

TOWN PLANNING BOARD

TPB PAPER NO. 9650
FOR CONSIDERATION BY
THE TOWN PLANNING BOARD ON 2.5.2014

PROPOSED REVISIONS TO
TOWN PLANNING BOARD GUIDELINES NO. TPB PG-NO. 31

Proposed Revisions to the Town Planning Board Guidelines No. 31

1. Introduction

This paper is to seek Members' agreement to the proposed revisions to Town Planning Board Guidelines No. 31 (TPB PG-No. 31) on Satisfying the 'Owner's Consent/Notification' Requirements under Sections 12A and 16 of the Town Planning Ordinance (the Ordinance).

2. Background

2.1 TPB PG-No. 31 was first promulgated in 2005. It provides guidance on the interpretation of 'current land owner' (CLO) as set out in the relevant provisions of the Ordinance; the documents required to be submitted together with a section 12A or section 16 application to demonstrate the ownership of the application site; and the manner in which the applicant would be considered by the Town Planning Board (the Board) to have satisfied the 'owner's consent', 'owner's notification' and/or 'reasonable steps' requirements.

2.2 As set out in TPB PG-No.31, the applicant can choose to notify each and every CLO of the application site instead of obtaining consent from CLO for the application. To demonstrate that the applicant has fulfilled the 'owner's notification' requirement, the applicant must submit -

- (i) relevant evidence of registered mail or local recorded delivery mail to the address of CLO or to the relevant address of the land/premises under application; or
- (ii) relevant evidence that the applicant has fulfilled the 'reasonable steps' requirement by, among others, sending a notice of application to Owners' Corporation, Owners Committee, Mutual Aid Committee, management office of the relevant building erected on the application site, or where appropriate, to the relevant Rural Committee.

There is currently no specific requirement on the type of address to which the notices of application should be sent.

2.3 In August and September 2013, complaints were lodged by CLOs to the Ombudsman and the Legislative Council that the CLOs' land was included in a s.12A application but no notification of the application from the applicants was received. Based on our record, the applicants had indeed sent notices of application by registered post to the lot addresses registered with the Land Registry of all CLOs. By selecting to take the route of "reasonable steps", the applicants complied with the requirements as set out in the current TPB PG-No.

31. Nevertheless, since notifications sent to the lot address may in some cases not reach the CLOs concerned, it is considered necessary to refine the notification requirement in TPG-PG No. 31.

3. Proposed Revisions to TPB PG-No. 31

- 3.1 It is proposed that in fulfilling the ‘owner’s notification’ or ‘reasonable steps’ requirement, the applicant should be required to send the request for consent or the notice of application to (i) a postal address of the owner as registered in the Land Registry/Companies Registry; or (ii) a postal address of the Owners’ Corporation, Owners Committee, Mutual Aid Committee, management office of the relevant land/building/premises under application or the relevant Rural Committee, where appropriate. As such, paragraphs 5.2, 6.2 and 6.5(a) of TPB-PG No. 31 are proposed to be revised accordingly.
- 3.2 Opportunity is also taken to make other minor refinements to TPB PG-No. 31.
- 3.3 The proposed revisions are highlighted in the draft TPB PG-No. 31A at **Attachment I**.

4. Consultation

Since the proposed revisions to TPB PG-No. 31 to specify more detailed requirements with respect to posting of notification of application are technical in nature, consultation with government departments is considered not necessary.

5. Decision Sought

Members are invited to endorse the proposed revisions to the TPB PG-No. 31 and promulgate the revised TPB PG-No. 31A to the public for information.

Attachment

Attachment I Revised TPB PG-No. 31A on Satisfying the ‘Owner’s Consent/Notification’ Requirements under Sections 12A and 16 of the Town Planning Ordinance

**PLANNING DEPARTMENT
MAY 2014**

TPB PG-NO. 31A

**TOWN PLANNING BOARD GUIDELINES ON SATISFYING
THE ‘OWNER’S CONSENT/NOTIFICATION’ REQUIREMENTS
UNDER SECTIONS 12A AND 16 OF THE TOWN PLANNING ORDINANCE**

[Important Note:

The Guidelines are intended for general reference only.

Any enquiry on this pamphlet should be directed to the Secretariat of the Town Planning Board (15th Floor, North Point Government Offices (NPGO), 333 Java Road, North Point, Hong Kong – Tel. No. 2231 4810 or 2231 4835) or the Planning Enquiry Counters of the Planning Department (Hotline : 2231 5000) (17th Floor, NPGO and 14/F, Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin).

