

TOWN PLANNING BOARD

TPB Paper No. 10867

**For Consideration by the
Town Planning Board on 16.9.2022**

**Proposed Revisions to the Town Planning Board Guidelines No. 35C
on Extension of Time for Commencement of Development**

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1. Purpose

This paper is to seek Members' agreement to the proposed revisions to the Town Planning Board Guidelines No. 35C on Extension of Time for Commencement of Development (the Guidelines/TPB PG-No. 35C).

2. Background

- 2.1 To ensure any development proposal approved by the Town Planning Board (the Board) would be implemented within a reasonable period, planning permission granted by the Board, except those for regularisation of uses and those granted on a temporary basis, is subject to a time limit (normally four years) that the permission shall cease to have effect on a specified date unless prior to that date, the permitted development has commenced or an extension of time for commencement of development is granted. According to the Guidelines, any extension(s) shall not result in an aggregate extension period longer than the original duration for commencement of the approved development proposal (i.e. normally maximum eight years in total from the original approval). The determination on whether an approved development has commenced should be considered on the basis of the facts and circumstances of each case. In general, the approval of building plans or the execution of land grant or lease modification in respect of the approved development would constitute a commencement of development.
- 2.2 From time to time, there are cases that, due to the current restrictive interpretation of "commencement of development", have resulted in lapse of planning permission and submission of a fresh planning application under s. 16 of the Town Planning Ordinance for implementation of a previously approved scheme granted by the Board. This is commonly found in approved applications for New Territories Exempted House (NTEH) (Small House) where the subsequent processing of Small House grant applications under the land administration regime may not be completed in time before the expiry of the planning permission. Also, for approved comprehensive development schemes, mostly within "Comprehensive Development Area" ("CDA") zone, it is not uncommon to find developments involving several phases and multiple ownership with the overall development period spanning more than eight years. However, under the Guidelines, there is no provision/flexibility to allow for commencement of development in part or in phase, and the approval of building plans or execution of land grant or lease modification in relation to any single phase of an approved development does not

constitute a commencement of development for the whole scheme. In line with the policy objective of streamlining and facilitating the development process and to obviate the need for fresh planning applications for the entire approved schemes, a review of the criteria on commencement of development under the Guidelines is hence conducted. Without compromising the original intent of imposition of time limit, revisions to the Guidelines are proposed.

3. **Proposed Revisions**

- 3.1 The major proposed revisions to the Guidelines are set out as follows (corresponding changes to the Guidelines together with other technical changes are shown in **Annex I**):

Approved developments involving land transactions with the Government

- 3.2 For an approved development involving land transaction with the Government (e.g. residential development, commercial complex, Small House development, etc.), in the final stage of the land transaction, the Lands Department (LandsD) will offer the formal basic terms (with or without premium, fee or rent) under a land document to the applicant for consideration. Land transactions generally include disposal of a new lot (i.e. land grant), modifications to conditions in an existing lease (i.e. lease modification), surrender of an existing lot(s) in exchange for a regrant of a new lot (i.e. land exchange), and etc. Upon receipt of the offer from LandsD, the applicant is required to advise whether he/she accepts the offer within a specified period of time. After the acceptance of the offer, the land document (as a legal document) will be scrutinised and finalised before its execution. The applicant's acceptance of the formal basic terms offer is an indication of commitment to taking up the approved scheme prior to the execution of the land document and could constitute a commencement of development. In this connection, **paragraph 2.1** of the Guidelines is proposed to be amended to the effect that the Board may consider an approved development has commenced as at the date of acceptance of the formal basic terms offer by the applicant of the concerned transaction, instead of the execution of land documents as stated in the current Guidelines.

Approved developments not involving building plan submissions or land transactions with the Government

- 3.3 Opportunity is also taken to refine the criterion on commencement of development for cases where building plan submission or land transaction is not applicable. For example, planning permissions from the Board are required for works for filling/excavation of land for some uses or developments under the statutory plans. Relevant documents are required to carry out those works such as excavation permit for excavation works and certificate of exemption in respect of site formation works for land filling for permitted NTEH. As such, amendment to **paragraph 2.1** is proposed to update that the issuance of relevant documents by the concerned authorities for

undertaking the permitted development, use(s) or works may also constitute a commencement of development.

Approved comprehensive developments not under single ownership and involving different implementation phases

- 3.4 Considering that comprehensive developments not under single ownership may be subject to long development programme and not be able to commence in whole within the maximum eight-year validity period as mentioned in paragraph 2.2 above, if the applicants have demonstrated in the approved comprehensive development schemes that the criteria¹ of allowing phased development have been complied with, phased commencement may be considered by the Board and the circumstances on what constitute a commencement of development set out in the Guidelines will be applicable. To this effect, it is proposed to add a new **paragraph 2.2** in the Guidelines. For the avoidance of doubt, the project proponents of comprehensive developments with phased commencement shall make due effort to implement the remaining phases within the validity period as far as possible, or otherwise the remaining phases of the approved schemes yet to be commenced shall cease to have effect.

4. Consultation

LandsD has been consulted and its comments have been incorporated in the draft TPB PG-No. 35D, where appropriate. Since the revisions are technical in nature, consultation with other government departments is considered not necessary.

5. Promulgation

Upon Members' agreement to the proposed revisions to TPB PG-No. 35C, the revised TPB PG-No. 35D will be uploaded to the Board's website and shall take effect upon promulgation.

6. Decision Sought

Members are invited to endorse the proposed revisions to TPB PG-No. 35C in **Annex I** and the proposed arrangement for promulgation of the revised Guidelines.

¹ As stipulated in paragraph 5.4 of the Town Planning Board Guidelines No. 17A for 'Designation of "Comprehensive Development Area" ("CDA") Zones and Monitoring the Progress of "CDA" Developments', the project proponent shall also demonstrate that due effort has been made to acquire the remaining portion of the site for development but no agreement can be reached with the landowner(s); the planning intention of the "CDA" zone will not be undermined; the comprehensiveness of the proposed development will not be adversely affected as a result of the revised phasing; the resultant development should be self-contained in terms of layout design and provision of open space and appropriate government, institution and community, transport and other infrastructure facilities; and the development potential of the unacquired lots within the "CDA" zone should not be adsorbed in the early phases of the development, access to these lots should be retained, and the individual lot owners' landed interest should not be adversely affected.

Attachments

Annex I Draft TPB Guidelines on Extension of Time for Commencement of Development
(TPB PG-No. 35D)

PLANNING DEPARTMENT
SEPTMEBER 2022