilities) to the community.
- 3.2 To make sure applicants will follow through to implement their committed proposals under the approved development scheme for both SS(s) and RS(s), lease modification or land exchange is required (please see paragraphs 3.6 and 3.7 below).

² Other efforts to incentivise private sector redevelopment in YM include the first batch of amendments to Mong Kok OZP initiated by the Planning Department in mid-2022 which permit interchangeability of domestic and non-domestic PR of selected areas, remove the PR restriction of the “Commercial” zone along Nathan Road, rezone certain character streets to “Other Specified Uses” annotated “Mixed Use” and relax the building height restrictions of a number of zones to expedite urban renewal in the district. The amended Mong Kok OZP was approved by the Chief Executive in Council on 30 May 2023. The Metro Planning Committee endorsed similar amendments to Yau Ma Tei OZP on 9 June 2023.

- 3.3 We propose that the TPR mechanism be implemented in YM on a pilot basis. Under this mechanism, a development scheme involving transfer of GFA from SS(s) to RS(s) **within the same OZP** will be considered **in a totality manner**. Such development schemes have to be approved by the Board based on section 16 planning applications submitted by applicants. The applicant has to demonstrate to the Board the planning gains from the development scheme along those set out in paragraph 3.1 above and detailed in the TPB Guidelines to justify a higher development intensity for the RS as well as the technical feasibility of the TPR scheme.

Flexibility allowed under the planning regime

- 3.4 The TPR scheme enables transfer of GFA from SS³ to RS within the same OZP by section 16 planning applications for minor relaxation of the permissible PR/GFA at the RS by up to **a maximum 30%**⁴, and the building height restriction of the RS as specified in the OZP may be relaxed where justified in tandem. In order to provide further incentives, the proposed mechanism will allow the following additional flexibility –

- (a) the RS(s) and SS(s) are **not necessarily adjoining to each other and/or under the same land use zoning**;
- (b) under the same planning application, there can be at most **two RSs**, but **no limit on the number of SSs**. This is to increase planning and design flexibility for cases such as where the “transferrable GFA” from SS(s) is more than the 30% limit of one single RS, hence requiring another RS to receive the residual “transferrable GFA” in order to maximise redevelopment potential. On the other hand, we do not recommend more than two RSs under the same planning application as it may diffuse the intended impact of the GFA transfer from SS to more strategic/accessible locations for higher intensity developments;
- (c) **interchangeability of domestic and non-domestic GFA** upon transfer may be allowed if the applicant can justify in the planning application the merits of the TPR, the GFA mix and the technical feasibility. For example, subject to the Board’s agreement, commercial (non-domestic) GFA transferred to a residential site can be used for domestic purpose in planning terms;
- (d) any **GFA of the existing building at the RS exceeding the permissible parameters** under the OZP can be accommodated on the RS and **shall not be counted against the 30% (maximum) increase arising from the relaxation** (please see Example 2 under “Illustration of Max GFA at RS under TPR” at **Appendix 2 of Annex 1**);

³ The maximum GFA of the SS, which can be transferred, means (i) the maximum PR/GFA specified in the Notes of the OZP; or (ii) the PR/GFA of the existing building if provided for in the Notes of the OZP, whichever is the greater. For the avoidance of doubt, sites falling within zones without PR/GFA control under the OZP cannot be SS.

⁴ Referring to a 30% increase over the maximum PR/GFA of the RS specified in the Notes of the relevant OZP. For the avoidance of doubt, sites falling within zones without PR/GFA control under the OZP cannot be RS.

- (e) where the RS is subject to both (i) maximum PR for a mixed use development and (ii) maximum PR for domestic or non-domestic use under the Notes, the 30% relaxation is calculated based on (i) regardless of the applied use for the RS in order to provide more flexibility to the applicant; and
- (f) the GFA of the GIC facilities supported by the Government at the SS and/or RS will not be accountable for the permissible GFA allowed for the application, i.e. **GFA of such GIC facilities** is to be allowed **on top of** the combined maximum permissible GFA of the SS and its RS(s) upon TPR.

