

For discussion
on 22 March 2005

Legislative Council
Panel on Planning, Lands and Works

Implementation of the
Town Planning (Amendment) Ordinance 2004

Purpose

This paper reports to Members the result of the public consultations conducted by the Planning Department on the implementation of the Town Planning (Amendment) Ordinance 2004 (the Amendment Ordinance).

Background

2. The Amendment Ordinance was passed by the Legislative Council (LegCo) on 7 July 2004 and gazetted on 23 July 2004. It will come into operation on a date to be appointed by the Secretary for Housing, Planning and Lands (SHPL) by notice published in the Gazette. In considering the Amendment Bill, Members of the then Bills Committee requested the Administration to report to the Panel before the implementation of the Amendment Ordinance on the following matters -

- (a) Posting of site notices on planning applications;
- (b) Maintaining the site notices;
- (c) The time period to be gazetted for the purpose of determining the 'current land owner' of the application site after consulting the stakeholders; and

- (d) The ‘reasonable steps’¹ required by the Town Planning Board (TPB) in relation to obtaining consent of or giving notification to the concerned ‘current land owner’ after consulting the stakeholders.

Consultation

3. Given the wide range of amendments covered by the Amendment Ordinance, detailed administrative TPB Guidelines are needed to facilitate understanding and implementation of the new requirements. In this connection and with a view to ensuring a smooth implementation, the Planning Department had prepared eight sets of TPB Guidelines which the TPB has agreed to be put to the relevant stakeholders for comments. The Guidelines set out the detailed procedures and new requirements of the TPB.

4. Furthermore, to facilitate preparation of the Town Planning (Fees) Regulation², which we will endeavour to table before LegCo for negative vetting within this legislative session, a proposed fee schedule was also circulated for consultation with the stakeholders. A copy of the consultation paper on the fee proposals is at **Annex A**.

5. The stakeholder consultation on the TPB Guidelines and the fee proposals lasted from September to December 2004³. As part of the exercise, a public forum was held and a total of 14 briefings were given to various stakeholder groups, including the three sub-committees of the Land and Building Advisory Committee; the Real Estate Developers’ Association (REDA); professional institutes; District Councils; Heung Yee Kuk; and open storage trade operators. In addition to the views expressed at the forum/briefings, a total of 26 written submissions were received during the consultation period.

¹ The Amendment Ordinance provides that an applicant for an application made under section 12A or 16 is required to obtain the consent of or notify the ‘current land owner’ of the application site or to take such *reasonable steps* as the TPB may require.

² Under the Amendment Ordinance, SHPL may by regulation prescribe fees for planning applications made under sections 12A, 16 and 16A(2).

³ The consultation period was extended by one month, upon the requests of the relevant stakeholders.

6. On 4 February 2005, the TPB was briefed on the outcome of the consultation and endorsed the eight sets of TPB Guidelines subject to amendments to take into account the public comments where appropriate. The Guidelines will be promulgated to the public upon gazetal of the notice for commencement of the Amendment Ordinance.

Matters Raised by the then Bills Committee

7. The TPB has deliberated further on the matters mentioned in paragraph 2 above and, taking into account the views received in the consultation, have taken the decisions as set out in paragraphs 8 to 13 below.

Posting of Site Notices

8. In respect of publishing planning applications for public comments⁴, the TPB Guidelines will specify that a newspaper notice be published for all such applications. Furthermore, in so far as local circumstances permit, a site notice will also be posted. Exceptions to this are when the application site involves a large area or many buildings; or is remote and inaccessible by the public; or the application is not site-specific (e.g. application for amending the notes of a zoning plan).

9. In addition, as an administrative measure to further enhance the effectiveness of publication, the TPB will also upload a notice together with a gist of the relevant application to the TPB's website and post a notice at the TPB Secretariat, the relevant District Planning Office, District Office and Rural Committee (where appropriate). A notice will also be sent to the Owners' Corporation(s) or other management committee(s) of buildings within 100 feet (around 30 metres) from the boundary of the application site. For cases of territorial or major local significance, a notice will also be mounted to a roadside railing in a prominent location in the area.

⁴ In respect of applications for amendment of plan under section 12A, planning permission under section 16 and review under section 17, the Amendment Ordinance requires the TPB to publish the application for three weeks for public comments. The TPB is required to cause a notice to be posted in a prominent position on or near the application site at the beginning of the three-week period or publish a notice in two daily Chinese language and one daily English language local newspapers once a week during the three-week period.

Maintaining the Site Notices

10. To ensure that the notice posted on site will be kept posted during the three-week period, the Home Affairs Department has agreed to the arrangement of periodic checks by the staff of the relevant District Office. If the notice is found to be removed or damaged, the staff will report to the TPB Secretariat and arrangement will be made to replace the notice as soon as practicable.

Definition of ‘Current Land Owner’

11. The ‘current land owner’ is defined under the Amendment Ordinance as the person whose name is registered in the Land Registry as that of an owner of the land as at the commencement of such period before the application is made, as is specified by the TPB by notice in the Gazette. Initially, the period proposed in the relevant TPB Guidelines is specified as ‘four weeks’. However, taking into account the views expressed by the stakeholders during consultation, the TPB has agreed to adopt a longer period of ‘six weeks’. The revised proposal aims to protect the interest of the land owner while at the same time avoid imposing a significant burden on the applicants.

Reasonable Steps Requirement

12. Under the Amendment Ordinance, the applicant may resort to taking ‘reasonable steps’ to obtain the consent of or give notification to the ‘current land owner’. In this regard, the Guidelines proposed that the following steps would be treated as ‘reasonable steps’ by the TPB -

- (a) sending a request for consent to each and every ‘current land owner’; or
- (b) (i) publish a notice of the application once in one local Chinese and one local English newspapers in accordance with the size of notice (i.e. 5 cm by 6 cm or 2 in by 2.5 in) and list of newspapers specified by the TPB; and

- (ii) post a notice of the application in a prominent position on or near the site in accordance with the size of notice (i.e. A4) specified by the TPB; or
send a notice to the Owners' Corporation(s) or other management committee(s) of the subject building, or to the relevant Rural Committee where appropriate.

13. In the course of consultation, some stakeholders were concerned that publishing newspaper notices might be too expensive especially for small-scale applications. The TPB has therefore agreed that if the applicant chooses to take step (b), the requirement for newspaper notice will be exempted for applications involving only change of use of premises within existing buildings, or temporary uses involving an application site area of less than one hectare, or New Territories Exempted Houses/Small Houses. However, both steps specified in (b)(ii) will then need to be undertaken instead (i.e., the applicant is required to post site notice *and* send a notice to the Owners' Corporation or management committee or the Rural Committee).

14. The consultation report, with detailed comments made by the stakeholders as well as the Administration's responses, is at **Annex B**. Although most of the issues raised are technical in nature, a number of key issues, including comments on the fee proposal, are highlighted in Appendix 1 of the report for Members' reference.

Way Forward

15. Subject to Members' views, the notice for commencement of the Amendment Ordinance will be published in the Gazette in early April, and the Amendment Ordinance will come into operation in May 2005. As regards the proposed Fee Schedule, our target is to submit it to the Panel for consideration within this legislative session before incorporation into the Fees Regulation. In view of the controversy over the fee proposals and in order not to delay the implementation of the Amendment Ordinance, our recommendation is to proceed with the Amendment Ordinance leaving the Fees Regulation to be commenced at a later date.

Advice Sought

16. Members' agreement to the way forward as set out in paragraph 15 above is sought.

Annex A Consultation Paper on the Fee Proposals

Annex B Consultation Report on the Implementation of the Town
Planning (Amendment) Ordinance 2004

Housing, Planning and Lands Bureau
Planning Department
March 2005

Consultation Paper

Town Planning (Amendment) Ordinance 2004 - Fee Proposals

Introduction

1. Under s.14(2) of the Town Planning (Amendment) Ordinance 2004 (the Ordinance), the Secretary for Housing, Planning and Lands is empowered to prescribe fees for the following applications by regulation :
 - applications for amendment of plan (s.12A)
 - applications for planning permission (s.16)
 - applications for Class B amendments (s.16A(2))

Proposed Fees

2. In line with the users pay and cost recovery principles adopted by the Administration, the Ordinance provides that any fees prescribed may be fixed at levels sufficient to effect the recovery of expenditure incurred. We have prudently worked out the processing costs based on streamlined working procedures. The proposed fee schedule is at [Annex I](#). Some examples to illustrate the proposed fee charging scheme are at [Annex II](#).
3. The applicant is not required to pay any fee for lodging a review or appeal against the Town Planning Board's decision on planning permission.

