



Design, Disposition and Height Clause under Lease

Introduction

This practice note sets out the streamlined measures regarding the Design, Disposition and Height (DDH) or Design and Disposition (DD) clause, including the scope of application of the clause and the aspects to be considered when the Director of Lands (the Director) exercises his discretion under the clause.

Scope of application

2. As stipulated in the Joint Practice Note (JPN) No. 5, as a streamlined measure, building height restriction would generally not be included in new leases and modified leases except in special circumstances.

3. In new and modified leases, irrespective of the size of the sites, the DD clause will generally **not** be imposed for sites which:

- (a) are for commercial development;
- (b) are for private residential or composite commercial / residential development in Density Zone I in urban areas;
- (c) fall within zone for high-density residential or composite commercial / residential development (i.e. zoned “Residential (Group A)” on the statutory town plans) in the New Territories;
- (d) are for industrial and / or godown development; or
- (e)
 - (i) require Town Planning Board’s approval of their Master Layout Plan (MLP) or Layout Plan (LP), or
 - (ii) are covered by planning permissions with approval condition requiring submission of MLP or LP to the Director of Planning; or
 - (iii) require submission of MLP or LP under lease as stated in the Explanatory Statement of the statutory town plans,

on the understanding that there will be specific provisions in the lease providing adequate control on essential development parameters such as gross floor area (GFA) / plot ratio for the sites concerned.

4. Where there is a need to impose in new leases other development restrictions on top of those spelt out under the statutory town plans such as for implementation of urban design concepts, or to exercise control on the flat size or the number of residential units or both, the Director will consider the inclusion of specific clauses (rather than DD clause) giving greater clarity to achieve the relevant restrictions for the concerned sites.

Modification to remove the DDH or DD clause under existing leases

5. For existing leases falling within any of the scenarios (a) to (e) in paragraph 3 above, the lot owner, when pursuing lease modifications to implement re-development plans, may apply to the District Lands Office (DLO) for lease modification to remove the DDH or DD clause. Such application, if approved, would be subject to the inclusion of a new maximum GFA clause (if the original lease does not contain such restriction) and other appropriate terms and conditions normally applicable to such lease modifications (e.g. sustainable building design requirements, car parking requirements, user, landscaping and preservation of tree requirements, building covenant and other requirements as may be imposed by other bureaux or departments) including payment of administrative fee and premium as the Director thinks fit. Each case will be considered on its own merits.

Timing for giving approval of DDH or DD clause

6. Where the lease contains DDH or DD clause, upon checking the compliance with the lease conditions of general building plan submissions received through the Buildings Department (BD)'s Centralized Processing System, the Lands Department (LandsD) would simultaneously consider the giving of approval under the DDH or DD clause and separate application is not required. As a result, approval in principle for building plans under lease together with approval under DDH or DD clause may be given at stage 1 of the streamlined building plans checking process as detailed in Lands Administration Office (LAO) Practice Note (PN) Issue No. 4/2018 provided that the building plans are considered acceptable other than checking of area calculations at stages 2 and 3 of the said checking process and no departments have raised objection to granting of such DDH or DD approval in stage 1. However, such approval in principle, if given, shall be subject to compliance with the conditions imposed and cannot be construed as proof of compliance of the other lease conditions.

Aspects to be considered under DDH or DD clause

7. It is acknowledged that pure design is a subjective issue and it is not our general intention to impose constraints on the aesthetic aspects of a development. However, there are certain aspects of appearance for which it is considered not appropriate to allow complete freedom. To assist Authorized Persons (AP) in preparing building plan submissions, aspects that will generally be considered by the Director when exercising the discretion under the DDH or DD clause (where those aspects have not been separately covered under specific provisions in the lease) are set out below, together with a note of the approach as a guide:

(a) Site Coverage¹

- (i) For the purpose of site coverage (SC) calculation, all components of a building on the lot including all projections and underground structures located outside the building footprint such as water tanks, and plant rooms should be accountable for SC unless expressly exempted under the lease. However, architectural features, cladding and minor features projected from the face of a building having no significant impact on building bulk will normally be disregarded from SC calculation, provided that the same is disregarded by the Building Authority (BA) without the need to grant modification under Section 42 of Buildings Ordinance (BO). In modern leases, where SC clause makes reference to buildings / structures at or above ground level, such restriction will not apply to underground buildings / structures.
- (ii) Environmentally friendly features such as balconies, utility platforms, non-structural prefabricated external walls, etc. as provided under JPNs Nos. 1 and 2 are SC accountable unless they are exempted by the BA and they fall within the exemption provisions in the lease as mentioned in the said JPNs.
- (iii) Curtain wall systems are also SC accountable unless they are exempted by the BA and they satisfy the criteria set out in the lease which contains the “Definitions of GFA and SC (with curtain wall system forming external face of building)” clause which is commonly found in modern leases. For leases which do not contain the exemption provision for curtain wall systems and provided that SC exemption in respect thereof has been granted by the BA, a modification of lease conditions is required before curtain wall systems can be exempted from SC calculation.

