

AJOY MEHTA
I. A. S.
Municipal Commissioner



No. :
Date :

The Principal Secretary-I,
Urban Development Deptt,
Mantralaya,
Mumbai - 400 032.

Sub :- The clarification in respect of amended Regulation 34 of DCR 1991 under Notification no. TPS-1813/3067/CR-22/MCORP/12/UD-13 dtd.16.11.2016 in respect of TDR other than Heritage & slum TDR.

Sir,

The Urban Development Department, GOM has issued notification u/no. TPS-1813/3067/CR-22/MCORP/12/UD-13 dtd.16.11.2016 in respect of Regulation-34 of DCR 1991 (i.e. generation and utilization of TDR for reservations and roads).

Various queries are raised in respect of the amended regulations by the stake holders. Therefore, the meetings were arranged with the PEATA, MCHICREDAI, NAREDCO representatives and based on the discussions with them the guidelines in respect of utilization and generation of reservation/road TDR are prepared for implementation which is attached herewith as Annexure-I. The certain points of the said amendment on which the clarification is required, are also listed and attached separately in Annexure-II.

In view of above, Principal Secretary, Urban Development is requested to arrange for the clarification under 62(3) of DCR 1991 on points of the said notification dt.16.11.2016, enclosed herewith as Annexure-II, at earliest please.

Yours faithfully,

Ajoy Mehta
Municipal Commissioner

Municipal Corporation of greater Mumbai

(Chief Engineer(Development Plan) Department)

Sub:- The guidelines for implementation of the Notification No. TPS-1813/3067/CR-122/MCORP/12/UD-13 dt.16.11.2016 in respect of generation / utilization of TDR in Greater Mumbai.

Annexure-I

Sr.No.	Guidelines
1	The effective date of notification shall be considered as 17.11.2016 i.e. date of publication of notification in Govt. Gazette.
2	The TDR generated from any land used zone can be utilized on any receiving plot irrespective of the land use zone with indexation as per provision 5.3 of the notification. The ASR rate of generating year is therefore required to be mentioned on DR .Hence ASR shall be considered on the date of signature of Hon'ble Municipal Commissioner on DRC.
3	It is possible that the reservation land may comprise of different CTS /CS no., village / Division as well as the ASR zone as per SDRR. The utilization of TDR is to be done with indexation of ASR. Therefore the DRC as per separate ASR zone shall be prepared and issued.
4	The notification u/r dt.16.11.2016 is issued in respect of TDR in regulation 34 by merging earlier regulation no.34 and its Appendix-VII-A, by substituting it, by modifying Regulation 34 and deleting the Appendix-VII-A, only. The Slum TDR is governed as per regulation 33(10) to be read with Appendix – IV and Appendix – VII-B of DCR 1991. Similarly the heritage TDR is governed as per regulation 67 to be read with Appendix – VII A of DCR 1991. The said notification does not include any modification in Appendix – IV, VII-B and VIIA to be read with the respective regulation no. 33(10) and 67 of DCR 1991, respectively. Hence the generation and utilization of Slum and Heritage TDR shall be governed as per the provisions of respective regulations. Therefore the indexation is not applicable to the Slum DRC &Heritage DRC; hence the ASR rate need not be mentioned on Slum DRC &Heritage DRC.
5	The Govt of Maharashtra has fixed the date of publication of this notification in the official gazette as the date of coming in the force of this modification. The notification u/r is published on 17.11.2016, as such the proposals for which the DRC is not issued before 17.11.2016 shall be processed as per the notification dt. 16.11.2016,since the compensation for the same is not availed. The fresh application for DRC in prescribed format & scrutiny fee for

the proposed area shall be insisted for the ongoing TDR proposals. The title clearance certificate, J.M plans, if any, and necessary remarks/compliances which are already obtained for the proposal shall not be insisted again. The earlier file no. shall be continued, however scrutiny fee paid earlier, shall be forfeited.
No incentive shall be allowed for the proposals submitted before publication of Notification u/r dt.16.11.2016.

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The provision 8.0 specifies the transit policy for implementation of the notification u/r. Accordingly,

1) DRC issued under the old regulations shall be allowed to be utilized as per TDR zones of the old regulations without indexation, for one (1) year period only, as stated below from the date of publication(i.e. up to 16.11.2017) and for utilization of said DRC after one year.(Clarification is sought from UDD) .

