

**Proposed Revisions to Town Planning Board Procedure and Practice,
Guidelines, Guidance Notes, Forms and Information Pamphlets**

1. Purpose

This paper is to:

- (a) brief Members on the major amendments to the Town Planning Ordinance (the Amended Ordinance) which will commence on 1.9.2023 (the Commencement Date); and
- (b) seek Members' agreement to the revisions to the Town Planning Board (TPB/the Board) Procedure and Practice (P&P), TPB Guidelines (TPB PGs), Guidance Notes, Forms and information pamphlets as well as the proposed Gazette Notice highlighted in paragraph 3 below, and the effective date and promulgation of the revised documents mentioned in paragraphs 5 and 6 below to facilitate the implementation of the Amended Ordinance.

2. The Amended Ordinance

- 2.1 To expedite the supply of land, the Government has reviewed the development-related statutory processes under six ordinances¹ including the Town Planning Ordinance (the Ordinance) and put forward the legislative proposals in the Development (Town Planning, Lands and Works) (Miscellaneous Amendments) Bill 2022 (the Bill) along the following five directions:

¹ The six ordinances include the Town Planning Ordinance, Lands Resumption Ordinance, Foreshore and Sea-bed (Reclamations) Ordinance, Land Acquisition (Possessory Title) Ordinance, Road (Works, Use and Compensation) Ordinance and Railways Ordinance.

- (a) streamlining and shortening statutory time limits;
- (b) avoiding repetitive procedures of a similar nature;
- (c) providing an express mandate in the law for the Government to proceed with different procedures in parallel;
- (d) improving inconsistent or ambiguous arrangements; and
- (e) streamlining other miscellaneous processes for more effective use of public resources.

2.2 The Government has also proposed enhancements to the enforcement-related provisions of the Ordinance to better protect rural areas (not previously covered by the Development Permission Area (DPA)) with ecological value but subject to development pressure and environmental degradation.

2.3 The Bill was published in the Gazette on 9.12.2022, introduced to the Legislative Council (LegCo) on 14.12.2022 and passed on 13.7.2023. The Amended Ordinance is to come into operation from 1.9.2023. To facilitate the implementation of the Amended Ordinance, the Board's current practices and procedures and related documents would need to be updated.

2.4 Major amendments in the Amended Ordinance are highlighted as follows:

Plan-making Process

Plan Exhibition and Submissions from the Public

- (a) apart from newspaper notification, specifying the additional requirement to publish on the Board's website the place and time of the exhibition of plan/amendment under section 5 or section 7 and making amendments proposed under section 6B(8) for public inspection²;
- (b) making representations and further representations available for public inspection as soon as reasonably practicable after they were received by the Board, rather than after the respective statutory periods for making representations and further representations (i.e. the respective 2-month and 3-week periods);

² Notwithstanding the new statutory requirement, it is already the Board's administrative practice to publish the related Gazette notices on the Board's website.

- (c) dispensing with the procedures in relation to comments on representations;
- (d) specifying that if a representation/further representation is made for a reason concerning compensation or assistance to, or arising from resumption or acquisition of any land by the Government, or clearance or obtaining vacant possession of any land by the Government, that representation/further representation, to the extent that it is made for that reason, may be treated by the Board as not having been made;

Representation Hearing

- (e) expressly specifying that the Board has the power to impose time limit on oral presentation made by a representer or a person who is authorized by one or more representers to present their cases at the representation hearing;
- (f) specifying that if the representer is not a natural person (e.g. company/organization/concerned group), the representer may authorize a natural person to attend the hearing. If the representer is a natural person and the Board is satisfied that the representer is unable to attend the hearing because of exceptional circumstances, the representer may authorize another natural person to attend on his/her behalf. This is to encourage representers to attend the meeting in person for direct exchange of views with Members. The power of consideration of authorization requests is proposed to be delegated to the Secretary of the Board;
- (g) dispensing with the further representation hearing;

Submission of Plan to Chief Executive in Council and its Decision

- (h) compressing the statutory time limit for submitting plans to the Chief Executive in Council (CE in C) for approval from 9 months to 5 months, which may be extended, if appropriate, for a period of 2 months and, in exceptional circumstances, further two more periods of 2 months each by the Secretary for Development (SDEV) instead of by the CE;