The Guidelines are subject to revision without prior notice.]

1. Introduction

- 1.1 In submitting an application for amendment of a draft or approved plan under section 12A or planning permission under section 16 of the Town Planning Ordinance (the Ordinance), the applicant must :
 - (a) obtain the consent of or notify each and every ‘current land owner’ of the application site in writing if he is not the ‘current land owner’ or the sole ‘current land owner’ (hereinafter referred to as the ‘owner’s consent’ and ‘owner’s notification’ requirements respectively); or
 - (b) demonstrate that reasonable steps have been taken to obtain/give the necessary owner’s consent/notification (hereinafter referred to as the ‘reasonable steps’ requirements).
- 1.2 The Town Planning Board (the Board) may refuse to process the concerned application if the applicant fails to satisfy the ‘owner’s consent’, ‘owner’s notification’ and/or ‘reasonable steps’ requirements (hereinafter collectively referred to as the ‘owner’s consent/notification’ requirements) in such form or include such particulars as the Board requires.
- 1.3 These Guidelines provide guidance on the interpretation of ‘current land owner’ as set out in the relevant provisions of the Ordinance; the documents required to be submitted together with the application to demonstrate the ownership of the application site; and the manner in which the applicant would be considered by the Board to have satisfied the

‘owner’s consent’, ‘owner’s notification’ and/or ‘reasonable steps’ requirements.

2. Interpretation of ‘Current Land Owner’

- 2.1 ‘Current land owner’ means 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 Board by notice published in the Gazette¹~~*~~. According to the Gazette Notice published on 15 April 2005, ‘such period’ is taken as ‘6 weeks’ before the application is made. In satisfying this requirement, more updated record of owner registered in the Land Registry will also be accepted.
- 2.2 It should be noted that ‘land’ includes any premises constructed thereon. Where the boundary of the application site transverses part of any lot/premises, the ‘current land owner’ in respect to such lot/premises should also be included. Also, where any related lot/premises is/are owned by more than one person according to the records at the Land Registry (LR records), each and every such person should be regarded as ‘current land owner’.

3. Documentary Proof of Ownership Status

- 3.1 It is the responsibility of the applicant to comply with the ‘owner’s consent/notification’ requirements. The applicant is required to sign a declaration in the application form that he has satisfied the ‘owner’s consent/notification’ requirements. The Secretariat of the Board will carry out random check on the submission to ensure that the applicant has fully complied with the requirements. In case of doubt, the Board may require the applicant to verify any information included in the application. In such circumstances, the applicant may be required to provide proof of ownership by supplying a copy of the LR records or by any other means such as statutory declarations.

¹ The definition of ‘current land owner’ does not include the HKSAR Government even though Government land may be included in the application site.

~~* The definition of ‘current land owner’ does not include the HKSAR Government even though Government land may be included in the application site.~~

- 3.2 If the applicant is not the sole ‘current land owner’ of the application site, he is also required to complete the relevant part of the application form on satisfying the ‘owner’s consent/notification’ requirement for section 12A or section 16 application and provide all the required documents.

4. The ‘Owner’s Consent’ Requirements

If the applicant has obtained the consent of any ‘current land owner’ to make a particular application, such information including the number of ‘owner’s consent’ obtained should be included in the relevant part of the application form. He is also required to provide copies of the completed statement of consent signed by the concerned ‘current land owner’. If the ‘current land owner’ is an individual, the statement of consent should state the Hong Kong Identity Card/Passport Number of that person. If it is a corporate entity, the statement of consent should bear the company seal and should be accompanied by a resolution of the board of directors. A sample format of statement of consent for reference by the applicant is shown in **Annex 1**.

5. The ‘Owner’s Notification’ Requirements

- 5.1 If the applicant has notified any ‘current land owner’ of the application, such information including the number of ‘owner’s notification’ given should be included in the relevant part of the application form.
- 5.2 An ‘owner’s notification’ should be in the form of a written notification of the application. Such notification may be sent by registered mail or local recorded delivery mail (e.g. courier service) to the name of individual ‘current land owner’ as appeared in the LR records. The mail may be sent to the postal address of the ‘current land owner’ registered on the LR records (or the company’s office address registered in the Companiesy Registry if the ‘current land owner’ is a corporate entity), or to the relevant postal address² of the land/premises under application. A sample format of the notice for reference by the applicant is shown in **Annex 2**. A full set of the record of ‘owner’s notification’ given (e.g. records of registered mail or local recorded delivery mail) should be submitted together with the application.