(a) The TDR utilization proposal received to the ULB (Urban Local Body) after 16.11.2016 with the stamp duty for sale deed paid after 16.11.2016, and sale deed agreement notarized after 16.11.2016, shall be processed as per the provisions of notification u/r.

(b) The TDR utilization proposal received to the ULB (Urban Local Body) after 16.11.2016 with the stamp duty for sale deed paid on or before 16.11.2016 and sale deed agreement is notarized before 17.11.2016 shall be processed as per the old regulations.

(c) The TDR utilization proposal received to the ULB (Urban Local Body) after 17.11.2016 with the stamp duty for sale deed paid before 17.11.2016 and sale deed agreement notarized before 17.11.2016 shall be processed as per the old regulations.

(d) The TDR utilization proposals other than mentioned above shall be dealt independently by obtaining the remarks from Law officer, MCGM.

2) The new DRC issued for road and reservation after 16.11.2016, can be used with indexation and as per provisions of the notification u/r.

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The provision 4.2 of the said notification u/r dtd 16.11.2016 is in respect of construction amenity TDR. Accordingly the construction amenity TDR is to be granted as per the following formula.

	<p>Construction Amenity TDR in sqmt. = (Cost of construction of amenity as per ASR for the year in which construction is commenced / land rate per sqmt. as per ASR for the year in which construction is commenced) x1.25.</p> <p>The cost of construction of amenity shall be as per the rate of construction mentioned in ASR X Built Up area certified by the Ex. Engr (Bldg.Proposals)</p>
8	<p>The full potential of the reserved plot is allowed by granting development on the part portion of the reserved plot as per notification no. TPS-1813/3067/C.N.492/13/Corp/UD-13 dtd. 02.05.2016. As such, the TDR as per notification dt. 16.11.16 for the land component of reservation proposed to be developed under accommodation reservation principal notification dt. 02.05.2016 shall not be granted. Only, the unutilized FSI (excluding TDR) if any, after deducting in-situ FSI, of the remaining plot shall be granted as per notification dtd. 16.11.2016 as mentioned in notification dtd 02.05.2016 in respect of development of reservations under accommodation reservation principle.</p>
9	<p>The compensation in terms of TDR is permissible for land under various reservations for public purposes new roads, road widening etc which are subjected to acquisition proposed in draft or final Development plan prepared under the MR& TP Act 1966 as per 2.0(i) of the notification u/r dtd 16.11.2016. Accordingly the TDR for proposed Nalla / Nalla widening/ training, and appurtenant service road thereto can also be considered treating the same as reservation.</p> <p>If the land is affected by any other D. P. reservation, over the proposed Nalla / Nalla widening/ training, and appurtenant service road thereto, then TDR for the land can be granted either for D.P. reservation or deemed reservation of Nalla.</p> <p>In case, if the area under Nalla/Nalla widening and appurtenant service road is consider as part of the whole land, then the TDR for the same will not be applicable, as the FSI is permitted on plot including Nalla. The open space for the proposed building shall be considered from the inner/nearest edge of the Nalla for firefighting requirement and from plot boundaries for Light/Ventilation & Dead wall.</p>
10	<p>Notwithstanding anything contain in any regulation the total maximum permissible built up area and utilization of TDR on receiving plot are subject</p>

to the road width as per 5.4.1 of the notification u/r dtd 16.11.2016.

The foot note (iii) specifies FSI loading on such plot (maximum building potential shall be basic FSI + TDR + additional FSI on payment of premium if any + road widening FSI of the vary said plot if any.

Accordingly the FSI loading limit as mentioned above will supersede the FSI loading limit mentioned in regulation 32 of DCR 1991.

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Provision 5.4.1.Utilisation of TDR and road width relation.

Notwithstanding anything contained in any regulation the total maximum permissible built up area and utilization of TDR on receiving plot are subject to the road width.

Note (i) MCGM shall convert all roads of width less than 9.00 mtr to 9.00 mtr. And above as per site conditions through MR & TP Act or MMC Act.

ii) Provided also that above utilization of TDR would be available to an existing road width of 9.00 mtr. and above, so marked under the relevant Municipal Corporation Act .