(b) Building Height

- (i) The control of building height is detailed in JPN No. 5 which took effect from 15 May 2019. The arrangements therein would generally be followed.
- (ii) Paragraph 15 of the JPN No. 5 specified that the arrangements therein do not apply to cases where, inter alia, the Government Leases concerned explicitly stipulated different specifications or do not contain any provisions for the purpose of controlling the development intensity. For clarity, in the latter scenario, height is measured from the lowest formation level on which any part of the building stands (including basement floors and stilt structures)² up to the top of the highest roof slab of the main roof. In some leases, the

¹ Please note that another streamlined arrangement on SC is being processed and this part will be revised as necessary.

² Localized sunken structures such as lift pits, sump pits, man-holes, sunken planters and sunken trenches for toilets and utilities, etc. would be accepted and the level of these localized slabs would not be counted as the lowest formation level of the building for building height calculation. Underground tanks or plant rooms were however treated as basement structures accountable for building height calculation.

building height restriction makes reference to a certain specified height above the mean formation level of the land on which the building stands. In such cases, the mean formation level will be taken as the average of the sum of the highest and lowest formation levels of the land on which any part of the building stands (i.e. both levels taken from the same lowest floor of the building including the lowest basement floor).

Notwithstanding the above, LandsD may exercise its discretion to recognise an existing development form with its corresponding building height as shown on the building plan which LandsD has previously approved or raised no objection to when interpreting individual lease terms where justified having regard to the factual matrix and legal advice.

- (iii) Subject to the types of the roof-top structures / projections being permissible under the lease conditions, and provided that the height restriction under the lease is not expressed in terms of absolute height limit, the size and height limit specified in JPN No. 5 on rooftop ancillary structures, roof-top architectural features and roof-top signboards would usually be followed for the purpose of administering building height restriction.
- (iv) In the cases where there is no explicit height restriction under lease, the pure aesthetic aspects of the height of a building would not normally attract disapproval under the DDH clause.

(c) Stilting

Stilting is not encouraged as far as possible even though there may be no anti-stilting clause under the lease conditions. If it is justified that there is no alternative form of construction available, stilt structures may be considered provided that the height of the stilts is reduced as much as possible. As a general guide, the maximum height of stilts should be 8 metres. Adequate surface treatment to the external elevation must be provided by means of architectural and landscape screening as illustrated, for example, in the sketch with explanations attached at *Appendix*. Both justifications and the proposed surface treatment should accompany the building plan submission. It must not be construed that a height up to 8 metres will automatically be permitted. Each case will be considered on its own merits.

(d) Soil filling under houses and gardens

Generally, soil filling proposed under houses or gardens or flatted developments to be developed on flat land is not acceptable. As a general guide, soil filling for leveling sloping or undulating sites would normally be acceptable if the depth does not exceed 2 metres. For deeper soil filling, the case will be assessed on its own merits according to design need and justifications.

(e) Carparking Provision

Provision for extra parking spaces, loading / unloading area and undesignated areas in carparking floors are covered in LAO PN Issue No. 4/2014.

Generally, to avoid the possibility of obtaining additional carparking spaces in excess of that specified under the lease by adopting stacked parking, parking spaces with excessive headroom will not be acceptable.

(f) Transfer Plate

Following the streamlined arrangements in the JPN No. 5, transfer plates for supporting building blocks would be allowed in exercising the control under DDH or DD clause provided that such design is accepted by the BA for non-accountable GFA calculation under the BO. BA's decision will generally be adhered to.

(g) Height of walls

The BA's ruling on the height of boundary wall, party wall between private gardens, parapet wall on flat roof, dividing wall between private flat roofs, parapet wall on main roof and dividing wall between private roofs would usually be followed in considering these proposals.

(h) External Finishing and Shape / Appearance of Buildings

The external finishing and shape or appearance of buildings including their roofs will not be a matter on which the department would normally seek to impose restrictions under DDH or DD clause. For existing lease conditions, enforcement of this requirement will normally be waived.

