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**Meeting of the Panel on Planning, Lands and Works
on 22 March 2005**

Town Planning (Amendment) Ordinance 2004

Background Brief

Introduction

The existing Town Planning Ordinance (TPO) was first enacted in 1939 and has remained largely in its original form. After publishing the White Bill on Town Planning for public consultation in 1996, the Administration introduced the Town Planning Bill (the 2000 Bill) into the Legislative Council (LegCo) in February 2000. The LegCo had not completed scrutiny of the 2000 Bill because of inadequate time before expiry of the first legislative term. Taking into account the experience of the 2000 Bill, the Administration introduced in May 2003 the Town Planning (Amendment) Bill 2003 (the Bill) with the objectives to expedite the plan-making process, enhance transparency and public involvement of the planning approval process, strengthen enforcement control against unauthorized developments (UDs) as well as increase the efficiency of the Town Planning Board (TPB). The Bill was passed by the LegCo on 7 July 2004. The Town Planning (Amendment) Ordinance 2004 (the Amendment Ordinance) will come into operation on a day to be appointed by the Secretary for Housing, Planning and Lands.

Plan-making process

2. At present plan making is a three-stage process, as shown in the flow chart in **Appendix I**. The Bill originally proposed to revise it to a one-stage process. After critical examination and having regard to the views of deputations, the Bills Committee formed to study the Bill reached a consensus with the Administration to amend the plan making process into a two-stage process as set out in **Appendix II**. The relevant amendments were incorporated into the (Amendment) Ordinance.

Planning application and approval process

3. The Amendment Ordinance also introduced changes to the planning application and approval process to enhance public participation and transparency. The major ones are as follows -

- (a) any person may make an application to TPB for amendment of an approved plan or a draft plan, which is currently done on an administrative basis;
- (b) an applicant for planning permission or amendment of plan is required to obtain the consent of or notify the current land owner or to take reasonable steps in order to obtain consent or to give notification within a reasonable period before the application is made;
- (c) planning applications and applications for amendments of plans will be made available for public comments;
- (d) all documents submitted by applicants for planning permission and amendments of plans to TPB will be available for public inspections ; and
- (e) two classes of amendments to planning permission, namely Class A and Class B amendments, will be introduced. Class A amendments to planning permission are deemed to be permitted without the need to submit an application to TPB. Class B amendments have to be submitted to TPB for approval under simplified procedures.

The new procedures for processing applications for planning permission and amendment of plans are shown in **Appendix III**.

Compensation

4. Over the past few years when LegCo members met with members of Heung Yee Kuk (HYK), HYK members repeatedly raised the subject of compensation for diminution of development rights due to planning actions. HYK considered that there should be adequate consideration of private rights as against the public interest in the plan-making process. The Administration's stance was that the issue of compensation relating to planning action had been considered in detail by the Special Committee on Compensation and Betterment (SCCB) in 1992. The SCCB recommended that the best approach was to build on the existing system of providing no compensation for partial loss of development rights due to planning actions.

According to the Administration, the affected landowners are allowed under the TPO to raise objections to zoning restrictions. TPB would take into account all public interests and strike a proper balance between public interests and private property right. The Amendment Ordinance incorporated many provisions to enhance the openness and fairness of the plan-making process.

5. HYK members requested that the issue of compensation for diminution of development rights should be addressed at the next round of review of the TPO.

Enforcement control against unauthorized development

6. Under the TPO, the Planning Authority is empowered to take enforcement action against UDs in the rural New Territories. Over the years, the Planning Authority has experienced technical difficulties in carrying out its duties. To address some of the deficiencies in the planning enforcement control, the Amendment Ordinance contained provisions in this respect. One of the major provisions is to confine compliance with enforcement notice to discontinuance of UDs, notwithstanding the submission of a planning application by the notice recipient for planning permission. This would prevent the existing abuse of procedures under which a notice recipient may resort to applying for planning permission as a statutory defence for non-compliance with the notice.

Town Planning Board

7. According to the Administration, the Bill was stage one of the phased approach to amend the TPO. The operation of TPB is intended to be reviewed under stage two. Nevertheless, the Amendment Ordinance introduced several improvements to procedures of TPB to enhance its efficiency. These include -

- (a) allowing TPB to transact any of its businesses by circulation of papers;
- (b) enabling TPB to delegate its powers to the standing committees of TPB to consider applications for amendment of plan and amendment to planning permission; and
- (c) enabling TPB to delegate certain power to public officers.