3.5 Some illustrations on the transferrable GFA from SS and the maximum additional GFA at RS are at **Appendices A** and **B** of the draft TPB Guidelines at **Annex 1**.

Conditions on approved TPR applications

3.6 Given that a TPR application is considered in a totality manner, it is important to ensure that the intended planning gains stated in an approved application (e.g. provision of public open space and/or community facilities, preservation of buildings on heritage or architectural grounds at SS) could be realised in a timely manner and as committed through imposition of appropriate planning approval conditions. It is also necessary to ensure ongoing and proper management and maintenance of facilities for the intended and committed uses benefitting the general public. To ensure enforceability of applicants' commitments and obligations under the approved application, we will incorporate relevant planning approval conditions and other requirements into the land leases. Specifically, the successful applicants will be required to –

- (a) apply for **lease modification or land exchange of both the SS(s) and RS(s)** (irrespective of whether implementation of the approved proposal contravenes the existing lease conditions or not), and for necessary **approval of building plans/building works for both sites** as a bundle. The requirements as stated in (b) and (c) below will be incorporated into the land leases upon lease modification or land exchange. In connection with lease modification/land exchange, premium issue will arise (see paragraph 5.6 below);
- (b) apply for pre-sale consent/certificate of compliance/consent to assign as appropriate in respect of the new development at the RS(s) only after completion of the GIC facilities and/or preservation works of buildings, as considered appropriate by the Government; and
- (c) comply with the restriction on alienation of the commercial portion of the approved scheme except as a whole and the owner of the commercial portion shall take up the maintenance and management of the public facilities and/or buildings for preservation under the lease as appropriate to ensure that the public facilities and/or buildings for preservation would be maintained and managed or if applicable until it is handed over to the Government upon request.

Appropriate condition(s) would be imposed under the leases governing the SS(s) and RS(s) to the effect that non-compliance of any lease conditions of the SS(s)

and/or RS(s) in the obligations on provision, management and maintenance of the GIC facilities and/or preservation works of buildings etc. as considered appropriate by the Government may render the Government taking lease enforcement action (including re-entry action) against the SS(s) and RS(s) where applicable.

- 3.7 The purpose of requiring application for lease modification or land exchange as stated in paragraph 3.6(a) above is to ensure the intended planning gains at the SS will be realised through transforming them into contractual obligations (i.e. along the direction of paragraphs 3.6(b) and 3.6(c) above) under lease. Appropriate development restrictions to reflect the approved planning proposal on the SS will be added to the lease of SS⁵. The lease modification/land exchange as required by an approved TPR scheme may involve premium payment and the premium for the SS(s) and RS(s) would be charged and assessed at full market value (“FMV”) following the established practice, i.e. reflecting the enhancement in land value of the SS(s) and RS(s) before (i.e. the land value under the existing lease) and after (i.e. the land value under the modified lease) the implementation of the approved TPR scheme.
- 3.8 We acknowledge that the pilot TPR scheme is new to the industry. As a facilitating measure, the Planning Department will offer pre-submission enquiry service and meetings for applicants, with involvement of other departments as necessary, at the early stage of the planning process.
- 3.9 Subject to market response to the pilot scheme, the TPR mechanism will be reviewed around 2025 with a view to enhancing the operational details of the scheme. At the time of review, we will take into account recommendations of further urban restructuring studies respectively in Sham Shui Po and Tsuen Wan now being conducted by the URA.

4. Comments of Bureaux and Departments

The TPB Guidelines have been circulated to relevant Government bureaux/departments (B/Ds) for comments. No objection or adverse comments have been received. The comments of the B/Ds have been incorporated, as appropriate, on the TPB Guidelines at **Annex 1**.

5. Consultation with Stakeholders

- 5.1 The Land and Development Advisory Committee (“LDAC”)⁶ was consulted on the proposed TPR framework on 19 May 2023. While The Real Estate Developers Association of Hong Kong (“REDA”) is represented on LDAC, as its representative was absent from the above-mentioned meeting, Planning Department arranged to brief REDA on 29 May 2023.

⁵ It may not be necessary to impose new development restriction on user, building height and permissible GFA on RS if the concerned lease is virtually unrestricted.

