

CONSULTATION PAPER

Follow-up Work on the Implementation of the Town Planning (Amendment) Ordinance

1. Introduction

1.1 The Town Planning (Amendment) Ordinance 2004 (Amendment Ordinance), passed by the Legislative Council on 7 July 2004, was published in the Government Gazette on 23 July 2004. It will come into operation on a date to be appointed by the Secretary for Housing, Planning and Lands. An information pamphlet providing a summary of the major provisions of the Amendment Ordinance is at **Appendix A**.

1.2 To facilitate the implementation of the Amendment Ordinance, Town Planning Board (TPB) Guidelines on the new procedures and requirements will need to be promulgated. Eight new/revised TPB Guidelines have been prepared and are at Appendices B to I. The purpose of this paper is to seek the stakeholders' views on the draft TPB Guidelines prior to their finalization.

2. New/Revised Town Planning Board Guidelines

Submission and Publication Requirements of the New Plan-making Process (TPB Guidelines No. A at **Appendix B**)

2.1 Under the new plan-making process, plan publication period will be standardized to 2 months for both new plans and amendments to plans. Representations, instead of objections, can be submitted to the TPB within the 2 months' period, which in turn will be published for comment. The requirements and practices regarding the submission and publication of representations, comments and further representations are set out in TPB Guidelines No. A.

2.2 The Guidelines stipulate the information required to be submitted to the TPB in making a representation/comment/further representation, the time limit for making a submission, and the circumstances under which the

representation/comment/further representation will be considered as invalid. Relevant forms are being prepared to facilitate the representer, commenter and further representer in complying with the submission requirements.

- 2.3 All the information submitted (including name, but excluding correspondence address, and telephone number/fax number/email address) will be available for public inspection at the two Enquiry Counters (one in North Point and one in Shatin) of the Planning Department (PlanD). To inform the public of the deadline for submission and the arrangement for public inspection of the submission, notices will be published in newspapers, uploaded to the TPB's website, and posted at the TPB Secretariat, the relevant district planning office (DPO), district office (DO) and, where appropriate, Rural Committee (RC).
- 2.4 The notification of decision arrangements will generally follow the existing practice.

Submission and Publication Requirements of Various Applications

(TPB Guidelines No. B at **Appendix C**)

- 2.5 Under the Amendment Ordinance, all planning applications (i.e. planning applications and applications for amendment to statutory plans), except those made under section 16A for Class B amendments to approved development proposals, will be published for public comment. TPB Guidelines No. B set out the general practices and requirements regarding publication of applications for amendment of plans, planning permission and review, as well as submission of comments on such applications.
- 2.6 Similar to the plan-making process, all information submitted (including name, but excluding correspondence address, and telephone number/fax number/email address) in connection with the various applications (except those made under section 16A) will be made available for public inspection at the two Enquiry Counters of PlanD. To inform the public of these applications, the deadline for submission of comments and the arrangement for public inspection, notices will be published in newspapers or posted in a prominent position on or near the application site. Notices will also be uploaded to the TPB's website, and posted at the TPB Secretariat, the relevant DPO, DO and, where appropriate, RC.

- 2.7 As an administrative practice, notices will also be sent to the Owners' Corporations or, where appropriate, other management committees of buildings within 100 feet (around 30m) of the application site. For applications of territorial or major local interest, notice may be mounted on roadside railing.
- 2.8 Similar to the plan-making process, forms will be prepared/revised to facilitate the applicant in complying with the submission requirement.