8. In the course of deliberation of the Bill, members received calls from many organizations urging for the opening up of TPB meetings. After in-depth discussion, the Administration agreed with members to provide expressly in law that all meetings of TPB shall be opened to the public, except

for the deliberation part in relation to consideration of representations/comments and planning applications and under certain circumstances in respect of other meetings. These specified circumstances include, among others, where TPB considers it not in the public interest to conduct open meetings and where sensitive or legal professional privileged information will be disclosed at the meetings.

9. At present, members of TPB including chairman and vice-chairman are appointed by the Chief Executive. Members of the Bills Committee urged the Administration to critically and comprehensively review the composition and operation of TPB at the stage two amendments of the TPO. Members were concerned in particular about the small quorum of five members for meetings of TPB which currently has 39 members.

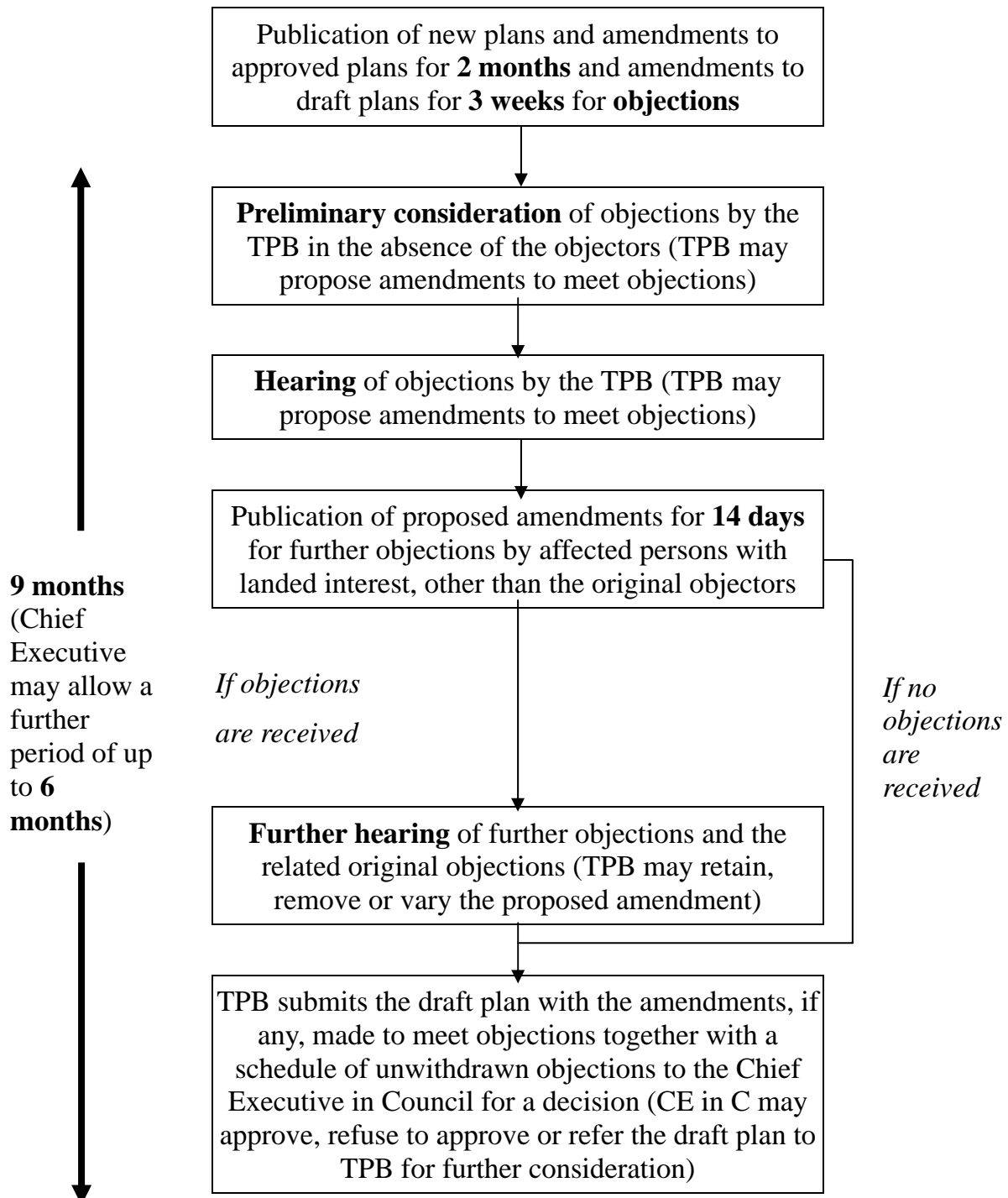
Implementation of the Amendment Ordinance