² Sending written notification to non-postal address, such as to a lot address is not normally accepted unless successful delivery is proved by advice of receipt.

6. The 'Reasonable Steps' Requirement

6.1 Apart from obtaining owner's consent or making notification, an applicant may demonstrate that reasonable steps have been taken to such effect before the application is made to the Board. To facilitate easy checking, the applicant is required to complete the relevant part of the application form. A full set of the relevant documents showing the steps taken should be submitted together with the application.

6.2 Subject to paragraph 6.3 below, the applicant is required to take the following steps to obtain owner's consent or give notification to the 'current land owner':

(a) sending a request for consent to the postal address of each and every 'current land owner'. Relevant evidence (e.g. records of registered mail or local recorded delivery mail) should be submitted together with the application; or

(b) (i) publishing a notice of the application once in two Chinese and one English local newspapers. The newspaper notice should be in the size of not smaller than 30 square centimetres (five square inches). A sample format of the newspaper notice is shown in **Annex 3**. The newspaper notice should be published in the local newspapers specified by the Board. Details can be obtained from the Secretariat of the Board or viewed at the Board's website; and

(ii) either posting a notice of the application in a prominent position on or near the application site/application premises. The notice should be at least A4 size and legible from a public place (a sample format is shown in **Annex 4**); or

sending a notice to the postal address of Owners' Corporation(s), Owners' Committee(s), Mutual Aid Committee(s) or management office(s), where applicable, of the building(s) erected on the application site or in which the application premises is located or, where appropriate, to the

relevant Rural Committee. Relevant evidence (e.g. records of registered mail or local recorded delivery mail) should be submitted together with the application. A sample format of the notice is shown in **Annex 4**.

6.3 Other than the steps set out in paragraph 6.2 above, the applicant may demonstrate to the satisfaction of the Board that he/she has fulfilled the 'reasonable steps' requirement. The Board will take into account the particulars provided in the application and determine whether such other steps taken by the applicant are acceptable on a case-by-case basis.

6.4 In satisfying the requirements in paragraph 6.2 above, the applicants of the following three types of applications are exempted from the requirement of publishing newspaper notice, but they are required to undertake both steps set out in paragraph 6.2(b)(ii) above in order to fulfill the 'reasonable steps' requirements:

- (a) change of use of premises within existing buildings;
- (b) temporary uses with an application site area less than 1 hectare; and
- (c) New Territories Exempted House/Small House developments.

6.5 Generally speaking, the applicant may consider resorting to fulfill the 'reasonable steps' requirements under the following circumstances :

- (a) where the applicant is unable to contact the 'current land owner' due to the absence/inadequacy of the relevant information, e.g. absence of or incomplete postal address of the 'current land owner' in the LR records, or
- (b) where the number of 'current land owners' involved in the application is large (i.e. above 50), and obtaining individual owner's consent and/or notifying each and every owner becomes too onerous.

7. Validity Period of Owner's Consent/Notification

The Ordinance stipulates that the applicant shall comply with the 'owner's

consent/notification' requirements within a reasonable period before the application is made. What constitutes 'reasonable period' will depend on individual circumstances of each case taking into account the justification 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 the 'current land owner'. Beyond the reasonable period, the applicant may be required to obtain the consent of or notify the 'current land owner' or satisfy the 'reasonable steps' requirement afresh.

8. Important Points to Note

8.1 The above guidelines are for general reference only. In deciding whether the applicant has satisfied the 'owner's consent', 'owner's notification' and/or 'reasonable steps' requirements, the Board will take into account individual circumstances of each case.

8.2 The Secretariat of the Board will carry out random check on the submission to ensure the applicant has fully complied with the 'owner's consent/notification' requirements. The Board may also require the applicant to verify any matter or particulars set out or included in the application, whether by statutory declaration or otherwise. In accordance with section 40(2)(c) of the Interpretation and General Clauses Ordinance (Cap. 1), the Board 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 willfully 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.

9. Guidance Notes

Before making the application, the applicant is also encouraged to make reference to the Guidance Notes for Application for Permission under Section 16 of the Town Planning Ordinance (Cap. 131) or Guidance Notes for Application for Amendment of Plan under Section 12A of the Town Planning Ordinance (Cap. 131), where applicable.