The provision 17(i) (4) of DCR 1991 specifies that, "Provided further that where any road is proposed to be widened in the development plan for which a regular line of street has been prescribed under the Mumbai Municipal Corporation Act, 1888 the resulting proposed width shall be reckoned in dealing with a request for development permission."

Accordingly, the Building plans are approved presently, considering the prescribed road width in Development Plan and Road Line (RL) prescribed under provision of MMC act, 1888, provided minimum 3.6mt./6.00 mt./9.00 mts. existing road width is available at site depending on the height of proposed building.

The provision 5.4.1 of notification u/r restricts the TDR utilization based on the existing fronting road width and marked on plan as per MMC Act..

The provision 5.4.1 is notwithstanding anything contain in any regulation, hence the TDR utilization shall be allowed based on existing road width of 9.00 mt. road and above fronting the plot, from the Municipal /Public road.

For this purpose while ^{allowing} allotting TDR based upon the existing road width it shall be ascertained that the minimum road width existing in front of plot shall be considered. Further, the said existing width of front road shall be available for the minimum length of front road till the junction of minimum 9.00 m or above existing road.

12	<p>The utilization of total TDR in the priority and quantum of maximum permissible TDR loading shall include at least 20% of slum TDR (Wherever applicable) and DRC generated on the vary said land. The utilization of slum TDR and heritage TDR are governed as per regulation 33(10) and 67 of DCR 1991. As per Appendix VIIB of DCR 1991 the slum TDR is to be used can be utilized in suburban and extended suburban. The slum TDR cannot be used in island City. As such at least 20% slum TDR shall be insisted (wherever applicable) out of total permissible utilization of TDR as per the road width, mentioned in 5.4.1. of notification u/r.</p>
13	<p>The following parameters shall be incorporated on Land DRC</p> <p>a) Possession area (Sqmts..) =</p> <p>b) Multiplying factor on (a) =</p> <p>c) Permissible credit area (a X b) (Sqmt.) =</p> <p>d) Incentive credit area on (a) above (Sqmt.) = (a X incentive factor)</p> <p>g) Total Credit (c+d) (Sqmt.) =</p> <p>ASR Zone:-</p> <p>ASR :- Rs.</p> <hr/> <p>The following parameters shall be incorporated on DRC for Amenity /Unutilized FSI under AR.</p> <p>a) Construction Amenity area credit (Sqmts.) =</p> <p>b) Unutilized FSI under AR ,credit (Sqmts.) =</p> <p>ASR Zone:-</p> <p>ASR :- Rs.</p> <hr/> <p>Presently the DRC is issued in categories</p> <p>1) Reservation :-Yellow color.</p> <p>1) Road :- Grey color</p> <p>3) Slum TDR: - Blue-Yellow.</p> <p>Now, the categories of DRC are changed, hence the DRC shall be issued as follows:-</p> <p>1)Reservation, Road – Yellow color.</p> <p>2) Construction Amenity, Unutilized FSI under AR: -Grey color..</p> <p>3) Slum DRC: - Bluish-Yellow.</p>
14	<p>In Hon'ble High Court, Mumbai's order dt.13.03.2013 in W.P.651/2013, it is mentioned that" The plain reading of the regulation shows that the "any reservation" means includes all reservations including Railway Reservation in question. The requisite amenities/reservation including for the BEST Bus</p>

Depot, D.P.Road, railway reservation, welfare Centers, schools, etc., all fall within the ambit of reservation and amenities. All these reservations/ amenities are part of the development and therefore bound to be part of such reservations/amenities, subject to requisite conditions." Accordingly the Road area is considered as reservation and its area is adjusted towards required amenity spaces while allowing I to R/C as per provisions 56&57 of DCR-1991. Also as per provision 4.1.1 of notification u/r equal FSI/TDR is permissible for road and other reservations. As such the TDR shall be allowed on gross plot area excluding the reservation, deemed to be reservation and the road area considering the same as reservation.

15 In following cases the TDR is not eligible as per 3.0 (i) and (v) of notification u/r.

(i) For earlier land acquisition or development for which the compensation has already been paid partly or fully by any means.