10. The Administration had undertaken to the Bills Committee to report to the Panel on Planning, Lands and Works on various aspects in respect of the Amendment Ordinance, a list of which is in **Appendix IV**.

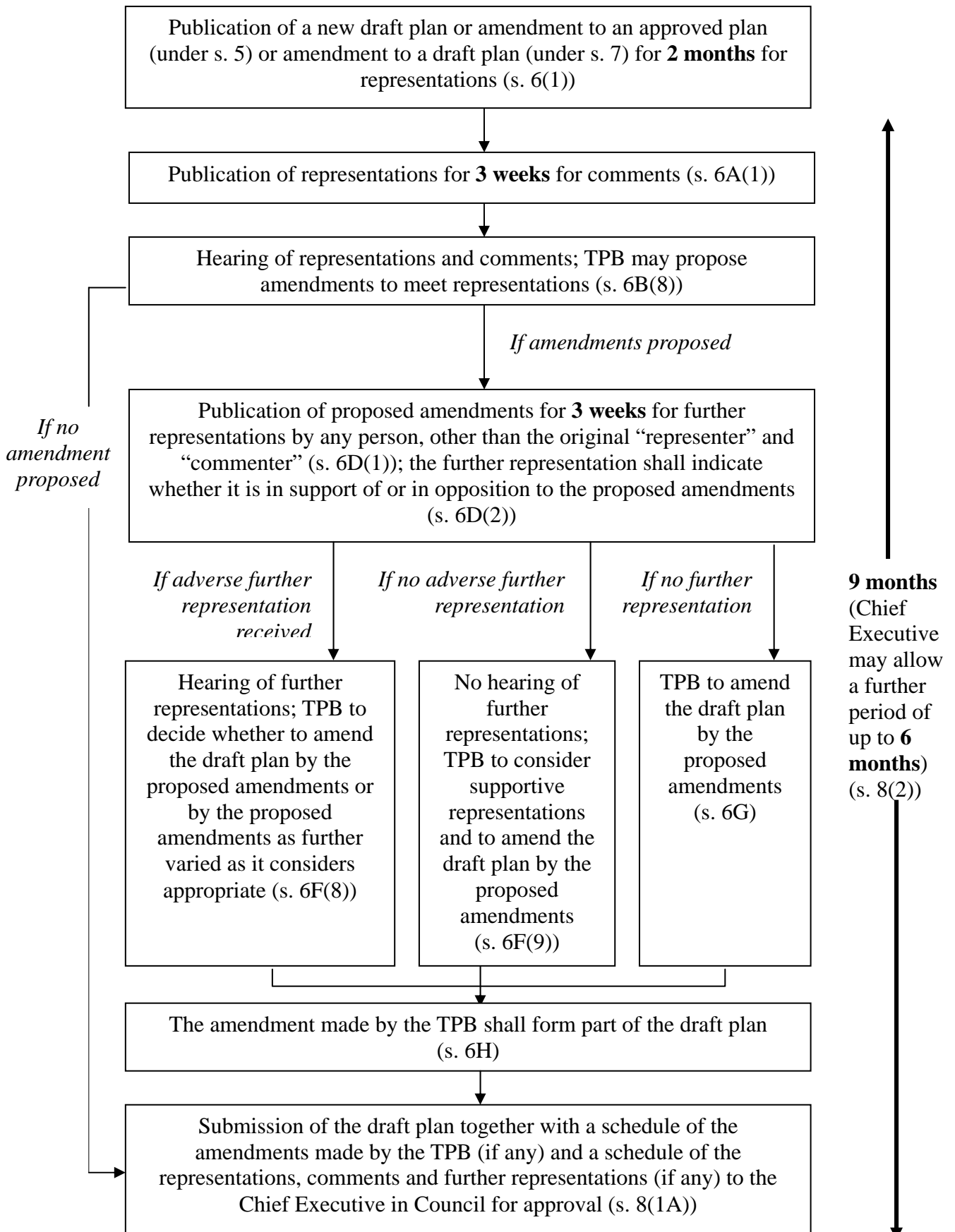
11. For the purpose of implementing the Amendment Ordinance, the Administration has drawn up eight draft new/revised TPB Guidelines on the new procedures and requirements. A list of the Guidelines is in **Appendix V**. Public consultation on the draft Guidelines was conducted from September to December 2004.