- (i) allowing the Board to submit a plan to the CE in C for approval in part and enabling the CE in C to make decision on the submitted part of the plan when the Board makes such submission³;
- (j) specifying the follow-up procedures when the CE in C refuses to approve a plan in whole or in part, or refer a plan to the Board for consideration and amendment of the plan or part of the plan;
- (k) transferring the authority of referring plan to the Board for replacement or amendment under section 12 from the CE in C to the SDEV;

Planning Applications

Submission of Further Information for Planning Applications

- (l) the Board must not accept any further information (FI) for applications for amendment of plan under section 12A (s.12A applications), applications for permission under section 16 (s.16 applications) or review applications under section 17 (s.17 reviews) if the FI is not submitted within the “specified period(s)” specified and published by the Board in the Gazette;

S.12A Applications

- (m) specifying the eligibility of the applicant of s.12A applications as follows:
 - (i) a person whose name is registered in the Land Registry as that of an owner, or one of the owners, of any non-Government land within the application site;
 - (ii) a person who has obtained written consent from a person mentioned in sub-paragraph (i);
 - (iii) a person who has obtained written consent of the Director of Lands in relation to any Government land within the application site;

³ If a plan is approved by the CE in C in part, it will become a partly-approved plan.

- (iv) a public officer; or
- (v) a public body as defined by section 2 of the Prevention of Bribery Ordinance (Cap. 201);
- (n) dispensing with public consultation procedures for s.12A applications;
- (o) in relation to (n), revising the time limit for consideration of s.12A applications from 3 months to 2 months;

S.16 Applications and S.17 Reviews

- (p) apart from newspaper notification, specifying the additional requirement of posting notice on the Board's website on the availability of s.16 application or s.17 review for public inspection⁴;

S.17 Reviews

- (q) requiring the applicant of s.17 review to set out the grounds for review;

Transitional Arrangement

Plan-making Process

- (r) upon commencement of the Amended Ordinance, for plan/amendment of plan exhibited under section 5 or section 7 but yet to be submitted to the CE in C for a decision **before** the Commencement Date, the procedures of considering representations, comment on representations and further representations under section 6 to section 6H of the pre-Amended Ordinance still apply while provisions relating to submission of plans to the CE in C for a decision under the Amended Ordinance shall apply (i.e. the Board can submit the plan to the CE in C for approval of the plan in whole or in part), save and except for the statutory time limit for submission to the CE in C remains to be "9 months" instead of "5 months";

⁴ Notwithstanding the new statutory requirement, it is already the Board's administrative practice to publish the related notices on the Board's website.

- (s) for amendment exhibited under section 7 on or **after** the Commencement Date to a plan exhibited under section 5 **before** the Commencement Date, the procedures of considering representations and further representations, as well as submission of plans to the CE in C for a decision under the Amended Ordinance shall apply except that the time limit for submission of plans to the CE in C remains to be “9 months”;

Planning Applications

- (t) for any s.12A application made **before** the Commencement Date, the procedures and requirements under the pre-Amended Ordinance shall apply, i.e. there is no eligibility requirement or specified period for FI submission, public consultation should be undertaken, and a statutory period of 3 months for consideration of the application still applies;
- (u) for any s.16 application made **before** the Commencement Date, the pre-Amended Ordinance shall apply, i.e. there is no specified period for FI submission;
- (v) for any s.17 review application sought in relation to a s.16 application or an application for amendment to permission under section 16A (s.16A application) made **before** the Commencement Date, the requirements under the pre-Amended Ordinance shall apply to that s.17 review, i.e. there is no requirement to provide grounds for the review application or any specified period for FI submission;

New Enforcement and Prosecution Power

- (w) for protecting rural areas in the New Territories which are currently covered by Outline Zoning Plans but have never been covered by any DPA Plans, for the purpose of preventing further environmental degradation and/or nature conservation, prescribing a new power for SDEV to designate any such areas to be Regulated Areas; and
- (x) enabling the Authority (i.e. the Director of Planning) to take enforcement and prosecution actions against unauthorized developments within Regulated Areas under the Amended Ordinance.