TOWN PLANNING BOARD

MAYAPRIL 201405

SAMPLE FOR REFERENCE ONLY

Sample statement of consent of “Current Land Owner”

**Application for Amendment of Plan under Section 12A/
Permission under Section 16* of the Town Planning Ordinance (Chapter 131)**

Consent of Land Owner

| | |
|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Full address/Location of the application site | |
| Nature of proposal under application | <i>(the subject of amendment should be indicated for a section 12A application, while the proposed use/development and major development parameters such as site area and the proposed plot ratio/gross floor area/site coverage/building height etc should be indicated for a section 16 application)</i> |

I hereby declare that:

(i) according to the record of the Land Registry, I am the registered owner of –

Lot(s) No.
..... in Demarcation District

the premises located at
.....

(ii) I have given consent to the applicant, *(name of the applicant)*..... to make the above application which involves the lot(s)/premises owned by me as specified in para. (i) above.

Signature Registered Owner[#]
.....

Name in Block Letter

Identity Document/Certificate of Incorporation No.*

Date

If the registered owner is a “limited company”, the signature should include the company seal and authorized signature. A resolution of the board of directors should also be included.

tick as appropriate

* delete where appropriate

This sample can be downloaded from the TPB’s website (<http://www.info.gov.hk/tpb/>).

SAMPLE FOR REFERENCE ONLY

Sample notice to be sent to the 'Current Land Owner' of the application site

NOTICE OF APPLICATION FOR AMENDMENT OF PLAN/PLANNING APPLICATION*

Notice is hereby given to *(name of the 'Current Land Owner')* of *(address of the 'Current Land Owner'/address of the relevant lot/premises*)* that I/we* intend(s)* to apply for amendment of plan/planning permission* under section 12A/16* of the Town Planning Ordinance ~~for~~ *(nature of the proposal – the subject of amendment should be indicated for a section 12A application, while the proposed use/development and major development parameters such as site area and the proposed plot ratio/gross floor area/site coverage/building height etc should be indicated for a section 16 application)* at *(address of the application site)* owned by you. Please forward this notice to the relevant owner if you are not the owner of the aforementioned application site.

(Name of the applicant)

(Date of notification)

** delete where appropriate*

This sample notice can be downloaded from the TPB's website (<http://www.info.gov.hk/tpb/>).

SAMPLE FOR REFERENCE ONLY

Sample notice for publishing on newspaper or posting on application site.

NOTICE OF APPLICATION FOR AMENDMENT OF PLAN/PLANNING APPLICATION*

Notice is hereby given to the owner(s) of (*location of the application site i.e. address of the relevant lot/premises*) that I/we* intend(s)* to apply for amendment of plan/planning permission* under section 12A/16* of the Town Planning Ordinance ~~forte~~ (*nature of the proposal – the subject of amendment should be indicated for a section 12A application, while the proposed use/development and major development parameters such as site area and the proposed plot ratio/gross floor area/site coverage/building height etc should be indicated for a section 16 application*).

(*Name of the applicant*)

(*Date of notification*)

* *delete where appropriate*

This sample notice can be downloaded from the TPB's website (<http://www.info.gov.hk/tpb/>).

SAMPLE FOR REFERENCE ONLY

Sample notice for posting on site or sending to Owners' Corporation(s)/Owners' Committee(s)/Mutual Aid Committee(s)/management office(s)/Rural Committee(s).

**NOTICE OF APPLICATION FOR
AMENDMENT OF PLAN/PLANNING APPLICATION***

Notice is hereby given to the owner(s) of (*location of the application site i.e. address of the relevant lot/premises*) that I/we* intend(s)* to apply for amendment of plan/planning permission* under section 12A/16* of the Town Planning Ordinance ~~forte~~ (*nature of the proposal – the subject of amendment should be indicated for a section 12A application, while the proposed use/development and major development parameters such as site area and the proposed plot ratio/gross floor area/site coverage/building height etc should be indicated for a section 16 application*).

Please post this notice on the notice board of your building/office*, or other conspicuous place as you think fit, to inform the owners about this application.[#]

(*Date of notification*)

(*Name of the applicant*)

* *delete where appropriate*

not applicable for notice to be posted on site by the applicant

This sample notice can be downloaded from the TPB's website (<http://www.info.gov.hk/tpb/>).