12. A list of relevant papers with their hyperlinks at the LegCo Website is in **Appendix VI**.

Three-stage plan making process under the existing Town Planning Ordinance



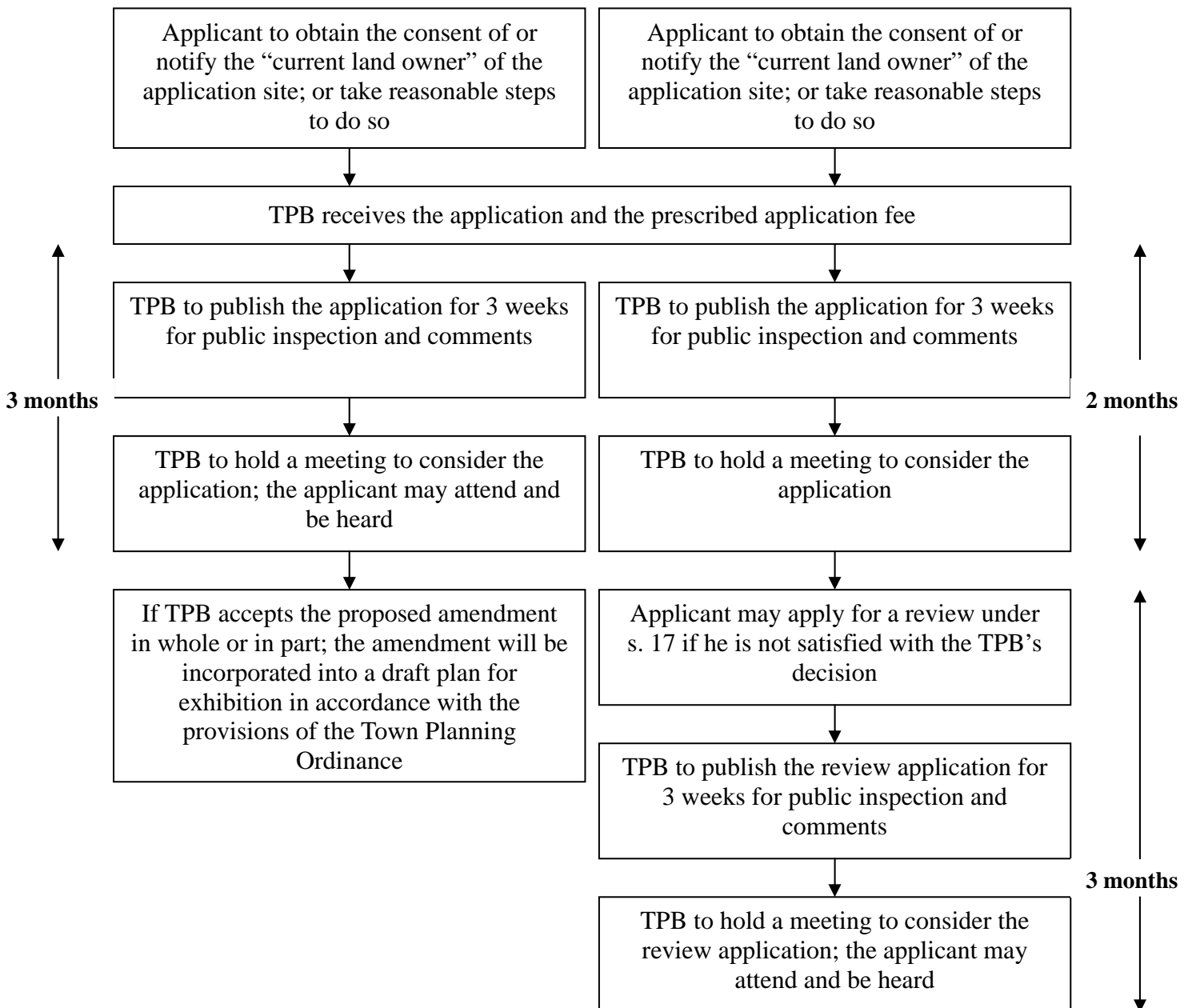
**The two-stage plan making process
as contained in the Town Planning (Amendment) Ordinance 2004**