3. Proposed Revisions to the TPB Documents for the Amended Ordinance

- 3.1 Apart from reflecting the new statutory requirements as highlighted in paragraph 2.4 above in the Board's procedures and practices including the P&P, TPB PGs, Guidance Notes, Forms and information pamphlets, opportunity is also taken to include in the documents enhancement measures for facilitating the statutory planning process. The relevant TPB documents are attached at the **Annexes** (with additions in **bold** and deletions ~~crossed out~~). A draft Gazette notice with regard to the specified periods for submitting FI is also enclosed for Members' consideration.

Plan-making Procedures

Consideration of Request for Authorizing Representative

- 3.2 As mentioned in paragraph 2.4(f) above, the Secretary of the Board, under section 2(5)(c) of the Amended Ordinance, is proposed to be delegated with the Board's power to consider under what exceptional circumstances a (natural person) representer may authorize a (natural person) representative to attend the hearing. The exceptional circumstances are proposed to include:

- (a) medical ground, e.g. sickness or hospitalisation;
- (b) not in Hong Kong, e.g. studying abroad or having business trip;
- (c) taken into custody or under quarantine; and
- (d) other grounds which, in the opinion of the Board, are considered acceptable.

Speaking Time for Representers/Authorized Representatives

- 3.3 As mentioned in paragraph 2.4(e) above, the Board has the power to impose time limit on oral presentation at the hearing. To ensure efficient conduct of hearing and consideration of representations, it is proposed to impose a maximum presentation time of 10 minutes for each representer or his/her authorized representative, on a non-accumulative basis, i.e. regardless of the number of representers the authorized representative is representing, each representer or authorized representative will only be given 10 minutes to

Speak once in the whole hearing process even if the authorized representative himself/herself is also a representer. Similarly, if the representer or authorized representative is accompanied by other persons (the accompanying person(s)), such as those needed to assist the elderly person to express views or those to provide professional views, the accompanying persons can only use the 10-minute speaking time allotted to the representer or authorized representative for making any presentation. In a nutshell, no one can speak for more than 10 minutes in presentation in the whole hearing process unless the Chairman accedes to any such request for additional presentation time.

- 3.4 The above exceptional circumstances and speaking time arrangement are set out in the Guidance Notes on Attending the Meeting for Consideration of Representations under the Town Planning Ordinance at **Annex 9**.

Consideration of Further Representations

- 3.5 As mentioned in paragraph 2.4(g) above, there will be no further representation hearing. Moreover, since the Board needs to inquire into the relevant matters before making its decision on the proposed amendment, comments from the relevant government departments may need to be sought and, if there is any new comment, further representers should be given the opportunity to respond to departmental comments for the sake of procedural fairness. Before the Board holds a meeting to consider the further representations, PlanD will consider seeking comments from relevant government departments on the further representations and responses to the departmental comments from the further representers as appropriate to facilitate the Board's consideration. Such arrangement is set out in the P&P at **Annex 2** and the proposed TPB PG-No. 29C on Submission and Publication on Representations, Comments on Representations and Further Representations under the Ordinance at **Annex 4**.

Arrangement for Public Inspection

- 3.6 As mentioned in paragraph 2.4(b) above, the Board is required to make all representations and further representations available for public inspection as soon as reasonably practicable after they have been received by the Board, rather than after the plan exhibition periods. In view of the removal of the procedure on comment on representations, the revised provision can facilitate

members of the public to make use of the two-month exhibition period to submit their own representations after they have seen the representations made available for public inspection, should they wish to express their views on those representations. Such arrangement is set out in the P&P and proposed TPB PG-No. 29C on Submission and Publication on Representations, Comments on Representations and Further Representations under the Ordinance at **Annex 4**.

Planning Applications

Specified Periods for FI Submission

- 3.7 Regarding the specified periods for FI submission mentioned in paragraph 2.4(l) above, it is proposed to specify the below periods in the Gazette (**Annex 1**) during which FI may be accepted by the Board:
- (a) two months after the day of the receipt of the concerned application by the Board; and
 - (b) two months after the day on which the Board decides to defer its decision on the application for the applicant to give further information. This is in line with the Board's current practice.