(v) If the compensation in the form of FSI/or by any means has already been granted to the owner.

Accordingly, If the compensation in the form of FSI for road area is already granted and the Commencement Certificate for the same (partly or fully) is issued, as per regulation 33(1) of DCR-1991, then in such cases TDR is not eligible as per the notification u/r issued on 16.11.16.

16 There is no restriction on utilization of Slum TDR in corridor and with respect to road width, as per Appendix VII-B of DCR-1991.

However, the provision 5.4.1 of the notification dt.16.11.2016 restricts the total permissible TDR utilization with respect to the fronting road width. There is no restriction on use of Slum TDR in corridor area as per 33(10) to be read with Appendix-IV & VII-B. Slum TDR. As such the Slum TDR may be permitted in corridor areas, within the permissible TDR utilization limit with respect to the road width as per provision 5.4.1 of the notification u/r.

17 The regulation 33(7) of DCR 1991 is for reconstruction / redevelopment of Cess buildings in the island city by cooperative Housing Societies or of old buildings belonging to the corporation or of old buildings belonging to the Police Dept.

a) The utilization of TDR is not permissible on portion of gross plot area on which higher FSI under DCR 33(7) is claimed. However, the utilization of TDR will be permissible on portion of the plot on which

higher FSI is not allowed owing to stipulations mentioned in DCR 33(7) to the extent based on criteria of road width mentioned in notification.

b) The plot is comprised of Cess structures only.

: - In such case, TDR utilization will not be permissible.

c) The plot consists of partly eligible non Cess structures (prior to 30.9.1969).

(i) If land component under non Cess structures prior to 30.09.1969 is less than 25% of the whole plot area, then TDR utilization will not be permissible on such plot

(ii) If land component under non Cess structure is more than 25% of the whole plot area, then the TDR utilization will be permissible only for the area of land component under non Cess structures prior to 30.09.1969 beyond 25% of the whole plot area e.g.If area of land component under non-Cess structure prior to 30.09.1969 is 40% of whole plot area, then TDR will be permissible only on 15% of land component under Non Cess structure prior to 30.09.1969(40%-25%),which can be utilized on the plot.

d) The plot is consist of partly non eligible non Cess structures (after 30.9.1969).

: - The TDR utilization will be permissible for land component under non Cess non eligible portion of the plot.

In all above cases, the TDR utilization shall be allowed with respect to road width as mentioned in 5.4.1 of notification under reference.

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The provision of DCR 33(9) is for reconstruction/ redevelopment of Cluster (s) of buildings by implementing Urban Renewal Scheme (s).

a) The F.S.I. is granted on gross area of plot with eligible structures of 30 years of age and dilapidated and /or Slum structures. The utilization of T.D.R. is not permissible on portion of gross plot area on which higher F.S.I. under DCR 33(9) is claimed.

b) However, F.S.I. 4.00 is not permissible on portion of the plot in a cluster owing to stipulations mentioned in DCR 33(9) such as –

i) Vacant portion of reservations / designations, Road setback, area under existing Municipal Road.

ii) Land component of built up area under non-eligible structures

iii) Plot area under retained buildings

iv) building/ plots included in cluster but developed under different DCR than 33(9) etc.

The utilization of T.D.R. will be permissible on portion of the cluster on which higher F.S.I. under DCR 33(9) is not allowed as stated above, to the extent based on criteria of road width mentioned in notification.

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Provision 58 1 (b)(iii) is as under:

The owner of the land will be entitled to the Development rights in accordance with the regulations for grant of TDR as in Appendix VII in respect of lands earmarked and handed over as per column (4) of the above table. Notwithstanding anything contained in these regulation, development rights in respect of the lands earmarked and handed over as per column (3) shall be available to the owner of the land for utilization in the land as per column (5) or as TDR as aforesaid.

The TDR provision 58-1(b)(v) is as under :

Where the land accruing as per column (3) & (4) are, in the opinion of the Commissioner, of such small sizes that they do not admit of separate specific uses provided for in the said columns, he may, with prior approval of Govt. earmark the said lands for use as provided in column (3).