Waiver of Prescribed Fees

4. Section 14(5) of the Ordinance provides that the Secretary for Financial Services and the Treasury (SFST), and any public officer authorized by the SFST in that behalf, may waive or reduce any prescribed fees on a case-by-case basis. Generally, the prescribed fee may be waived by SFST only if the application is directly and exclusively for "charitable purposes" and is submitted by a "charitable body" ¹.

Consultation

5. After consulting the stakeholders, related organizations and the Legislative Council's Panel on Planning, Lands and Works on the fee proposals, the Regulations incorporating the proposed fee schedule will be submitted to the Legislative Council for a decision.
6. Comments on the proposed fee schedule are welcome. We would appreciate your comments no later than 19 November 2004. Written comments can be sent to the Planning Department at the following address:

**15/F, North Point Government Offices
333 Java Road North Point
Hong Kong**

Or

Fax: 2877 0245 or 2522 8426

Or

E-mail: tpbpd@pland.gov.hk

**PLANNING DEPARTMENT
OCTOBER 2004**

¹ A body appearing in the list of approved charitable institutions and trusts of a public character, which are exempted from tax under section 88 of the Inland Revenue Ordinance (IRO), may be regarded as a charitable body.

Annex I

Proposed Fee Schedule

PART A : Applications for Planning Permission under s.16	
<i>1. New Applications</i>	
(a) All applications (unless otherwise specified)	
(i) First 1,000m ² of site area and first 1,000m ² of total floor area	\$7,500
(ii) Each additional 100m ² of site area or part thereof (subject to a maximum of \$5,000 for the additional fee)	\$50
(iii) Each additional 100m ² of total floor area or part thereof	\$150
[the total fee is subject to a maximum of \$90,000]	
(b) Utility Installation	\$18,000
(c) Minor relaxation of the stated development restrictions for any Column 1 use specified in the Schedule of Uses, or any use/development always permitted under the covering Notes	
(i) First 1,000m ² of site area and first 1,000m ² of total floor area	\$7,500
(ii) Each additional 100m ² of site area or part thereof (subject to a maximum of \$5,000 for the additional fee)	\$50
(iii) Each additional 100m ² of total floor area or part thereof	\$150
[fee is based on the total floor area of the entire development and the total fee is subject to a maximum of \$15,000]	
(d) Filling of land/pond or excavation of land or diversion of stream for any Column 1 use specified in the Schedule of Uses, or any use/development always permitted under the covering Notes	\$5,000

(e) Temporary development of land/building(s) not exceeding 5 years	
(i) Area of application site ¹ of 10,000m ² or less	\$7,500
(ii) Area of application site ¹ of more than 10,000m ²	\$10,000
2. Renewal of Temporary Permission Granted by TPB	\$7,500
3. Resubmission² of Application within 1 year of refusal, approval or withdrawal (other than Group 1(d))	50% of the fee based on the fee schedule which is effective when the resubmission is made, subject to a minimum fee of \$7,500
Part B : Applications for Class B amendments under s.16A	\$4,000
Part C : Applications for Amendment to Statutory Plan under s.12A	
1. Amendment to zoning with or without amendment to Notes of the plan	
(a) First 5,000m ² of land area	\$25,000
(b) Each additional 100m ² of land area or part thereof	\$150
[the total fee is subject to a maximum of \$90,000]	
2. Amendment to Notes of the plan only	\$25,000

¹ Area of application site refers to area of land or area of premises in case of development within an existing building to which the application relates.

² This group of applications means an application which is made by the same applicant to amend a rejected or withdrawn scheme within one year of refusal or withdrawal, or to amend a previously approved scheme within one year of approval. The amendments in question do not fall within the Class A or B amendments under s.16A of the Town Planning Ordinance, and should not lead to a material change to the previous scheme.

Annex II

Some examples to illustrate the proposed fee charging scheme

Group 1(a) under Part A

Example 1 : A s.16 application for a residential development involving a site area of 11,000m² and total floor area of 52,700m²

basic fee for first 1,000m ² of site area and first 1,000m ² of total floor area	\$7,500
fee for each additional 100m ² of site area or part thereof, subject to a maximum of \$5,000	$(11,000\text{m}^2 - 1,000\text{m}^2) / 100\text{m}^2 \times \$50 = \$5,000$
fee for each additional 100m ² of total floor area or part thereof	$(52,700\text{m}^2 - 1,000\text{m}^2) / 100\text{m}^2 \times \$150 = \$77,550$
Total fee (subject to a maximum of \$90,000)	\$90,050 → \$90,000

Example 2 : A s.16 application for a permanent container trailer/tractor park involving a site area of 11,000m² and total floor area of 1,000m²

basic fee for first 1,000m ² of site area and first 1,000m ² of total floor area	\$7,500
fee for each additional 100m ² of site area or part thereof, subject to a maximum of \$5,000	$(11,000\text{m}^2 - 1,000\text{m}^2) / 100\text{m}^2 \times \$50 = \$5,000$
fee for each additional 100m ² of total floor area or part thereof	\$0
Total fee (subject to a maximum of \$90,000)	\$12,500

Example 3 : A s.16 application for a change of use of an existing premises for a restaurant involving a total floor area of 1,250m²

basic fee for first 1,000m ² of site area and first 1,000m ² of total floor area	\$7,500
fee for each additional 100m ² of site area or part thereof, subject to a maximum of \$5,000	\$0 (no site area involved)
fee for each additional 100m ² of total floor area or part thereof	$(1,250\text{m}^2 - 1,000\text{m}^2) / 100\text{m}^2 \times \$150 = \$450$
Total fee (subject to a maximum of \$90,000)	\$7,950

Group 1(c) under Part A

Example 4 : A s.16 application for minor relaxation of building height for a residential development involving a total site area of 48,000m² and total floor area of 19,000m² within the "Residential (Group C)" zone

basic fee for first 1,000m ² of site area and first 1,000m ² of total floor area	\$7,500
fee for each additional 100m ² of site area or part thereof, subject to a maximum of \$5,000	$(48,000\text{m}^2 - 1,000\text{m}^2) / 100\text{m}^2 \times \$50 = \$23,500 \rightarrow \$5,000$
fee for each additional 100m ² of total floor area or part thereof	$(19,000\text{m}^2 - 1,000\text{m}^2) / 100\text{m}^2 \times \$150 = \$27,000$
Total fee (subject to a maximum of \$15,000)	\$39,500 → \$15,000

Group 1 under Part C

Example 5 : A s.12A application for rezoning an area of 49,000m² from "Government, Institution or Community" to "Residential (Group B)"

basic fee for first 5,000m ² of land area	\$25,000
fee for each additional 100m ² of land area or part thereof	$(49,000\text{m}^2 - 5,000\text{m}^2) / 100\text{m}^2 \times \$150 = \$66,000$
Total fee (subject to a maximum of \$90,000)	\$91,000 → \$90,000

**Consultation Report on the Implementation of
the Town Planning (Amendment) Ordinance 2004**

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PART I INTRODUCTION

The Town Planning (Amendment) Ordinance 2004 (Amendment Ordinance), which aims at enhancing the transparency of the planning system, streamlining the planning process and strengthening the enforcement control against unauthorized developments in the rural New Territories, was enacted by the Legislative Council on 7 July 2004 and published in the Government Gazette on 23 July 2004. It will come into operation on a date to be appointed by the Secretary for Housing, Planning and Lands by notice published in the Gazette. To facilitate the implementation of the Amendment Ordinance, Town Planning Board (TPB) Guidelines on the new procedures and requirements will need to be promulgated. The Amendment Ordinance also provides for the charging of application fees which will be set out in the new Town Planning (Fees) Regulation. Public consultation on the eight new/revised TPB Guidelines and the fee proposal took place between September and December 2004¹. A public consultation forum was held on 19 October 2004 and 14 briefings (**Appendix 2**) were given to various stakeholder groups during the period. In addition to the views expressed at these forum/briefings, 26 written submissions² (**Appendix 3**) had been received. On 4 February 2005, TPB considered the public comments and endorsed the amendments to the eight sets of TPB Guidelines to take into account the public comments, where appropriate.