The 'Owner's Consent/Notification' Requirements
(TPB Guidelines No. C at **Appendix D**)

- 2.9 The Amendment Ordinance requires that in submitting an application for amendment of plan or planning permission, the applicant should obtain owner's consent, or notify the owner, or take such reasonable steps the TPB may require to obtain consent or give notification to owner on such application. TPB Guidelines No. C provide guidance on the interpretation of 'current land owner', the required documentary proofs and how the 'owner's consent/notification' requirements can be satisfied.
- 2.10 'Current land owner' is defined in the Amendment Ordinance as "any person whose name is registered in the Land Registry as that of an owner of the land to which the application relates, as at the commencement of such period before the application is made as is specified by the TPB by notice published in the Gazette." To cater for owners of new transaction pending formal registration and taking into account the practice of Land Registry in processing registration of land document, it is recommended to specify 'such period' as '4 weeks' before the application is made. In satisfying this requirement, a more updated record of owner registered in the Land Registry will also be accepted.
- 2.11 In making an application, an applicant has to submit a full set of the relevant Land Registry records and to provide:
- (a) the statement of consent signed by each and every 'current land owner'; or

- (b) the record of notification to prove that he has sent by registered mail or local recorded delivery mail to the ‘current land owner’ and submit the record of owner’s notification; or
- (c) evidence to demonstrate that he has taken such reasonable steps as
 - (i) sending (e.g. mail record) the statement of consent to the ‘current land owner’; or
 - (ii) publishing a notice of the application once in two Chinese and one English local newspapers; and either posted a notice in a prominent position on or near the application site, or sent a notice of the application by post to the Owners’ Corporation(s) or, where appropriate, other management committee(s) of the building(s) erected on the application site or the relevant Rural Committee(s).

The TPB may require the applicant to take other reasonable steps in satisfying the “owner’s consent/notification” requirements as circumstances require.

2.12 The Amendment Ordinance also stipulates that the applicant should comply with the ‘owner’s consent/notification’ requirements within a reasonable period before the application is made. What constitutes a ‘reasonable period’ will depend on individual circumstances of each case, taking into account the justifications to be provided by the applicant. In general, one year before the application will be taken as the reasonable validity period of the owner’s consent/notification, provided that such owner remains to be the ‘current land owner’.

2.13 In accordance with section 40(2)(c) of the Interpretation and General Clauses Ordinance (Cap. 1), the TPB may withdraw its decision on an application if the applicant is found to have made any false declaration or statement on the application. Any person who knowingly or wilfully makes a false declaration or statement would be liable to prosecution under the Crimes Ordinance (Cap. 200), the Oaths and Declarations Ordinance (Cap.11) and/or other relevant Ordinances.

Submission of Further Information

(TPB Guidelines No. D at **Appendix E**)

2.14 Under the Amendment Ordinance, the applicant may submit further information to supplement an application for amendment of plan, planning permission and review. The TPB may, under section 2(5)(c) of the Amendment Ordinance, delegate to the Secretary of the TPB its power to determine acceptance of further information. TPB Guidelines No. D set out the general practice in dealing with further information submitted by an applicant.

2.15 Further information may generally be divided as follows:

- (a) those which will result in a 'material change' to the nature of the application, and thus submission of a fresh application will be required;
- (b) those which will be acceptable for inclusion into the application, but publication of such additional information for public comment will be required and thus the statutory time limit for consideration of the application will be re-counted from the date when the further information is received; and
- (c) those which will be acceptable for inclusion into the application, but the information submitted is so minor in nature that such type of information could be exempted from publication requirement, and the application together with the further information will be submitted to the TPB for consideration as originally scheduled.

2.16 The general criteria for assessing the various types of information are proposed as follows:

- (a) a 'material change' is involved if the further information will lead to, for example, (i) a change exceeding 10% in the proposed plot ratio, gross floor area, site coverage or building height of the original scheme, (ii) in the case of applications for amendment of plan, a major change in site area or boundary, the proposed zoning, uses and development restrictions, (iii) in the case of applications for planning permission, a major change in the area and configuration of the application site,

proposed use, design and layout of the proposed scheme and nature of approval sought; and

- (b) the accepted further information may be exempted from publication requirement if it relates to clarification of background or technical information, rectification of editorial errors, or minor changes in the proposed scheme in terms of internal layout, location of open space, form and disposition of building, etc.