(i) Projections over Public Streets

The AP should adhere to the general principle stated in LAO PN Issue No. 4/2008 ensuring the proposed development will not encroach onto Government land irrespective of any DDH or DD clause in the relevant lease. Subject to approval of BA and LandsD, installation or projection such as architectural or amenity features may be or are allowed to be constructed on or over government land. Below are the list of examples.

- (i) Provision of canopies and architectural features to project over public streets (including pavement) is generally acceptable provided there are no objections on planning, aesthetic, environmental and road safety grounds. The BA's ruling would usually be followed.
- (ii) Provision of pipes (including water-pipes and drain-pipes) and gutters to project over public streets (including pavement) is generally acceptable provided the projection is not more than 300mm, at a height of not less than 2.5m above the level of the ground, complying with Building (Planning) Regulation 7(2) and there is no objection from Transport Department (TD) and Highways Department (HyD). The BA's ruling would usually be followed.

- (iii) Modern leases governing residential developments may contain “Noise Impact Assessment” (NIA) and “Noise Barrier” clauses under which the provision of a noise barrier to project over public streets (including pavement) may be allowed. The design of the noise barrier is generally considered acceptable if it is agreed by Environmental Protection Department, Planning Department, HyD, TD and BD and the projection matches with that approved under the NIA.
- (iv) For conversion of an entire existing industrial building, guidelines on the projection of claddings or curtain walls beyond the lot boundary upon Government land are provided in LAO PN Issue No. 1/2010B. For partial conversion or refurbishment of industrial buildings or other types of buildings, provision of claddings or curtain walls projecting over public streets (including pavement) would normally be allowed if the BA approves the same and there is no objection from all concerned parties including TD and HyD. The application for such projection beyond the lot boundary may be effected by way of lease modification or other suitable form of documentation, and, if approved, is subject to payment of any fee and premium as appropriate.

8. The above aspects relating to design of buildings should be broadly representative of aspects to be considered by LandsD when considering approval under the DDH/DD clause, although they should not be considered as exhaustive. The Director reserves his discretion in deciding aspect(s) that should be considered for individual cases as necessary.

Consistency in exercising DDH or DD clause

9. To ensure a consistent approach in exercising the control under the DDH or DD clause, if a DLO intends to disapprove a building plan submission under the DDH or DD clause after taking into account the aspects set out in paragraph 7 and, where applicable, any other additional aspect(s) specified by the Director for individual cases pursuant to paragraph 8, the agreement of Building Committee III, under the chairmanship of Deputy Director of LandsD, would be sought.

Appeal and reconsideration of previous decisions

10. Without prejudice to the Government’s rights under the relevant government lease and its rights as lessor / landlord, the Director may at his discretion consider appeal against decision on the DDH or DD clause. The Applicant should give reasons in support of the appeal. The Director’s decision on the appeal shall be final and binding.

11. It must be noted that nothing in this practice note shall in any way fetter or affect the rights of the Government, the Director 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. All rights to modify the whole or any part of this practice note are hereby reserved.

12. LAO PN Issue No. 3/2014 is hereby superseded.



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Illustration of surface treatment to the external elevation of stilting structures