**The new procedures for processing applications
for planning permission and amendment of plans**

Amendment of Plan (s. 12A)

Planning Permission (s. 16)



**Issues in relation to the
Town Planning (Amendment) Ordinance 2004 to be reported to
the Panel on Planning, Lands and Works**

During the course of deliberation of the Bills Committee on Town Planning (Amendment) Bill 2003, members requested the Administration to report to the Panel on Planning, Lands and Works on the following issues -

- (a) posting of site notices: the Town Planning Board (TPB) will, as far as practicable, cause a notice concerning planning applications to be posted in a prominent position and published in newspapers. The site for posting of notice should have heavy pedestrian flow in order to attract wider public attention;
- (b) definition of current land owner: TPB will, after consulting the trade, publish in the Gazette a period before the making of a planning application for the purpose of determining the current land owner as registered in the Land Registry;
- (c) maintaining notices about planning applications being kept posted: the Administration will liaise with the Home Affairs Department to carry out periodic check of notices to ensure as far as possible the notices kept posted;
- (d) voting by TPB members without hearing all relevant representations: some members were concerned that a decision made by TPB may be subject to challenge if TPB members vote on a matter without hearing all the relevant representations;
- (e) use of land in areas covered by conservation-related zoning: a member was concerned about the criteria adopted for considering and approving land use in areas covered by conservation-related zoning; and
- (f) the meaning of reasonable steps required by TPB in relation to notification to land owners after consulting the stakeholders.

List of new/revised Town Planning Board Guidelines

1. Draft Town Planning Board Guidelines No. A on Submission and Publication of Representations, Comments on Representations and Further Representations under the Town Planning Ordinance
2. 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
3. Draft Town Board Guidelines No. C on Satisfying the “Owner’s Consent/Notification” Requirements under sections 12A and 16 of the Town Planning Ordinance
4. 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
5. Draft Town Planning Board Guidelines No. E on Deferment of Decision on Representations, Comments, Further Representations and Applications made under the Town Planning Ordinance
6. 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
7. Draft Town Planning Board Guidelines No. G on Extension of Time for Commencement of Development
8. Draft Town Planning Board Guidelines No. H on Class A and Class B Amendments to Approved Development Proposals

Town Planning (Amendment) Ordinance 2004

List of relevant papers

Council/Committee	Date of meeting	Paper
Bills Committee on Town Planning Bill	--	Report (http://www.legco.gov.hk/yr99-00/english/hc/papers/cb1-1726.pdf)
Bills Committee on Town Planning (Amendment) Bill 2003	--	LegCo Brief (http://www.legco.gov.hk/yr02-03/english/bills/brief/b52_brf.pdf) Background brief (http://www.legco.gov.hk/yr02-03/english/bc/bc12/papers/bc120918cb1-2390-1e.pdf) Reports (http://www.legco.gov.hk/yr03-04/english/hc/papers/hc0625cb1-2213e.pdf) (http://www.legco.gov.hk/yr02-03/english/bc/bc12/reports/bc12cb1-2256-e.pdf)
Planning, Lands and Works Panel	--	LC Paper No. CB(1) 566/02-03(01) (http://www.legco.gov.hk/yr02-03/english/panels/plw/papers/plwcb1-566-1e.pdf) LC Paper No. CB(1) 1932/03-04(01) (http://www.legco.gov.hk/yr03-04/english/panels/plw/papers/plwcb1-1932-1e.pdf) LC Paper No. CB(1) 1932/03-04(02) (http://www.legco.gov.hk/yr03-04/english/panels/plw/papers/plwcb1-1932-2e.pdf)