⁶ Members of LDAC comprise nominees from various professional and trade organisations relevant to the real estate development sector, persons from other professional backgrounds, and representatives of government departments.

Views of LDAC

- 5.2 LDAC Members supported the proposed pilot scheme on TPR in YM through processing of section 16 planning applications by the Board. They acknowledged that the pilot scheme would expedite urban renewal as well as release development potential of sites, such as those of smaller size, and transfer it to sites with higher development intensity for redevelopment, while at the same time enable the original small sites to be developed into open space benefitting the community, or other community facilities, or even to be put to conservation purposes. LDAC Members also welcomed the introduction of various incentives under the scheme, such as interchangeability of domestic and non-domestic PR. They suggested the Government to articulate clearly the vision of the pilot scheme and its public good in terms of urban improvement and planning benefits for the relevant localities. Members considered that the processing of applications under the pilot scheme should comply with the established and treasured planning principles such as those related to visual impact and urban design aspects. Members also advised the Government to ensure that effective and enforceable means should be put in place for securing the intended planning gains in the application sites according to the approved proposal. Members took note that a review would be conducted in 2025 with a view to enhancing the operational details of the scheme, which includes the possibility of extending the scheme to other districts, so as to better facilitate market players to make use of the TPR mechanism to expedite urban renewal.

Views of REDA

- 5.3 The REDA expressed that the private sector has been a major driving force in urban renewal, and welcomed any new ideas proposed by the Government to incentivise urban redevelopment activities, including the facilitation of site assembly and more streamlined and efficient application processing. While acknowledging the application of TPR would be conducive to better utilisation of development potential of urban sites, REDA had concerns on premium assessment at FMV, the uncertainties and protracted process arising from lease modification/land exchange and premium assessment, issuance of pre-sale consent/certificate of compliance/consent to assign conditional upon completion of GIC facilities, the uncertainties associated with and time taken in respect of provision of GIC facilities (including seeking comments from government departments, construction cost, maintenance and management), as well as the restrictions on alienation of commercial portion. The REDA considered that the above would reduce the attractiveness of the pilot scheme.
- 5.4 The REDA suggested that lease modification/land exchange should be confined only to the contractual obligations under lease and should not include additional development restrictions; consideration should be given to establishing standard rates on premium to save time and give certainty to developers; more incentives should be given to unrestricted leases; the established procedures of the Government accepting undertaking/bond from developers to guarantee completion of GIC facilities should be adopted; the construction cost of GIC facilities and maintenance and management costs of the public facilities should be deductible from the premium; some “expected turnaround time” by processing departments and means for applicants to receive updates of application progress

should be made known.

Responses

Upholding important planning principles

- 5.5 The views of LDAC have been taken into account in finalising the draft TPB Guidelines where appropriate. The draft TPB Guidelines emphasise that the applicants have to submit relevant technical assessments to demonstrate that the proposals on RS(s) and SS(s) as a whole are technically feasible and would not result in unacceptable adverse impact on transport and other infrastructural capacities; surrounding environment; and visual, air ventilation and other technical aspects. Applicants still have to take heed of the important planning and urban design principles. Apart from addressing urban decay, paragraph 2.5 of the draft TPB Guidelines highlight that more favourable consideration will be given to an application with development proposal that could bring additional planning gains including provision of the needed community facilities and public open space; enhancing open space network, vehicular and pedestrian traffic, streetscape, public space and air ventilation; unblocking important vista; and connecting or synergising with points of interest and/or major pedestrian destination.

Safeguarding realisation of planning gains

- 5.6 It is imperative for the Government to ensure realisation of the planning gains committed in the planning application. Having reviewed the existing development control mechanism, the land administrative regime is the most effective and ready avenue for this purpose. It is suggested to impose planning approval condition(s) to the effect that the applicant should not obtain approval of general building plans for the private development at the RS(s) (and SS(s) if applicable) unless and until the lease modification and/or land exchange for the proposed development at the RS(s) and SS(s) have/has been executed, regardless of whether the approved scheme is permissible under the leases.
- 5.7 The primary objective of requiring lease modification/land exchange for the RS(s) is to add the contractual obligations that are necessary to ensure the timely realisation of the planning gains specified in the approved TPR scheme, in particular the completion of the proposed public use or building preservation works at the SS(s) and their subsequent maintenance and management. Details of the lease conditions are set out in paragraph 3.6 above. For virtually unrestricted leases, it may not be necessary to impose new development restriction on user, building height and permissible GFA on RS.