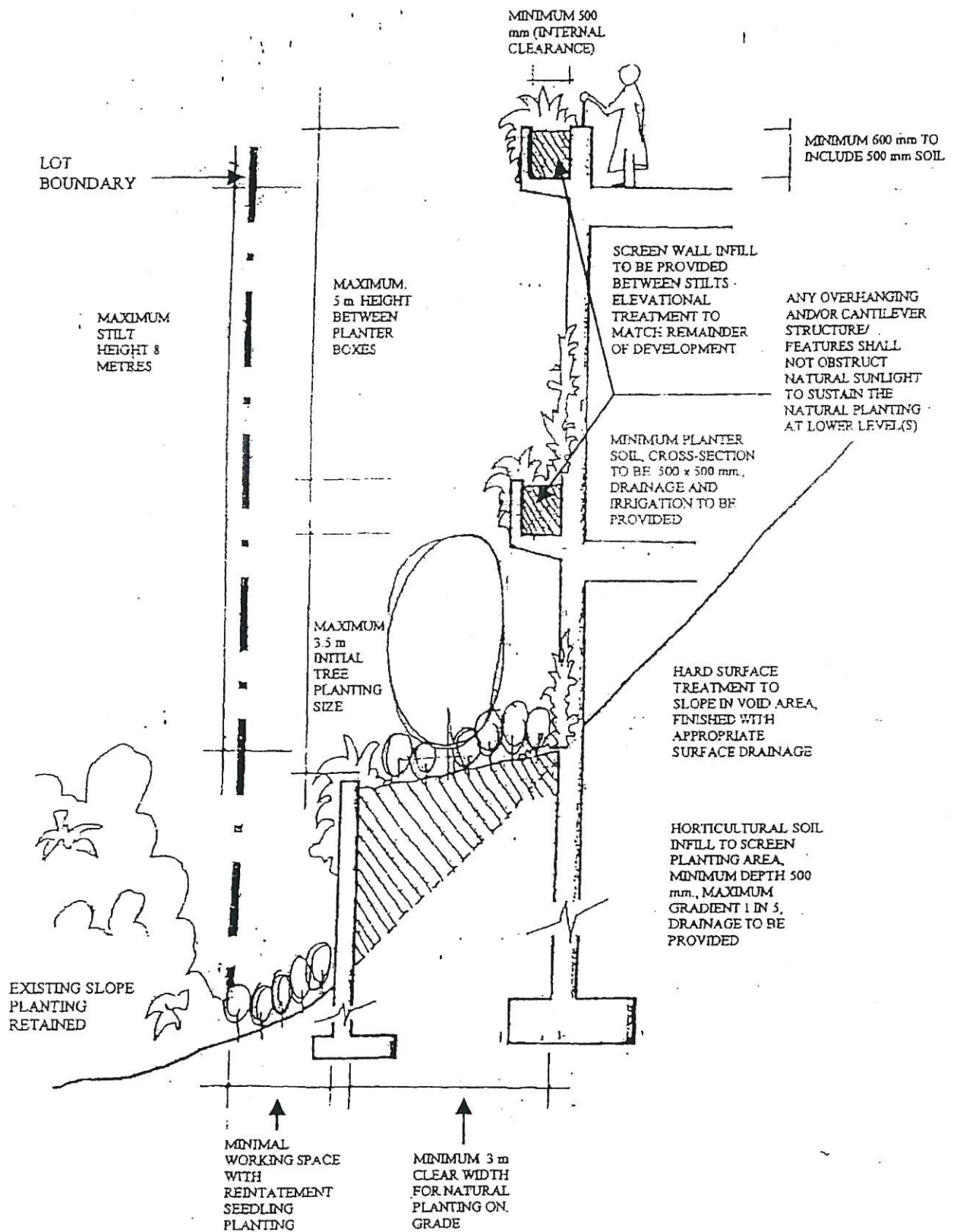
Architectural screening

Screen wall infill must be provided between stilts and the overall stilted structure is to be viewed in DD&H terms as an integral part of the overall development, using compatible materials and colour-scheme of equivalent standard and quality to those proposed for use elsewhere in the development.

Landscape screening

- (a) minimum 3 metres clear width planting strip within lot boundary to be provided for screening purposes at the base of stilts, retained as necessary to a maximum gradient of 1 in 5, provided with existing or imported soil medium of appropriate depth and specification for horticultural purposes, and with drainage and irrigation as necessary. Under special circumstances, minor relaxation of the minimum clear width of planting strip may be allowed with justification;
- (b) screen planting mix to be designed to be capable of effectively screening the full height of the stilt structure within 5 years, of growing a minimum of a further 2 metres in height and of producing a stable, maintenance-free vegetative cover;
- (c) screen planting to be provided in an appropriate mix of pioneer species (for rapid growth and establishment) and native indigenous species (slower growing but of greater ecological and amenity value, and ultimately more visually compatible). In addition, a range of stock sizes should be included from seedling trees /shrubs (only around 300 – 600 mm in height but capable of rapid establishment and growth) to the largest practical sizes for immediate impact (heavy standard trees of 3.5 metres height), and to include climbing plants;
- (d) planter boxes to be provided along the top of the stilted structure, with minimum soil cross-section of 500 x 500 mm and adequate drainage and irrigation, with climbing or hanging plants. Similar intermediate planter boxes are to be provided every ≤ 5 metres of stilt height;
- (e) reasonable maintenance access shall be provided for the planters and planting areas.

A typical cross-section of a stilted structure illustrating these basic requirements is attached.



GUIDELINES ON THE USE OF STILTED SUBSTRUCTURES • TYPICAL SECTION