Any accepted further information not falling within (a) or (b) above will be published for public comment.

2.17 Representation, comment and further representation made to the TPB after expiration of the relevant statutory time limits shall be treated as not having been made. It is the duty of the representer, commenter and further representer to provide sufficient information when making submission to the TPB. Under the Ordinance, there is no provision for the TPB to accept further information from the representer, commenter and further representer after the expiry of the relevant statutory time limits for making submission.

Processing of Request for Deferment

(TPB Guidelines No. E at **Appendix F**)

2.18 TPB Guidelines No. E set out the general procedures and practices in considering request for deferment on decision on representations, comments, further representations and applications. The TPB may, under various circumstances or upon request, defer its decision on the submissions to another date.

2.19 Reasonable grounds should be provided to support the request for deferment. The deferment should not be indefinite, and further deferment will only be granted under very special circumstances. The TPB may, upon consideration of such request or of its own volition, decide to defer the decision on an application on the following grounds:

- (a) further consultation with relevant Government departments is required;
- (b) supplementary information which is essential for the consideration of

the submission is required, but not yet available;

- (c) recommendations of major Government planning-related study or infrastructure proposal which may have significant planning implications on the application site is due to be released; or
- (d) any other reasonable grounds as the TPB thinks fit.

2.20 The decision on the applications may also be deferred where the TPB accepts submission of further information to supplement the applications and the consideration date has to be rescheduled, or if the zoning of the application site is still subject to outstanding adverse representation yet to be submitted to the Chief Executive in Council (CE in C) for consideration.

2.21 However, in the plan-making process, submission of further information is not provided for as explained in paragraph 2.17 above. Requests for deferment of representation hearing will normally not be entertained as it may affect other parties involved in the hearing and there is a tight statutory time limit of 9 months for the submission of the draft plan to CE in C for consideration. If the deferment is absolutely unavoidable, the TPB may grant a deferment up to a maximum period of 4 weeks, taking into account all relevant considerations and circumstances of each case. The procedures for handling requests for deferment are set out in the Guidelines.

Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use

(TPB Guidelines No. F at **Appendix G**)

2.22 Planning permissions for temporary uses are granted for a specific approval period and in most cases, time-limited conditions are also imposed for submission and implementation of improvement measures associated with temporary open storage and port back-up uses in the New Territories. TPB Guidelines No. F set out the application procedures and assessment criteria for applications for renewal of planning approval and for extension of time for compliance with planning conditions for temporary uses.

2.23 While all applications for renewal of planning approval for temporary uses will be processed under section 16, a streamlined approach in respect of the

submission requirements is recommended to be adopted. If there is no major change in planning circumstances since the last approval of the application, the applicant will not be required to prepare new, but just the updates of, technical assessments to support the application.

2.24 An application for extension of time for compliance with planning conditions for temporary uses will fall within Class B amendments and shall be made in accordance with section 16A. Under no circumstances should the extension of time for compliance with planning conditions exceed the original validity period of the temporary approval. Such application should be submitted no less than 4 weeks before the expiry of the specified time limit. The planning permission will be revoked if the planning conditions are not complied with by the specified time limit and no application for extension of time has been received or approved. Under such circumstances, a fresh section 16 application in accordance with the provision of the extant statutory plan will be required.

2.25 The assessment criteria for such applications are similar to those stated in the current TPB Guidelines No. 21A.

Extension of Time for Commencement of Development
(TPB Guidelines No. G at **Appendix H**)

2.26 Planning permissions for most of the permanent developments are subject to a time-limited condition requiring the development be commenced by a specified date. TPB Guidelines No. G set out the application procedures and assessment criteria for processing applications for extension of time for commencement of development.

2.27 Any extension(s) of time for commencement of development shall not result in an aggregate extension period longer than the original duration for commencement of the approved development proposal. An application for such extensions will also fall within Class B amendments and shall be made in accordance with section 16A. Such application should be submitted no less than 4 weeks before the expiry of the specified time limit. The planning permission will lapse if the approved development is not commenced by the specified time limit and no application for extension of time has been received or approved. Under such circumstances, a fresh

section 16 application in accordance with the provision of the extant statutory plan will be required.