The provision 58(10) is as under:

Notwithstanding anything stated or omitted to be stated in these Regulations, the development or redevelopment of all lands in Gr. Mumbai owned or held by all cotton textile mills, irrespective of the operational or other status of the said mills or of the land use zoning relating to the said lands or of the actual use for the time being of the said lands or of any other factor, circumstance or consideration whatsoever shall be regulated by the provisions of this regulation and not under any other Regulation.

However the lands reserved for public purposes which is owned or held by Cotton Textile Mills, shall not be regulated by the provisions of this regulations and reserved lands shall be handed over to MCGM or the Appropriate Authority in lieu of TDR or shall be developed as per the provisions laid down under Regulation 9 (Table 4) i.e. AR Notification dtd. 02.05.2016 at present.

From above, it can be seen that the FSI for the R.G. area can be

availed within the same plot or the TDR can be availed as per provision 34 of DCR 1991 and TDR of MHADA area is permissible as per the provisions of Appendix VII.

The provision 5.4.1 of the notification u/r is not withstanding anything contain in any regulation, whereas the provision 58(10) of DCR 1991 also not withstanding anything stated or omitted to be stated in the regulation as stated above.

Hence, as per provision 58 (10) is notwithstanding anything stated or omitted to be stated in these regulations and irrespective of the operational or other status of the said mills or of the land use zoning relating to the said lands or of the actual use for the time being of the said lands or of any other factors, circumstance or consideration whatsoever shall be regulated by the provisions of this regulation and not under any other regulation.

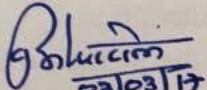
As such the provisions of 58 of DCR 1991 prevails over the provision 5.4.1 of notification u/r dtd 16.11.2016, in respect of utilization of TDR / DR. However, all other provisions of amended regulation 34, other than clause 5.4.1 will remain applicable.

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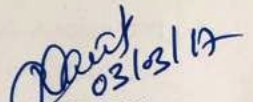
General directives for processing TDR utilization proposals.

- 1) Architect /L.S. to submit the application for building plan approval, proposing TDR utilization in prescribed format through Online AUTO DCR approval system.
- 2) The application shall essentially comprised of U- form, certified copy of notarized agreement for TDR sale deed along with copy of receipt of stamp duty paid for the same.
- 3) Ex. Engr. (Bldg. Proposals) office shall scrutinize the proposal in all respect including applicability and the provisions of notification dt. 16.11.2016, contents of U-form and then prepare the physical file with report as per EODB circular dt. 29.12.2015 for processing further for utilization of TDR.
- 4) The physical file shall be forwarded to Ex. Engr. (D.P.) as per the ward from where the DRC is generated.
- 5) The file shall contain the copy/s of U- Form and agreement with stamp duty paid receipt. EEBP office shall ensure that the contents of the form are filled up by applicant in all respect except the details to be verified by the D.P. Section.

- 6) Architect/LS shall submit the original DRC and U-Form to AO (DP)/ HC (TDR) within 3 days from the date of submission of proposal to BP department.
- 7) AO (DP)/HC (TDR) shall verify the area, signature of DRC holder/s and validity of DRC.
- 8) Ex.Engr (D.P.) shall process the proposal for utilization of TDR and deduction of equivalent credit from DRC for approval of Hon'ble Municipal Commissioner.
- 9) After sanction of utilization proposal, Concern Asstt. Engineer (D.P.) shall forward the copy of approval to Exe. Engr. (Bldg. Proposals) through e-office.
- 10) The Ex. Engr. (Bldg. Proposals) shall then attach the TDR utilization sanction to the respective file existing online.


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Municipal Corporation of Greater Mumbai
(Chief Engineer (Development Plan) Department)

Sub:- Clarification required from Urban Development Department, GOM., in respect of Notification No.TPS-1813/3067/CR-22/MCORP 12 / UD13dt.16.11.2016 in respect of generation and utilization of TDR in Greater Mumbai.