This Report summarizes the public comments and highlights the key issues which are of considerable public concern. The Report also gives an account of the responses of the Administration to the public comments.

¹ The Amendment Ordinance, the consultation papers on the eight new/revised TPB Guidelines and the fee proposal are available at the Planning Department's website (www.info.gov.hk/planning/). The TPB Guidelines endorsed by the TPB will be available at the TPB's website (www.info.gov.hk/tpb/).

² The views expressed in one submission are not included in the Report at the request of the consultee.

PART II OVERVIEW OF KEY ISSUES

Amongst various public comments and suggestions, the key issues which are of considerable public concern are identified and responded to in this Part. The detailed comments and responses are set out in Appendix I. Given that the subject consultation was on the implementation of the Amendment Ordinance, most of the oral and written submissions relate to the detailed procedures and requirements of the new planning system and the fee proposal.

Key Issue 1 : Consideration of representation / comment / further representation relating to draft plan and comment on application for planning permission and amendment of plan

- ✧ **Public Comment** With a more open planning system, there is a general concern that the number of representations to draft plans and comments on planning applications would significantly increase, and a large number of adverse representations / comments may be misleading as some may lack substance or even contain ulterior motives. Some consultees consider that there is a need to prevent any possible abuse and suggest that some guidelines should be drawn up on what kind of representations / comments should be made by the public and how the TPB should consider such representations / comments.
- ✧ **Government Response** In assessing the significance of the representations / comments, TPB would consider the substance rather than the quantity and take into account the merits of such representations / comments on a case-by-case basis. However, to address the public concern, TPB agreed to incorporate some general statements in the relevant TPB Guidelines to inform the public that the representations / comments should be related to the planning context. The TPB would primarily consider planning issues such as planning intention, land-use compatibility and impacts of the planning proposals on the surrounding area, for example, in terms of environment, ecology, traffic, infrastructure, landscape, visual and local community aspects.

Key Issue 2 : Disclosure of personal information

- ✧ **Public Comment** The Law Society of Hong Kong (LSHK) and the Hong Kong Institute of Planners (HKIP) comment that the Government should prevent infringement of the Personal Data (Privacy) Ordinance (the Privacy Ordinance) when making available documents submitted to TPB for public inspection. The Real Estate Developers' Association (REDA) considers that all private information including the name of the person making representation (referred as 'representer' hereafter) or comment (referred as 'commenter' hereafter) should be excluded from publication.

- ✧ **Response** In line with the objective of the Amendment Ordinance to enhance transparency of the planning system and in response to a strong public request for disclosure of the name of the applicant over the years, it is the legislative intent that all information submitted to TPB as part of the representation / comment / application (including comments on application) will be made available for public inspection. To address the concern on release of personal information which may lead to possible abuse, TPB agreed that only the name of the representer / commenter / applicant but not other personal information (e.g. address, telephone number, fax and e-mail address) will be disclosed. Since the name of the representer / commenter / applicant forms part of the representation / comment / application which is required to be made available for public inspection under the Amendment Ordinance, there would not be any infringement of the Privacy Ordinance.

Key Issue 3 : Submission of further information to supplement representation / comment / further representation in the plan-making process

- ✧ **Public Comment** REDA has grave concern over the lack of provision for submission of further information to supplement representation, comment and further representation after the expiry of their respective statutory time limits for submission.

- ✧ **Government Response** In response to public comments received on the Town Planning (Amendment) Bill, the Administration had moved Committee Stage Amendments to extend the publication period of all draft plans from one month to two months in order to allow sufficient time for the preparation of representations. Since clear procedures are laid down in the Amendment Ordinance for publication of representations for comments, the Department of Justice has advised that no submission of further information to supplement representations should be allowed beyond the statutory time limit to ensure that all documents are available for public inspection at the time public comments are invited. Likewise, submissions of comments on the representations and further representations to any proposed amendments published by the TPB are also required to be made within their respective time limits and be made available for public inspection. The acceptance of submission of further information beyond the statutory deadline would simply defeat one of the key objectives of the enactment of the Amendment Ordinance, namely to streamline the statutory plan-making process. More importantly, although there is no provision for submission of further information in law, the Amendment Ordinance provides that all the concerned parties may attend the hearing and be heard by the TPB. It therefore does not preclude the representer/commenter/further representer from presenting further information at the hearing.

Key Issue 4 : Further information to supplement planning applications³

- ✧ **Public Comment** The relevant TPB Guidelines set out some qualitative and quantitative criteria for determining what would constitute a ‘material change’ in the nature of an application. Some consultees, including HKIP, REDA and Heung Yee Kuk (HYK) consider the ‘10% threshold’ (e.g. with respect to plot ratio, GFA or building height etc.) for determining what would constitute a ‘material change’ may not be appropriate for small projects.

- ✧ **Government Response** The ‘10% threshold’ is meant to provide a general guideline that such degree of change would generally imply a material change in the nature and impact of the proposed development. Since it is difficult to define small project and work out an objective benchmark that is fair to all applicants, what constitutes a material change should be a matter of fact and degree to be assessed on the individual merits of each case. TPB agreed to refine the Guidelines to clarify this intention.

- ✧ **Public Comment** REDA suggests that submission of a new or revised technical assessment should be exempted from re-counting of the statutory time limit for processing the application as such submission is very often prepared in response to the comments from Government departments.

- ✧ **Government Response** As clearly stated in the TPB Guidelines, technical clarifications or technical responses to Government departments’ comments will be exempted from the publication requirement if such clarifications / responses would not result in any change to the basic development parameters. However, if the submission / resubmission of a new / revised technical report is involved, such information should not be exempted. This is to ensure sufficient transparency in the planning application system as a new / revised technical assessment often provides a significant reference for the public to comment on the application.

- ✧ **Public Comment** Both Hong Kong Bar Association (HKBA) and REDA are concerned whether the applicant should be given a choice as to whether an application should be further

³ Under section 2(5)(c) of the Amendment Ordinance, TPB may delegate to the Secretary of TPB (Secy/TPB) its powers to determine acceptance of further information, and whether such further information can be exempted from publication for public comments. If the further information constitutes a material change in the nature of the application, a fresh application will be required. If the further information does not constitute a material change but cannot be exempted from publication, the further information will be published for public comments and the statutory time period for consideration of the application will be re-counted from the date of receipt of the further information.

processed with or without the submitted further information should the Secy/TPB decide that such further information shall be published for public comment and the statutory time limit shall be recounted.

- ✧ **Government Response** To address their concerns, TPB agreed to amend the Guidelines to specify that in submitting any further information, the applicant is required to indicate whether he would choose to proceed with the processing of the application without the further information should it be eventually decided by the Secy/TPB as not accepted or accepted but not exempted from the publication requirement. Otherwise, in the event that the further information is accepted but not exempted, the further information will be published for public comments and the statutory time limit for consideration of the application will be automatically re-counted from the date of receipt of the further information.
- ✧ **Public Comment** Both HKBA and REDA are concerned whether there is a mechanism for appeal against the Secy/TPB's decision on the acceptance and publication of further information for public comments.
- ✧ **Government Response** According to legal advice, there is no appeal mechanism in respect of such decision made by Secy/TPB under the Amendment Ordinance.

