

立法會
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**Paper for the House Committee meeting
on 13 May 2005**

**Report of the Subcommittee on
Town Planning (Amendment) Ordinance 2004 (Commencement) Notice**

Purpose

This paper reports on the deliberations of the Subcommittee on Town Planning (Amendment) Ordinance 2004 (Commencement) Notice (the Subcommittee).

Background

2. The Town Planning (Amendment) Ordinance 2004 (the Amendment Ordinance) was passed by the Legislative Council on 7 July 2004. It contains a comprehensive package of changes to expedite the plan-making process, enhance transparency and public involvement of the planning approval process, strengthen enforcement control against unauthorized developments as well as increase the efficiency of the Town Planning Board (TPB). Under section 1 of the Amendment Ordinance, the Amendment Ordinance shall come into operation on a date to be appointed by the Secretary for Housing, Planning and Lands by notice published in the Gazette.

Town Planning (Amendment) Ordinance 2004 (Commencement) Notice

3. Town Planning (Amendment) Ordinance 2004 (Commencement) Notice (the Notice) was published in the Gazette on 15 April 2005. The Notice appoints 10 June 2005 as the date on which the Amendment Ordinance shall come into operation.

The Subcommittee

4. The House Committee agreed at its meeting on 22 April 2005 to set up a subcommittee to study the Notice. Hon Alan LEONG Kah-kit was elected Chairman of the Subcommittee. The Subcommittee held two meetings and met with the Real Estate Developers Association of Hong Kong (REDA). A membership list of the Subcommittee is in the **Appendix**.

Deliberations of the Subcommittee

5. The Subcommittee notes that the Amendment Ordinance introduces substantial changes to the current plan-making and planning approval processes with the objectives of streamlining the procedures and enhancing transparency and public participation. For the purpose of implementing the revised plan-making and planning approval processes as provided in the Amendment Ordinance, eight sets of revised and new TPB guidelines were promulgated by TPB on 15 April 2005 after consultation with stakeholders and Members of the Legislative Council. Noting the concerns of REDA on some provisions of the guidelines, the Subcommittee therefore invited REDA to attend its meeting to clarify the concerns.

6. REDA has made it categorically clear that it supports the commencement of the Amendment Ordinance on 10 June 2005. Nevertheless, it has concerns on several aspects of the TPB Guidelines, as follows:

- (a) Restriction on submission of additional information in the plan-making process;
- (b) Deferment of decision by TPB on planning applications; and
- (c) Processing of applications of Class B amendment to approved development schemes.

Submission of additional information

7. Under the Amendment Ordinance, a draft plan or amendment to a draft plan or amendment to an approved plan shall be published for two months for the public to make representation. After expiry of the two months, any representation received shall be published for public comments for three weeks. As provided in the Amendment Ordinance, representations and comments made to TPB after the expiration of the statutory period shall be treated as not having been made. REDA is concerned that the statutory two-month period is not sufficient for the appointment of consultants and preparation of complex technical submissions. This will particularly be the case where additional information, like traffic impact assessment, may be necessary in response to

comments received in respect of the representations. Whilst the additional information could be presented to TPB at the time of hearing, it could not be considered in advance nor could other relevant parties have the chance of commenting on it. REDA therefore suggests making a provision in the relevant guideline that additional information could be submitted up until four weeks before the hearing by TPB.

8. Members note that in response to the views of the Bills Committee formed in the last legislative term to study the Amendment Ordinance, the publication period of draft plans has been extended to two months instead of the original proposal of one month. One of the objectives of the Amendment Ordinance is to enhance public participation in the plan-making process by requiring the publication of all representations and comments received within the statutory period for public inspection. The acceptance of any further information beyond the statutory deadline would defeat the intention of making available all representations for public comments. Moreover, according to the legal advice sought by the Administration, there is no provision in the Amendment Ordinance for the submission of additional information before the hearing and the guideline could not go beyond the Amendment Ordinance. REDA's suggestion is therefore not viable. The Administration nevertheless undertakes to review the situation based on operational experience six months after the commencement of the Amendment Ordinance. REDA considers the arrangement acceptable.