Annexure - II

Sr.No.	Particulars	Clarification Required.
1	<p>Amended DCR-34 Regulation, 4.2- TDR against Construction of Amenity.</p> <p>The ASR mentioned in the SDRR published by the GoM, is for the building construction and not for the construction of roads, open space reservations such as Garden, Playground, Parks, Recreation ground, etc.</p> <p>The construction of roads, open space reservations such as Garden, Playground, Parks, Recreation ground, etc., does not comprised of any structure/s.</p> <p>The modified regulation 33(1) specifies 25% additional FSI/TDR for construction of Road.</p> <p>The regulation 5.2 of notification No. TPS/1813/3067/ CR492 /MCORP/UD-13 dt.02.05.2016 under Accommodation Reservation (AR) Principle, in respect of development of roads, specifies that "The planning Authority / Appropriate Authority shall acquire the land and develop the reservation for the same purpose".</p>	<p>i) Whether the provision is applicable for granting construction of road, open space reservations like Gardens, etc.</p> <p>ii) Whether the TDR for construction of road in context of the provision made in AR notification dt. 02.05.2016 under regulation -9 , is to be granted.</p> <p>iii) if yes, then what will be the quantum of TDR /FSI towards construction of roads and open space reservations.</p>

2	<p>The UDD, GOM has issued notification u/no TPB/4313/570/CR-40/2015/UD-11 dt. 06.07.2015, in respect granting 25% TDR for encumbered reservations, in case of the land is required urgently by planning Authority. Further ,the said notification specifies that the TDR shall also be available in respect of properties owned by Central Govt, the State Govt and their statutory agencies.</p>	<p>i) Whether the said notification is still effective and whether incentive TDR shall also be permissible if the said notification dtd 06.07.2015 is effective.</p> <p>ii) Whether the TDR can be granted to the Central Govt, the State Govt and their statutory agencies under the said notification dt.06.07.2015.</p>
3	<p>Provision 5.4.4.- Utilization of TDR by considering gross plot area. In Hon'ble High Court, Mumbai's order dt.13.03.2013 in W.P.651/2013, it is mentioned that" The plain reading of the regulation shows that the "any reservation" means includes all reservations including Railway Reservation in question. The requisite amenities/reservation including for the BEST Bus Depot, D.P.Road, railway reservation, welfare Centers, schools, etc., all fall within the ambit of reservation and amenities. All these reservations/ amenities are part of the development and therefore bound to be part of such reservations/amenities, subject to requisite conditions." Accordingly the Road area is considered as reservation and its area is adjusted towards required amenity spaces while allowing I to R/C as per provisions 56&57 of DCR-1991. Also as per provision4.1.1 of notification u/r equal FSI/TDR is permissible for road and other reservations. As such the TDR shall be allowed on gross plot area excluding the reservation, deemed to be reservation and the road area considering the same as reservation.</p>	<p>Whether TDR shall be allowed on gross plot area excluding the reservation, deemed to be reservation and road area considering the same as reservation.</p>

<p>4</p>	<p>Provision 5.4.5. Area restricted from utilization of TDR. Utilization of TDR is not permissible in Coastal Regulation Zone. As per MOEF notification dt.06.01.2011u/no.S.0.19(E), Para V, special consideration is given wherein the projects of the redevelopment of dilapidated, Cessed and unsafe buildings are permitted as per FSI in accordance with the regulations prevailing on the date on which the project approval is granted by competent authority. As such TDR utilization was allowed in CRZ-II wherever permissible as per DCR-1991.</p>	<p>Whether the utilization of TDR can be allowed as per said MOEF notification dt.06.01.2011.</p>
<p>5</p>	<p>Provision 5.4.1 The utilization of TDR is restricted as per the fronting road width. Provision 8.0 specifies the transition guideline for implementation of the notification u/r. As per above provisions the old DRC can be utilised as per the old regulations without indexation but subject to all other conditions of the notification u/r. Therefore the TDR utilization is not permissible on plot fronting road width less than 9.00 mts. Considering the inherited potential, the development/redevelopment works are at various construction stages. In some cases, IOD/Amended plans are approved, building /s is /are demolished, part Commencement Certificate is issued, however TDR is not utilized or partly utilized on the plot. In such cases the development will affect due non utilization of TDR.</p>	<p>whether the TDR utilization can be granted as per the old regulation without restricting the TDR as per the road width, in cases where the part approval is already granted in the form of IOD/Amended plan approval/Part Commencement certificate, considering the full inherited development potential but the TDR is utilised partly or yet to be utilised</p>