Key Issue 5 : Owner's consent / notification for planning application

- ✧ **Public Comment** REDA expresses concern on insufficient time to comply with the requirement for obtaining the consent of or notifying the current land owner which was proposed in the relevant TPB Guidelines to mean any person whose name is registered in the Land Registry (LR) as that of an owner four weeks before a planning application is made to TPB.
- ✧ **Government Response** To address the concern, TPB has agreed to amend the Guidelines by specifying six weeks instead of four weeks.
- ✧ **Public Comment** Some stakeholders, including HYK and the open storage trade operators, comment that posting notice in local newspapers as a proposed reasonable step for obtaining land owner's consent/ notification of land owner would impose a heavy financial burden on the applicants.
- ✧ **Government Response** TPB agreed to exempt small-scale applications from the requirement of publishing newspaper notices. Exempted applications are change of use of premises within existing buildings, temporary uses involving an application site area of less

than one hectare, and New Territories Exempted Houses/Small Houses. Such applicants may choose to provide a record of sending a statement of consent directly to all the 'current land owners' of the site or post a notice at the application site/premises and send the same to the Owners' Corporation, Owners' Committee, Mutual Aid Committee, management committee, or the relevant Rural Committee where applicable as a means to comply with the 'reasonable steps' requirement. The relevant TPB Guidelines have been amended accordingly.

- ✧ **Public Comment** HYK expresses that requiring the applicant to provide a full set of land ownership record issued by LR in order to fulfil the requirements for owner's consent / notification is unnecessary and costly.
- ✧ **Government Response** Having considered that there is no legal requirement for the submission of LR records as proof of the ownership status and obtaining all the LR records could be onerous and costly to the applicant in case the application site involves many individual lots, TPB agreed to clarify in the relevant TPB Guidelines that the submission of LR records is not a compulsory requirement. To strike a balance, the applicant is required to sign a declaration in the application that he has obtained the consent of or notify the owner or taken reasonable steps to do so. The Secretariat of TPB will also take random checks, and in case of doubt, 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.

Key Issue 6 : Deferment in decision on planning application

- ✧ **Public Comment** REDA comments that TPB should not defer making a decision on an application at the request of a Government department as it impinges on the right of the applicant in seeking a review or appeal. The organization is of the view that only the applicant has the right to seek deferment. On the other hand, some of the District Council members feel strongly that the applicant should not be allowed to indefinitely defer his application when there are local and departmental objections. A reasonable period of deferment should be imposed to minimize psychological pressure on local residents.
- ✧ **Government Response** According to legal advice, the Town Planning Ordinance only requires an application to be considered by TPB within a statutory time limit. It is silent on whether a decision must be made at the meeting where the application is considered by TPB. Since the applicant's right of review / appeal is subject to a decision being delivered by TPB, his/her right would not be affected in case of deferment.

Same as existing practice, the decision of deferment, no matter at the request of the applicant or a Government department, still rests with TPB. However, to strike a proper balance to

address the concerns on the uncertainty of the decision on the application, TPB will take into account the right or interest of the concerned parties, and may specify a maximum period for deferment as it deems appropriate for the case.

Key Issue 7 : Extension of time-limit for commencement of development

✧ **Public Comment** Under existing practice, a planning permission normally runs for four years to ensure that the approved development would be implemented within a reasonable period. The period could be extended on application to the TPB. The relevant TPB Guidelines specifies that any extension of time for commencement of development, which is proposed to be a Class B amendment requiring the approval of TPB under the new section 16A of the Amendment Ordinance, shall not result in an aggregate extension period longer than the original duration (usually four years) for commencement of the approved development. In effect, a total of eight years (the original four years validity plus four years extension) could be allowed. The Guidelines further states that the acceptance of other Class B amendments will not automatically extend the time limit for another four years. REDA objects to these proposals.

✧ **Government Response** The objective of setting a time limit for commencement of development is to ensure that the approved development would be implemented within a reasonable period. Since an application for Class B amendments under the new section 16A is exempted from the owner's consent/notification and publication requirements, the TPB is mindful of striking a proper balance between allowing flexibility in implementation of the development and transparency of the planning application system. In practice, a total of eight years should generally be more than sufficient for going through the development process in the Hong Kong context. The planning circumstances and community aspirations may change substantially in eight years' time and it is only fair that the community is given the opportunity to comment on the application again after such a long lapse of time.

Since an extension of time limit is in itself a Class B amendment, automatically extending the time limit for another four years upon acceptance of other Class B amendments is considered inappropriate for the reasons explained in the preceding paragraph. In any case, an applicant with a genuine need to apply for a longer extension period may submit a fresh section 16 application.

Key Issue 8 : Scope of Classes A and B Amendments

✧ **Public Comment** REDA comments that the proposed new scope of Classes A and B amendments is more restrictive than the relevant existing TPB Guidelines. The proposed

new scope should be significantly revised.

- ✧ **Government Response** TPB agreed to amend the proposed new scope to broadly follow the list of minor amendments currently processed by the District Planning Officer or the Director of Planning under delegated authority of TPB as set out in the existing TPB Guidelines . Moreover, in revising the list of Class A and B amendments to provide greater flexibility and to maintain control where necessary, TPB agreed to specify in the Guidelines that certain categories of Class A or B amendments would not be applicable if such change is restricted by any approval condition attached to the original planning permission. These include increase in GFA as a result of increase in site area due to setting out or bonus plot ratio granted by the Building Authority, increase in number of units and building height and change in location of public open space.

Key Issue 9 : Deferred commencement of the provisions relating to enforcement

- ✧ **Public Comment** The open storage trade operators criticize the Administration that there was insufficient consultation on the Bill before its passage by the Legislative Council (LegCo) and express grave concern on the removal of the submission of a planning application as a means to comply with an enforcement notice under the Amendment Ordinance. They consider that the provisions in the Amendment Ordinance would be too restrictive as no grace period is given to them for relocation. The operators request that implementation of the provisions relating to enforcement be withheld and separated from other provisions of the Amendment Ordinance, or alternatively, all open storage uses existed before the publication of the Amendment Ordinance in the Gazette should be “grand-fathered” and exempted from the new provisions.
- ✧ **Government Response** The relevant provisions in the Amendment Ordinance is to plug a fundamental loophole in the existing Ordinance, whereby an operator may delay prosecution action by the submission of a planning application. It had been thoroughly considered by the Bills Committee, taking into account the views expressed by relevant parties including deputations of the open storage trade. Moreover, the Amendment Ordinance enacted does not provide any ‘grand-fathering’ of or exemption for existing open storage uses. The request for withholding the commencement of the new provisions is also not justified. However, to alleviate the operators’ concerns, TPB has agreed to review the existing TPB Guidelines on Application for Open Storage and Port Back-up Uses to see if greater flexibility could be allowed to regularize some of these uses at appropriate locations. The revised Guidelines will be promulgated to the public after further consultation with the stakeholders.

Key Issue 10 : Fee Proposal

- ✧ ***Public Comment*** There are significant concerns on the proposed fee charging system, particularly from the open storage trade operators regarding applications for temporary permissions and from HYK on Small House applications. The open storage trade operators consider that the proposed fee would impose heavy financial burden to them and point out that the proposal will deter applicants from submitting planning applications. HYK consider it unfair to charge applications for Small House developments which are required only because there is insufficient land for Small Houses within the village environs. Besides, a number of stakeholders, including HKBA, Green Groups, HKIP, the Hong Kong Institute of Architects and the Democratic Party, consider that waiver of application fees should not be restricted to registered charitable organizations. It should be extended to all applications relating to 'public causes'.

- ✧ ***Government Response*** The issues relating to the fee proposal have policy implications which need to be further considered by the Administration. As the fee schedule forms part of the Fees Regulation which is a subsidiary legislation subject to negative vetting by LegCo, consultation with the LegCo Panel on Planning, Lands and Works would be made before submission of the Fees Regulation to LegCo.