Premium assessment

- 5.8 As stated in paragraph 3.7 above, the lease modification/land exchange as required by an approved TPR scheme may involve premium payment and the premium for the SS(s) and RS(s) would be charged and assessed at FMV following the established practice, i.e. reflecting the enhancement in land value of the SS(s) and RS(s) before (i.e. the land value under the existing lease) and after (i.e. the land value under the modified lease) the implementation of the approved

TPR scheme. The Land Authority will, during premium assessment, also take into account the impact on FMV of the concerned lot(s) due to imposition of relevant contractual obligations such as provision and/or maintenance of public open space/GIC facilities or building preservation into the lease conditions through lease modification or land exchange. The Land Authority will assess the premium of an approved TPR scheme based on above established practices in a fair and reasonable manner and will take into account as appropriate merits and circumstances of individual TPR schemes.

Incentives under the TPR scheme

- 5.9 Notwithstanding that the TPR scheme may involve payment of premium, it is considered that more sizeable developments with better layout efficiency and amenities at more accessible and strategic locations (i.e. RSs) would yield better market price and achieve better economy of scale than pencil-type redevelopments at small and isolated sites (i.e. SSs). For example, redeveloping a tiny old building without elevator into one with elevator will greatly reduce the usable floor space. Moreover, the TPR scheme has built in lots of flexibilities as set out in paragraph 3.4 above to enhance its appeal.

Provision of GIC/Public facilities

- 5.10 To facilitate the applicant in identifying GIC facilities that are in shortfall in YM and may be supported by government departments for further considering their suitability in a particular site, the Planning Department is drawing up a tentative wish list in consultation with relevant government departments. The Planning Department will provide assistance to the applicant at the pre-submission stage in this regard and help line up liaison between the applicant and concerned department so as to speed up the process.
- 5.11 Which party to bear the ultimate construction and maintenance and management cost of GIC/public facilities will need to be considered on a case-by-case basis. Where the applicant is proposing self-financing social welfare facilities, it is reasonable for the applicant to bear the cost. For other cases, the developer may be reimbursed of the capital costs for provision of such facilities if the facilities are required/requested by the relevant department. Moreover, if the facilities will be handed over to the Government upon completion, the maintenance and management cost will not be an issue. However, if the facilities are to be provided out of the initiatives of the developer as planning gains which are not contingent upon the development/redevelopment of the site, generally these facilities should be provided at the developer's own expenses without deduction from land premium.
- 5.12 The Government will consider whether provision of undertaking/bond to guarantee completion of GIC facilities could be accepted having regard to the circumstances of the particular case.

A more facilitating and certain pre-submission process

- 5.13 As mentioned in paragraph 3.8 above, the Planning Department welcomes pre-submission enquiry and meetings. Moreover, the Planning Department is

reviewing the pre-submission arrangement with a view to streamlining and expediting the development process. After an application is received, it will be processed in accordance with the Ordinance and the relevant Town Planning Board Guidelines.

6. Advice Sought

6.1 Members are invited to:

- (a) note the results of the consultation with LDAC and REDA and the departmental responses in paragraph 5 above; and
- (b) agree that the draft TPB Guidelines (**Annex 1**) is suitable for promulgation.

6.2 The TPB Guidelines will take immediate effect upon promulgation and a press release will be issued by the Board Secretariat concurrently.

Attachments

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| Annex 1 | Draft Town Planning Board Guidelines for Application for Transfer of Plot Ratio under Section 16 of the Town Planning Ordinance |
| Annex 2 | Master Renewal Concept Plan Framework proposed under the District Study for Yau Ma Tei and Mong Kok |

**PLANNING DEPARTMENT
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