2.28 The assessment criteria for such applications are similar to those stated in the current TPB Guidelines No. 21A.

Class A and Class B Amendments to Approved Development Proposals
(TPB Guidelines No. H at **Appendix I**)

2.29 Under the Amendment Ordinance, amendments to approved development proposals are now classified as Class A or Class B amendments. Changes falling within Class A amendments do not require planning permission, while those falling within Class B amendments are subject to the approval of the TPB upon application made under section 16A. TPB Guidelines No. H set out the types of amendments and the application procedures and assessment criteria for application for Class B amendments to approved development proposals.

2.30 The proposed list of Class A and Class B amendments (to be published in the form of a Gazette Notice), with a total of 21 categories, is at Annex 1 of Appendix I. The list largely follows the categories used in the current TPB Guidelines No. 19B on Minor Amendments to Approved Development Proposals, with necessary modifications to fit in with the new classification system.

2.31 Similar to the existing practice, the TPB may delegate its authority to the Director of Planning (D of Plan) to consider applications under section 16A for Class B amendments to approved development proposals. The applicant will be informed of the decision of an application processed by D of Plan within 6 weeks. Those applications which are considered unacceptable by the concerned Government departments will be submitted to the TPB for consideration within two months.

2.32 An application for Class B amendments can only be submitted by the person to whom the permission is granted. If aggrieved, the applicant may apply for review and appeal. The requirements on 'owner's consent/notification' and publication for public inspection do not apply to an application for Class B amendments.

2.33 Similar to the existing arrangement, no separate planning application would be required for amendments made to the approved development proposal as a result of fulfilling the approval conditions provided that such amendments will not materially affect the original approved scheme. Should there be disagreement over the fulfillment of planning conditions between the applicant and the Government departments concerned, the matter will be submitted to the TPB for consideration.

3. Consultation with Stakeholders

3.1 Consultation with the stakeholders will be held from late September to mid November 2004. Taking into account the feedback from the stakeholders, the draft Guidelines will be revised and submitted to the TPB for further consideration and endorsement.

3.2 Comments on the eight new/revised TPB Guidelines at Appendices B to I are welcome. We would appreciate your comments **no later than 19 November 2004**. Written comments can be sent to the TPB Secretariat at the following address:

15/F, North Point Government Offices
333 Java Road
North Point
Hong Kong

Or

Fax: 2877 0245 or 2522 8426

Or

E-mail: tpbpd@pland.gov.hk

Attachments

- Appendix A Information Pamphlet on Town Planning (Amendment) Ordinance 2004
- Appendix B Draft Town Planning Board Guidelines No. A on Submission and Publication of Representations, Comments on Representations and Further Representations under the Town Planning Ordinance
- Appendix C Draft Town Planning Board Guidelines No. B on Publication of Applications for Amendment of Plans, Planning Permission and Review and Submission of Comments on Various Applications under the Town Planning Ordinance
- Appendix D Draft Town Planning Board Guidelines No. C on Satisfying the “Owner’s Consent/ Notification” Requirements under sections 12A and 16 of the Town Planning Ordinance
- Appendix E Draft Town Planning Board Guidelines No. D on Submission of Further Information in relation to Applications for Amendment of Plan, Planning Permission and Review made under the Town Planning Ordinance
- Appendix F Draft Town Planning Board Guidelines No. E on Deferment of Decision on Representations, Comments, Further Representations and Applications made under the Town Planning Ordinance
- Appendix G Draft Town Planning Board Guidelines No. F on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development
- Appendix H Draft Town Planning Board Guidelines No. G on Extension of Time for Commencement of Development
- Appendix I Draft Town Planning Board Guidelines No. H on Class A and Class B Amendments to Approved Development Proposals