Planning Department

March 2005

SUMMARY OF DETAILED COMMENTS AND RESPONSES

Paragraph No.	Issue	Parties	Views/Comments	Government Response
	I. General Issues			
1.	- Transparency in the planning process	HKBWS Member/SDC Member/EDC	Welcome the greater transparency in the plan-making process and greater access of information offered by Town Planning Board (TPB) website.	Noted.
		WWF	The opening up of the TPB meetings and the arrangement on public participation at different stages of the planning process will enhance the transparency of the planning process.	Noted.
		RPOC	Support the implementation of Town Planning (Amendment) Ordinance (TP(A)O) which will enhance transparency of the planning system and allow affected owners to express opinions.	Noted.
		Consultee 4	The TP(A)O is a step in the right direction to replace the outdated Town Planning Ordinance (TPO).	Noted.

Paragraph No.	Issue	Parties	Views/Comments	Government Response
		<p>MTRC</p> <p>Member/HKIS Kam Kin Pong</p> <p>REDA Member/PSC</p>	<p>The operation of a more transparent planning system should be properly managed so as to minimize any possible abuse of the system. Otherwise, the smooth running of development activities in Hong Kong will be affected.</p> <p>Will the TPB meeting be open to public when it is hearing and considering the representation, comment and further representation?</p> <p>A set of TPB Guidelines should be prepared to inform the public as to when and how the opening up of TPB meetings would be implemented.</p>	<p>Noted. The concern has been duly taken into consideration in the preparation of the follow-up work on the implementation of the TP(A)O and indeed it is the whole purpose behind the consultation of the TPB Guidelines and fee proposals. A proper balance would be struck to safeguard the public interest for a more transparent planning system while maintaining the smooth operation of the planning and development system in Hong Kong.</p> <p>The scope of opening up has been laid down in the TP(A)O. In gist, the TPB meeting to consider representation, comment and further representation, except the deliberation part, will be open to the public.</p> <p>Appropriate guidance notes on the opening up of the TPB meeting are being prepared and will be incorporated in the TPB Procedure and Practice. The guidance notes will be promulgated to the public.</p>
2.	- Efficiency of the planning process	Member/HKIS	Whether a more open planning process will arouse more objections and therefore prolong planning period?	The submission period for representation, comment and further presentation in the plan-making process and for comment on various applications are clearly set out in the TP(A)O. The entire periods for the plan-making process and consideration of

Paragraph No.	Issue	Parties	Views/Comments	Government Response
				planning application remain unchanged at nine and two months respectively. The transparency of the planning process is not achieved at the expense of efficiency.
3.	- Later stage amendments	HKBWS Public Forum	Look forward to future stages amendments, in particular those relating to the composition, operation and independence of the TPB, and the setting up of an urban design committee within the TPB.	Noted.
4.	- Guidelines on hearing	LSHK	Will there be any guidelines to ensure fair hearing?	The existing Guidance Notes on hearing proceedings will be updated to take account of the new provisions of TP(A)O, and will be uploaded to the TPB website for easy reference by members of the public. A copy of the Guidance Notes will be distributed to the concerned representers, commenters and further representers before the TPB meeting. The TPB Procedure and Practice will also be revised accordingly.
5.	- Applicant's attendance at Section 16 application	Member/LSC	Whether the applicant or his representative can attend before the TPB meeting in considering s.16 applications?	No. The TP(A)O does not provide for attendance by the applicant at the s.16 application stage. Given the large number of applications considered by the TPB, this is to ensure efficiency of the operation of the TPB (over 70% of the planning applications received in 2003 were approved at the s.16 stage).

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	II. TPB Guidelines			
6.	- Objectives of the TPB Guidelines	LSHK	Generally the Guidelines accurately reflect the objectives of the Ordinance in setting out very detailed procedures. There is no fundamental criticism to the Guidelines.	Noted.
7.	- streamlining of the existing plan making procedures	Member/SDC	The proposed amendments represent tremendous improvement to the existing objection-hearing procedures. Besides, the provisions of TP(A)O in allowing the hearing of both the objector and supporter by TPB are welcome.	Noted.
8.	- plan exhibition period	Public Forum GLA	The 2-month plan exhibition period is inadequate for District Councils (DCs) to solicit views from the relevant parties. The 3-week period for submission of comments on representation is inadequate and should be extended to 4 weeks.	Compared with the present system where publication of draft plans under sections 5 and 7 of the existing Ordinance is subject to to a statutory time limit of two months and three weeks respectively, the publication period has been standardized to two months. As the statutory time limit for submitting representation and comment has been laid down in the TP(A)O, the TPB has no power to extend the period for the public to submit representation or comment. However, as far as circumstances permit, the Planning Department (PlanD) will endeavour to consult DCs on new and amendment plans prior to formal gazettal except for statutory plans involving sensitive information (e.g.

Paragraph No.	Issue	Parties	Views/Comments	Government Response
				new Development Permission Area plan or imposition of height and plot ratio restrictions).
9.	- publication of plan	GLA	All plans under exhibition should be posted in the relevant district office sub-offices.	It is the current practice that all new and amendment plans are made available for public inspection at the TPB Secretariat, relevant District Planning Office (DPO), District Office (DO) and Rural Committee (RC), where appropriate.
10.	- disclosure of personal information	HKIP	What kind of information will be released when the representation, comment and further representation are made available for public inspection? In respect of the various applications, what kind of information will be released for public inspection?	One of the legislative intents of the TP(A)O is to increase the transparency of the planning system. There has been a strong call from the community for disclosure of the identity of the applicant and it is the legislative intent of the TP(A)O that all information submitted to the TPB would be made available for public inspection. The name of the applicant, representer, commenter or further representer forms part of the submission. To avoid abuse, we will release the name but not other personal data such as correspondence address, telephone number/fax number/e-mail address. The Department of Justice has confirmed that this arrangement would not infringe upon the PD(P)O.
		LSHK	Care should be taken to prevent infringement of the Personal Data (Privacy) Ordinance (PD(P)O) when disclosing personal information to other Government departments or the public.	
		REDA	All private information including name of the representer/commenter should be excluded from publication.	
		PlanArch	The privacy of the applicant/project proponent should be fully respected. The	

Paragraph No.	Issue	Parties	Views/Comments	Government Response
		<p data-bbox="663 754 757 783">MTRC</p> <p data-bbox="663 1015 757 1043">LSHK</p>	<p data-bbox="824 276 1420 715">disclosure of certain information such as name of the applicant, contact details, status of land ownership, planning justifications will not help the public to understand the development proposal. Instead, the applicant may be subject to unnecessary disturbance from objectors and estate agents. Hence, the information to be disclosed should be restricted to the details of application site (i.e. address, boundary, area and location plan) and development proposal (i.e. development parameters and layout).</p> <p data-bbox="824 754 1420 970">Commenters on planning applications should also be required to provide their personal particulars and be reminded that if they wilfully or knowingly make a false declaration or statement, they would be liable to prosecution under the Crimes Ordinance.</p> <p data-bbox="824 1015 1420 1305">Apart from personal information, commercially sensitive information (e.g. details of joint ventures) should also be excluded from publication. Provision should be made for the applicant to request that certain information should be made available only after reference to or consent by the applicant.</p>	<p data-bbox="1442 754 1525 783">Ditto.</p> <p data-bbox="1442 1015 2029 1230">The TP(A)O provides for disclosure of all information contained in an application for public inspection. The applicant has to decide what information should be included to facilitate TPB's consideration of his application.</p>

Paragraph No.	Issue	Parties	Views/Comments	Government Response
11.	- how would TPB consider the representations/ comments/ further representations or comments on applications	<p>Public Forum REDA</p> <p>Public Forum REDA Member/HKIS</p> <p>Public Forum REDA Member/HKIS</p> <p>LSHK</p>	<p>Some guidelines on how TPB should consider representations/comments/further representations or comments on applications should be devised.</p> <p>The posting of site notices may attract a large number of objections and the quantity of adverse comments per se may be misleading as some may lack substance or contain ulterior motives. However, the TPB may reject an application simply because it is subject to a number of objections.</p> <p>Some guidelines on how TPB should consider comments on applications should be devised, and the criteria on who could make comments and what kind of comments could be made. The reasons for objection should also be clearly stated and should have planning justifications. The comments should be relevant to the planning context of the site and not vexatious.</p> <p>Compared with the existing provision, “any person” (instead of the person affected by the draft plan) can make representation, comments and further representation. The representer/ commenter/further representer should be requested to state their relationship with the proponent of the subject amendment</p>	<p>Agreed. Guidelines are amended to include some general guidelines on what would be regarded as planning considerations.</p> <p>It is not the legislative intent to impose restriction on who could make representation, comment and further representation (except that the further representer cannot be the same person as the representer or commenter relating to the proposed amendment). There is no legal provision in the TP(A)O to require the representer, commenter or further representer to state his relationship with the original proponent of the amendment item. The significance of representations/ comments/ further representations will be assessed on the merits of the substance rather than the quantity and on a case-by-case basis.</p> <p>Ditto.</p>