Deferment of decision on applications

9. Under the relevant guideline on deferment of decision on applications or review of applications, TPB may, upon request or of its own volition, decide to defer the decision on an application for certain reasons. Such a request may be initiated by representers, commenters, applicants or the Planning Department (PD). One of the reasons specified in the guideline is to await the recommendations of a major Government planning-related study or infrastructure proposal due to be released which might have significant planning implications on the subject site. REDA is concerned that the applicant's right of appeal would be adversely affected if TPB defers making a decision. It suggests that awaiting completion of planning-related study should be deleted from the guideline as a reason for deferment and that PD should not have the right to request for deferment in respect of applications.

10. Members of the Subcommittee accept the Administration's explanations that whilst an applicant or PD may request for a deferment, the decision rests entirely with TPB taking into account all relevant factors including whether the right or interest of other concerned parties will be affected. The guideline provides that the deferment should not be indefinite. Normally the applicant or relevant parties would be given two months for preparation of submission of further information, if required. No further deferment would be granted by

TPB except under very special circumstances. Members also note that the applicant has the right of appeal under the Amendment Ordinance, which will not be affected by deferment of decision made by TPB. REDA accepts the arrangement as provided in the guideline.

Processing of Class B amendment applications

11. For the purpose of streamlining the planning approval process, the Amendment Ordinance provides for separate procedures for handling minor amendments to approved development schemes which are named Class A and B amendments. Class A and B amendment applications are exempted from publication for public comments. Under the relevant guideline, TPB has delegated its authority to the Director of Planning to consider Class B amendments. However, applications which are considered unacceptable by any concerned departments will be submitted to TPB for consideration. REDA is concerned that should Class B amendment applications be circulated to District Offices (DOs) which in turn seek comments from District Councils or other local bodies/persons, this will run contrary to the intention of the Amendment Ordinance of streamlining the planning approval process by exempting Class B amendments from publication. REDA suggests that it be expressly stated in the relevant guideline that Class B amendment applications should not be circulated to DOs and adverse comments received by DOs should not be a reason for referring the application to TPB for consideration.

12. Members note that under the administrative arrangement, PD will seek comments of concerned Government departments and process the application within six weeks after receipt of a Class B amendment application. Should adverse comments from any Government department be received, the application together with the views of departments will be submitted to TPB for consideration within two months after the receipt of the application. Whilst members support the need to streamline the planning approval process for minor amendments, they, at the same time, appreciate the importance of consultation by DOs under the existing established channels. It is essential for TPB or its delegated authority to take into account all relevant planning considerations in assessing applications. In any event, TPB is required to consider a Class B amendment application within two months after receipt of the application under the Amendment Ordinance. Having considered these factors and the undertaking made by the Administration to review the situation six months after operation of the Amendment Ordinance, the Subcommittee agrees that Class B amendment applications should be processed in accordance with the relevant guideline.

Recommendation

13. The Subcommittee supports the commencement of the Amendment Ordinance on 10 June 2005.

Advice sought

14. The Subcommittee invites Members to note its deliberations.

Council Business Division 1
Legislative Council Secretariat
11 May 2005

Appendix

Subcommittee on Town Planning (Amendment) Ordinance 2004 (Commencement) Notice

Membership list

Chairman	Hon Alan LEONG Kah-kit, SC
Members	Hon James TIEN Pei-chun, GBS, JP Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP Hon Emily LAU Wai-hing, JP Hon Abraham SHEK Lai-him, JP Hon Albert CHAN Wai-yip Hon Audrey EU Yuet-mee, SC, JP Hon LEE Wing-tat Hon CHEUNG Hok-ming, SBS, JP Hon CHIM Pui-chung Hon Patrick LAU Sau-shing, SBS, JP
	(Total: 11 members)
Clerk	Miss Odelia LEUNG
Legal Adviser	Ms Bernice WONG
Date	29 April 2005