S.12A Application

- 3.8 While there is no statutory requirement to make the applicant's submission available for public inspection, it is recommended to continue to do so as an administrative arrangement to maintain the transparency of the statutory planning process. All s.12A applications will be uploaded to TPB's website and made available at two Planning Enquiry Centres of PlanD for public inspection.
- 3.9 Under the eligibility requirement, some members of the public may not be eligible to make s.12A applications. As an administrative measure, PlanD currently has a mechanism to process development proposals, which includes rezoning proposals. For rezoning proposals received from the public on or after 1.9.2023, PlanD will upload the key information of these proposals to PlanD's website for public inspection and assess the proposals in

consultation with concerned Government bureaux/departments. If a proposal is considered acceptable and that there are no adverse comments from concerned bureaux/departments, the proposal will be submitted to the Board for consideration in the form of proposed amendment(s) to the relevant plan as appropriate. This arrangement will be set out in PlanD's website.

Soft Copy Submission

- 3.10 To facilitate the public to inspect planning applications on-line and to reduce paper consumption, it is proposed to require all s.12A applications, s.16 applications, applications under section 16A (s.16A applications) and s.17 reviews made on or after the Commencement Date to provide soft copy of the supplementary information (e.g. planning statement and technical assessments). Such arrangement is set out in the relevant Guidance Notes and Forms at **Annexes 10 to 12 and 16 to 20**.

Others

- 3.11 According to the current TPB PG-No. 31A, in submitting a s.12A or s.16 application, the applicant is required to have consent from or notify the 'current land owners'⁵ of the application site or demonstrate that reasonable steps (reasonable steps) have been taken to obtain/give the necessary owner's consent/notification. In view of public comments received on 'reasonable steps' requirement and the manner of how notices should be posted as one way to satisfy the requirement, opportunity is taken to propose amendments to TPB PG-No. 31A to (i) explain clearly that the circumstances under which an applicant would consider resorting to fulfil the 'reasonable steps' requirement are just examples; and (ii) specify enhanced manner of how site notices should be posted, including the number and the size of such notices.
- 3.12 According to the current TPB PG-No. 31A, the Board accepts 'reasonable steps' taken within 1 year before a planning application is made. The revised 'reasonable steps' requirement mentioned above is proposed to apply

⁵ '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 Gazette. According to the Gazette Notice published on 15.4.2005, 'such period' is taken as '6 weeks' before the application is made.

to notices posted on or after 1.9.2023 such that planning applications under preparation with ‘reasonable steps’ already taken before 1.9.2023 but yet to be submitted to the Board can still be accepted.

3.13 The above arrangement is set out in **Annex 6**.

4. Consultation

The Development Bureau and Department of Justice have been consulted on the key revisions and draft Gazette notice for FI submission. Their comments have been incorporated in the documents at the **Annexes**, where appropriate.

5. Effective Date

The proposed revisions to the TPB documents summarised in paragraph 3 will take effect on the Commencement Date of the Amended Ordinance, i.e. 1.9.2023. However, the current P&P, TPB PGs, Guidance Notes, Forms and information pamphlets should continue to apply for cases to be processed in accordance with the transitional arrangements mentioned in paragraph 2.4.

6. Promulgation

Subject to Members’ agreement to the proposed revisions to the TPB documents highlighted above, a press release will be issued and the revised P&P, TPB PGs, Guidance Notes, Forms and information pamphlets will be uploaded to the Board’s website two weeks before the Commencement Date to inform the public in advance the new arrangements and requirements.

7. Decision Sought

Members are invited to endorse the proposed revisions to the TPB documents outlined in paragraph 3 above with the detailed amendments incorporated in the documents at **Annexes 1 to 24**, the effective date of these documents in paragraph 5 and the promulgation arrangement in paragraph 6.