Paragraph No.	Issue	Parties	Views/Comments	Government Response
			<p>item or the applicant in order to avoid the possibility of abuse by making numerous supportive representations/comments (e.g. from members/ associates of a private company or pressure group). It will help TPB to decide what weight to give to a number of identical or nearly identical representations/ comments.</p>	
12.	<p>- submission of draft plan for Executive Council's approval</p>	LSHK	<p>Whether the Chief Executive's decision to allow a further period of submission to the Executive Council be notified on the website?</p>	<p>Agreed. Such decision will be notified in TPB's website in future.</p>
13.	<p>- posting of site notices</p>	<p>GLA</p> <p>Consultee 4</p> <p>Member/SSPDC</p>	<p>The posting of site notices can serve a useful purpose. It should be additional to and should not substitute for the newspaper notices.</p> <p>Posting site notices on application sites should be a prerequisite because one cannot expect the public to read newspaper everyday to check if something would be built in front of their houses.</p> <p>Notice boards should be erected at conspicuous places to publicize the applications.</p>	<p>For every section 12A, 16 or 17 application, in so far as the local circumstances permit, the proposal is to post a site notice on or near the application site in addition to the notice published in the newspapers. There will also be other administrative measures such as posting a notice in the TPB Secretariat, relevant DPO, DO and (where appropriate) RC and uploading a notice to the TPB website.</p> <p>For applications of territorial or major local significance, a notice (about 33 inches x 60 inches or 867mm x 1577mm) may be mounted to a roadside railing in the locality</p>

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				in addition to the standard publication procedures.
14.	- publication of newspaper notice	Member/SDC	The arrangement of publication of newspaper notices, which will help inform the public about an application, is welcome.	Noted.
15.	- roles of District Offices and District Council	Member/SDC Member/EDC Member/SSPDC	Local residents are not all familiar with the planning application process even they have received the notices informing them about the application. The District Offices and local leaders play an important role in planning matters and should help explain the issues pertaining to the application to local residents. The District Council should also be involved in related planning matters.	Agreed. PlanD will be happy to explain the application to the local residents if required, and will, in consultation with DO, attend local meetings, if necessary.
16.	- publication of applications	Member/SDC Member/SDC Member/EDC REDA	The impacts arising from a development, for example, traffic and landscape, do not confine to the areas within 30m of the application site and consultation should therefore be made with major local bodies such as District Council and Area Committee. More detailed information should be put on the website for consultation purpose. The proposed administrative measures for notification (e.g. putting up notice at Rural Committee offices and District Offices and	Under the TP(A)O, the TPB is required to publish newspaper notice or cause a site notice to be posted in a prominent location on or near the application site. It is our proposal to publish both newspaper notice, and in so far as the local circumstances permit, post site notice. Sending notices to the Owner's Committee and management committees within 100 ft (around 30m) of the application site is one of the administrative measures to help publicize an application. There will also be other administrative measures such as posting a

Paragraph No.	Issue	Parties	Views/Comments	Government Response
		<p data-bbox="629 421 790 448">Consultee 4</p> <p data-bbox="618 756 801 820">Consultee 4 Member/SDC</p>	<p data-bbox="824 276 1424 379">sending notice to OC of neighbouring buildings) go beyond the requirements of the TP(A)O.</p> <p data-bbox="824 421 1424 564">Notices disseminated by the District Office to the owners' incorporations should be a prerequisite within certain perimeter of the application site</p> <p data-bbox="824 756 1424 971">The three-week period for allowing the public to comment on planning applications is too short. One proposal is to extend such period to at least 6 weeks as it takes time logistically to prepare documents for distribution, and organize public consultation meetings.</p> <p data-bbox="824 1086 1424 1342">The PlanD has been requested to inform SDC Members about all planning applications in the district. Such practice should be extended to other District Councils and in the consultation process, it should specify that the District Council is one of the consultation bodies for applications.</p>	<p data-bbox="1447 276 2029 715">notice in the TPB Secretariat, relevant DPO, DO and (where appropriate) RC and uploading a notice, with the gist of the application, in both Chinese and English, to the TPB website for easy reference by members of the public on. The administrative measures aim at supplementing the statutory requirements and are generally in line with the one of the key objectives behind the TP(A)O which is to increase transparency of the planning system.</p> <p data-bbox="1447 756 2029 1043">The three-week consultation period is prescribed under the TP(A)O and cannot be extended. However, with the publication of notice in the newspapers and positing at site as well as through other administrative publication arrangements, the public will be better informed of the submission of an application to the TPB.</p> <p data-bbox="1447 1086 2029 1190">Agreed. We will send the notice to all interested DC members to inform them about the application.</p>

Paragraph No.	Issue	Parties	Views/Comments	Government Response
		Member/EDC HYK	PlanD may prepare photomontage or physical model on a proposed development such that the public would not be misled by the information provided by the applicants. Notice on planning applications involving land in the rural New Territories (NT) should also be sent to the HYK.	PlanD will assess each and every application objectively and all public comments will be submitted to TPB together with the application for consideration. Agreed. Guidelines are amended accordingly.
17.	- copying of applications and public comments	Public Forum MTRC PlanArch PlanArch LSHK Member/PSC	Whether there would be copyright issue if the public is allowed to make copies of the documents submitted to the TPB? Technical documents are protected by copyright. The public should not be allowed to make copies of the documents submitted to the TPB. Public comments on a planning application should be copied to the applicant. Whether the public can obtain a copy of the application?	Section 59 of the Copyright Ordinance (Cap. 528) specifies that if copying is authorized by another Ordinance, such action does not infringe upon the copyright. The TP(A)O provides that an application as well as the comments on application should be made available for public inspection and members of the public (including the applicant) could make copies of such comments upon payment of a fee. Public can make copies on payment of a fee.
18.	- requirements for submission of comments on applications	Kam Kin Pong	Standard forms should be prepared for lodging objections to applications.	No standard form is considered necessary as the commenter is free to express their views so long as the particular matter of the application to which the comments relates and the details of the comment are set out.

Paragraph No.	Issue	Parties	Views/Comments	Government Response
		MTRC	Comments on planning applications should be allowed to include proposed amendments to the development schemes with a view to building consensus views.	Commenters are always allowed to provide alternative proposal to the application and the TPB will assess public comment on a case-by-case basis.
19.	- publication of further information and re-counting of statutory time limit	REDA	Unless the further information would result in a “material change”, all other further information should not be notified.	Under the TP(A)O, the applicant may submit further information to supplement an application for amendment of plan, planning permission and review. The Secretary of TPB (Secy/Board) will determine whether the information could be accepted and, if accepted, whether the information would be exempted from the requirement of publication for public comment. The TP(A)O also specifies that if the information is accepted for inclusion in an application and published for public comment, the statutory time period will be re-counted so as to allow sufficient time for processing and publishing it for public inspection and comments. This is to provide members of the public the necessary opportunity to inspect and raise comments on the revised proposal.
20.	- disclosure of TPB papers and minutes	Member/LSC HKIP Public Forum	Whether the TPB papers and minutes will be disclosed to the public. The TPB should consider providing the transcript of the meetings to the public?	The TPB papers, except on confidential items, will be deposited in the Enquiry Counters of the PlanD for public inspection on the following day after the issue of the papers to Members. The papers will also