Annexes

- Annex 1** Draft Gazette Notice for Specified Period(s) for Giving Further Information
- Annex 2** Proposed revisions to the Board's Procedure and Practice
- Annex 3** Proposed revisions to TPB PG-No. 24C (to be renumbered as "24D") : Town Planning Board Guidelines on Interpretation of Existing Use in the Urban and New Town Areas
- Annex 4** Proposed revisions to TPB PG-No. 29B (to be renumbered as "29C") : Town Planning Board Guidelines on Submission and Publication of Representations, Comments on Representations and Further Representations under the Town Planning Ordinance
- Annex 5** Proposed revisions to TPB PG-No. 30B (to be renumbered as "30C") : Town Planning Board Guidelines on Publication of Applications for Amendment of Plan, Planning Permission and Review and Submission of Comments on Various Applications
- Annex 6** Proposed revisions to TPB PG-No. 31A (to be renumbered as "31B") : Town Planning Board Guidelines on satisfying the 'Owners Consent/Notification' Requirements under Sections 12A and 16 of the Town Planning Ordinance
- Annex 7** Proposed revisions to TPB PG-No. 32A (to be renumbered as "32B") : Town Planning Board Guidelines on Submission of Further Information in Relation to Applications for Amendment of Plan, Planning Permission and Review
- Annex 8** Proposed revisions to TPB PG-No. 33A (to be renumbered as "33B") : Town Planning Board Guidelines on Deferment of Decision on Representations, Comments, Further Representations and Applications
- Annex 9** Proposed revisions to Guidance Notes on Attending the Meeting for Consideration of Representations, Comments and Further Representations under the Town Planning Ordinance
- Annex 10** Proposed revisions to Guidance Notes on Application for Amendment of Plan under Section 12A of the Town Planning Ordinance (Cap. 131)
- Annex 11** Proposed revisions to Guidance Notes on Application for Permission

under Section 16 of the Town Planning Ordinance (Cap. 131)

- Annex 12** Proposed revisions to Guidance Notes on Application for Amendment of Permission under Section 16A(2) of the Town Planning Ordinance (Cap. 131)
- Annex 13** Proposed revisions to Guidance Notes on Electronic Submission for Application for Amendment of Plan, Permission, Amendment of Permission and Review under Sections 12A, 16, 16A(2) and 17 of the Town Planning Ordinance (Cap. 131) Respectively and the Submission of Further Information
- Annex 14** Proposed revisions to Form No. S6 : Representation in Respect of Draft Plan under Section 6(1) of the Town Planning Ordinance (Cap. 131)
- Annex 15** Proposed revisions to Form No. S6D : Further Representation in Respect of Proposed Amendments to Draft Plan under Section 6D(1) of the Town Planning Ordinance (Cap. 131)
- Annex 16** Proposed revisions to Form No. S12A : Application for Amendment of Plan under Section 12A of the Town Planning Ordinance (Cap. 131)
- Annex 17** Proposed revisions to Form No. S16-I : Application for Permission under Section 16 of the Town Planning Ordinance (Cap. 131) (applicable to proposals not involving or not only involving: (i) construction of “New Territories Exempted House(s)”; (ii) temporary use/development of land and/or building not exceeding 3 years in rural areas; and (iii) renewal of permission for temporary use or development in rural areas)
- Annex 18** Proposed revisions to Form No. S16-II : Application for Permission under Section 16 of the Town Planning Ordinance (Cap. 131) (applicable to proposal only involving construction of “New Territories Exempted House(s)”))
- Annex 19** Proposed revisions to Form No. S16-III : Application for Permission under Section 16 of the Town Planning Ordinance (Cap. 131) (applicable to proposal only involving temporary use/development of land and/or building not exceeding 3 years in rural areas or renewal of permission for such temporary use or development)
- Annex 20** Proposed revisions to Form No. S16A : Application for Amendment to Permission under Section 16A(2) of the Town Planning Ordinance (Cap. 131)

- Annex 21** Information pamphlets on ‘How to Participate in Statutory Plan-making Process’
- Annex 22** Information pamphlets on ‘How Much Do You Know about Site Notice for Planning Application?’
- Annex 23** Information pamphlets on ‘Observation of Meetings of the Town Planning Board and its Committees’
- Annex 24** Information pamphlets on ‘Meeting Arrangements when Rainstorm Warning or Typhoon Signal is Issued’

PLANNING DEPARTMENT

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