Paragraph No.	Issue	Parties	Views/Comments	Government Response
				be made available in the Public Viewing Room on the day of the meeting of the TPB or its Committees. The minutes of meeting will be uploaded to TPB website for public inspection and are the official record of the TPB meeting.
21.	- notification of TPB decision	LSHK	Whether an interim reply is necessary if details are made available on website? If the date of formal notification rather than the meeting date is taken as the date of decision, a clear statement may be added in the Guidelines to avoid confusion, e.g., the timing of decision is relevant if a judicial review of a plan-making decision is desired. Besides, will a copy of the formal notification to representer/ commenter be made available on website?	An interim reply may be needed for some applicants who cannot afford to wait for the formal notice. The Guidelines are amended to indicate that the date of decision of the TPB or its Committee on an application is the date of its meeting, but the time limit for lodging a review and appeal under section 17 and 17B respectively starts from the date of the formal notification of the TPB or its Committee's decision. Since the decision of TPB will be uploaded to TPB's website immediately after its meeting, it is not necessary to post the formal notification at the TPB website. The details of development parameters and planning conditions have been uploaded to the archives of TPB website.
22.	- consent/ notification of owners	Public Forum	The Government was collaborating with land owners in requiring the applicants to obtain owner's consent/notification before submitting planning applications.	It is the legislative intent to obtain the owner's consent or notify the owner before submission of a planning application. This is to avoid the situation where even the owner himself is not aware of the

Paragraph No.	Issue	Parties	Views/Comments	Government Response
		Member/SSPDC	Whether the Government can ensure that all the “current land owners” are notified before agreeing to an application for amendment of plan or granting a planning permission?	application and may not be able to submit his comments on the application to the TPB. However, there are practical difficulties to ensure that all the owners such as the diseased or absentee owners are notified.
23.	- definition of “current land owner”	<p data-bbox="616 497 804 671">Public Forum</p> <p data-bbox="616 683 804 751">REDA Member/HKIS</p> <p data-bbox="616 938 804 1007">Kam Kin Pong Member/HKIS</p> <p data-bbox="616 1310 804 1342">LSHK</p>	<p data-bbox="822 497 1426 566">Whether “owner’s consent/notification will be required for Government land?</p> <p data-bbox="822 683 1426 895">“Current owner” is defined as the owner 4 weeks before the application is made. This is close to the application time and does not allow for delays in submission. A longer period, say 6 weeks will provide more flexibility.</p> <p data-bbox="822 943 1426 1262">Both mortgage banks and financial companies to which the application sites/premises relate should also be informed about the submissions of applications as their interests would also be significantly affected. In case if an owner sublet his land or premises and the lease term spans for a long period of time, e.g. 30 years, the lessee should also be notified.</p> <p data-bbox="822 1310 1426 1378">Whether it should be mentioned that a purchaser under an uncompleted agreement</p>	<p data-bbox="1444 497 2040 635">No. The definition of “current land owner” refers to the owners registered in the Land Registry. This does not cover Government land.</p> <p data-bbox="1444 683 2040 751">Agreed. Guidelines are amended accordingly.</p> <p data-bbox="1444 943 2040 1378">The Department of Justice has confirmed that the definition of “current land owner” does not include the mortgagee in possession of or the prospective owners with the concerned assignment pending registration in the Land Registry. Nonetheless, various statutory and administrative measures would be put in place to publicize the submission of applications, including sending a notice to the Owner’s Committees or management offices of buildings within 100 ft (around</p>

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			for sale and purchase registered in the Land Registry is not a “current land owner” and does not have to be notified? In some cases, it may be appropriate for notice to be served on the Incorporated Owners.	30m) (i.e. including the subject building) of the application site to inform local residents about the application.
24.	- detailed requirements of owner’s consent/ notification	<p>REDA</p> <p>REDA Public Forum</p> <p>HKBA</p>	<p>The RC should not be treated as an owner (for the purpose of satisfying the “reasonable steps” requirement).</p> <p>The TPB should not be allowed to require the applicant to take other reasonable steps to satisfy the owner’s consent/notification requirements after an application has been submitted.</p> <p>If the current land owner is an individual, the statement of consent should state his HKID/passport number as well. If it is a corporate entity, the statement should be</p>	<p>Being one of the major local rural community bodies, there is no reason to exclude the RC from being notified under the “reasonable steps” requirement.</p> <p>The reasonable steps set out in the Guidelines are not meant to be exhaustive. The applicant may take other steps to satisfy the “reasonable steps” requirement provided that the TPB considers such steps acceptable. The TPB will take into account such other steps taken by the applicant on a case-by-case basis to determine whether the applicant has satisfied the “owner’s consent/notification” requirements. But as far as the TPB is concerned, the reasonable steps that the TPB considers acceptable have already been set out in the Guidelines. Guidelines are amended to clarify this.</p> <p>Agreed. Guidelines are amended where appropriate to set out the requirements for a corporate entity.</p>

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		LSHK	<p>under company seal and accompanied by a resolution of board of directors. In any case, execution should be signed by an identified person as witness.</p> <p>For notification of current land owner who is a corporate entity, it should be sent to the address on the Company Registry and a copy of an updated company search from the Company Registry should also be submitted together with the application.</p> <p>The notice should also be sent to the address of current land owner registered on the Land Registry and (rather than or) address of the land/premises under application.</p> <p>Neither the TP(A)O nor the Guidelines have stated what attitude TPB will take if the current land owner refuses to give consent. Whether TPB has the discretion in these circumstances and if affirmative, how such discretion is exercised?</p> <p>It is noted that the “land” is defined in the Guidelines to include any premises constructed thereon. Some examples may</p>	<p>Agreed. Guidelines are amended to require the applicant to send the notification to the company’s office address. The TPB Secretariat will carry out random check on the submission. In case of doubt, the TPB may require the applicant to verify the information, by statutory declaration or otherwise.</p> <p>Sending the notice to both addresses may render the system too onerous. A balance should be made between transparency and efficiency of the planning system.</p> <p>If the applicant can demonstrate that he has notified the owner, he is considered to have fulfilled the statutory requirement. The affected owner may submit comment on the application. Public comments (including those raised by owner) will be assessed on there own merits.</p> <p>An application site may cover land or premises. Where the boundary of the application site transverses part of any</p>

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		<p style="text-align: center;">HYK 新界西北 露天倉大聯盟 Operator/MPD</p>	<p>need to be given as to how the “current land owner” should be included if the “land” includes part of any lot/premises.</p> <p>For the requirement of sending a statement of consent to “current land owner”, whether registered mail or similar mail requiring signature of recipient is required?</p> <p>The publication requirements seem to be very expensive for small cases and whether there will be an exemption for them? Besides, whether there is an appeal procedure if the applicant considers the TPB is acting unreasonably in asking for “other reasonable steps” to be taken?</p> <p>The proposed reasonable step of posting notice in local newspapers is ineffective, and would impose a heavy financial burden on the applicants. Land owners may not read the relevant newspapers. It would also be difficult to spot the relevant applications which are of concern to them among all the newspaper notices.</p>	<p>lot/premises, the “current land owner” in respect of such lot/premises should also be included. If the application site is co-owned by a number of owners, each and every owner appeared on the Land Registry is also defined as “current land owner”. Guidelines are amended to clarify this.</p> <p>The applicant will need to produce record of registered mail or local recorded delivery mail to demonstrate the action taken. Guidelines are amended to clarify the point.</p> <p>Agreed. Three types of applications : (1) change of use of premises within existing buildings; (2) temporary uses with an application site area less than one hectare; and (3) Small House developments are proposed for exemption from the requirement of publication of newspaper notice. This is aimed to alleviate the financial burden on the applicants. However, they are required to post a site notice and send a notice to the Owner’s Corporation and Owner’s Committee of the buildings on the application site, or where appropriate, to the relevant Rural Committee in order to fulfill the “reasonable steps” requirements. Guidelines are amended accordingly. Besides, as explained in the</p>

Paragraph No.	Issue	Parties	Views/Comments	Government Response
		Member/SSPDC	Whether an applicant is required to obtain the consent of a certain proportion of owners?	<p>response above, the reasonable steps set out in the Guidelines are not meant to be exhaustive. The applicant may take other steps to satisfy the requirement, and the TPB will consider whether to accept these other steps on a case-by-case basis.</p> <p>The TP(A)O requires the applicant to either obtain the owner's consent or notify owner, or take reasonable steps to do so. The rationale behind is to provide an opportunity for the affected parties (including the owners) to submit comment on the application. A mandatory requirement for an applicant to obtain consent of a certain proportion of owners is not necessary. A balance should be struck between equity and efficiency of planning.</p>
25.	- provision of land ownership record	HYK	<p>The requirement of providing a full set of land ownership records issued by the Land Registry is unnecessary and would impose a heavy financial burden on the applicants. In any case, the TPB would presumably obtain the same set of record from the Land Registry to verify the information submitted by the applicant.</p> <p>The applicant should only be required to adopt a simpler and cheaper means to provide</p>	Agreed. Land ownership records issued by Land Registry is only one of, and not the sole, documents that can prove the land ownership status. The applicant should clearly indicate what action has been taken to satisfy the "owner's consent/notification" requirement and submit to the TPB documentary proof of the ownership status, where appropriate. The TPB Secretariat will carry out random check on the submission to ensure that the applicant has

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			the proof of land ownership.	fully complied with the “owner’s consent/notification” requirements. The TPB may also require the applicant to verify any matters or particulars set out or included in the application, whether by statutory declaration or otherwise. Guidelines are amended to clarify this.
26.	- situations where there are large number of owners and in the rural context	Member/PSC HYK 新界西北 露天倉大聯盟 Operator/MPD	<p>It would be difficult to comply with the owner’s consent/ notification requirements if the number of owners involved in an application is very large.</p> <p>For applications involving land in the rural NT, it may be difficult to meet the requirements set out in the Guidelines because:</p> <p>(a) many tenancy agreements in relation to land owned by “tso/tong” are verbally made between the managers and the tenants;</p> <p>(b) many registered land owners do not reside in Hong Kong; and</p> <p>(c) the records of the Land Registry only show the names of the registered land owners but not their addresses.</p>	<p>The applicant can demonstrate to the TPB that reasonable steps have been taken to obtain owner’s consent or give notification to the owner. These steps include (i) publishing a notice of the application in local newspapers and (ii) either posting a notice of the application on or near the application site or sending a notice of application to the Owners’ Corporation/Committee etc. of the buildings, erected on the application site, or where appropriate, to the relevant Rural Committee. The reasonable steps to be adopted by the applicant may vary and the circumstances of each case will be duly considered by the TPB, e.g. whether the applicant is unable to contact the owners or the number of owners involved is large.</p> <p>Besides, to alleviate the burden on applicants of small-scale development, three types of applications are exempted from</p>

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			<p>Whether the requirement for owners' consents would be considered as fulfilled if 3 out of 4 of the registered "tso/tong" managers give consents to the application?</p> <p>Would an objection to an application raised by a land owner, for example, one of the "tso/tong" managers be considered by the TPB as an objection from the land owner or the general public?</p> <p>If a land owner who has given consent to the application subsequently lodges an objection, how would the TPB consider this kind of objection?</p>	<p>publication of newspaper notice in fulfilling the "reasonable steps" requirements as mentioned above.</p> <p>The registered "tso/tong" managers are also regarded as the "current land owners" under the TP(A)O. The same rules as regards consent/notification or reasonable steps apply.</p> <p>The affected "tso/tong" manager, with or without having given his consent, may submit comment on the application. His comment will be treated as public comment. Public comment is not the sole consideration of TPB. Its significance will be determined on its substance and on a case-by-case basis.</p>
27.	- validity of owner's consent/notification	Public Forum REDA	<p>The proposed one-year validity period of an owner's consent/notification is too short as some applicants may take more than a year to prepare a submission.</p> <p>The owner consent should be valid (i.e. not limited to one year) as long as the application is under processing by the TPB or the Town</p>	<p>The validity period is aimed to balance the need for allowing flexibility for the applicant to prepare an application and the possibility of change in ownership within the period. The one-year period is not a definitive requirement. If an applicant can provide good justifications, the TPB will consider waiving the requirement on a</p>

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			Planning Appeal Board (TPAB).	case-by-case basis. Nevertheless, once the owner's consent/notification requirement is fulfilled, the applicant is not required to obtain consent from or notify owners again when an application is being processed by TPB or TPAB under sections 17 and 17B of the TPO.
28.	- submission of further information to supplement a representation	REDA	The provision of preventing the submission of supplementary information after initial representation or comment is made does not appear in the existing Ordinance. Instead of presenting the information at the hearing, the TPB and the public would be better served if such information is given to them earlier.	According to the Department of Justice, there is no provision in the TP(A)O for submission of further information by the representers, commenters and further representers after the expiry of the relevant statutory time limits. The completion of one procedure is followed by another and a deadline has been set for completion of these procedures in s.6 of the TP(A)O. The acceptance of submission of further information beyond the statutory deadline would simply defeat one of the key objectives of the enactment of the TP(A)O, namely to streamline the statutory plan-making process. More importantly, although there is no provision for submission of further information in law, the TP(A)O provides that all the concerned parties may attend the hearing and be heard by the TPB. It therefore does not preclude the "representer"/"commenter"/"further representer" from presenting further

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				information at the hearing.
29.	- threshold for “material change”	Public Forum REDA HKIP HYK Member/SDC HKIP	<p>The proposed 10% threshold for interpreting what would constitute “material change” in the nature of an application may not be appropriate for small-scale development. Consideration should be given to introducing a 2-tier system for small-scale and large-scale developments respectively.</p> <p>The threshold is recommended to be 25% instead of 10% so as to allow greater flexibility.</p> <p>Some developers may increase the plot ratio or gross floor area just below the 10% threshold and therefore avoid re-publication of the application. However, some of the amendments, e.g. building disposition, landscape and tree preservation proposals, implementation programmes may affect the local community. The Guidelines should specify under what circumstances that re-publication of the amendments is exempted.</p> <p>Submission of further information is mainly required to respond to Government department’s comments. It will be very subjective in determining whether</p>	<p>What constitutes a material change of the nature of the application is a matter of fact and degree and should be assessed on the merits of individual case. The “10%” is meant to provide a general guideline for allowing flexibility for an applicant to make adjustment to a proposal after submission. It is difficult to define small project and work out an objective benchmark that is fair to all applicants.</p> <p>Whether an exemption is to be granted should be assessed on the circumstances of each case. The TPB Guidelines will give an indication on the types of information that could be exempted. Besides, it has been clearly stated in the TPB Guidelines that in considering whether the changes are minor or not, the Secy/Board may make reference to the relevant categories of amendments as set out in the “Schedule of Class A amendments” published by the TPB.</p> <p>Ditto.</p>

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		LSHK	<p>amendments to the design and layout will constitute a “material change” to an application.</p> <p>Can the same criteria be applied for both the types of information that constitute “a material change” and the types of information that could be exempted?</p>	<p>What constitutes “a material change” is a matter of fact and degree. Not all cases, such as design aspect, can be quantified.</p>
30.	- determination and clarification of “material change”	<p>REDA</p> <p>HKBA</p>	<p>What constitutes a “material change” should not be narrowly defined and where possible should try to avoid the unnecessary re-counting of the two-month statutory period for consideration by the TPB.</p> <p>Is there a right to appeal to the Secretary on TPB’s decision (e.g. a quick appeal system to Vice-chairman of TPB) in determining whether the further submission constitute a “material change”?</p> <p>A paragraph should be added to clarify that if the further information constitute a “material change” to the nature of an application, a</p>	<p>It is the duty of the applicant to provide sufficient information when making an application to the TPB. If submission of further information is needed and the information is accepted for inclusion into the application, unless it is exempted by the Secy/Board, it is required under the TP(A)O that the statutory time limit for consideration of the application would have to be re-counted from the date of receipt of the further information.</p> <p>There is no provision under the TP(A)O for the applicant to seek a review or appeal against such decision.</p> <p>Agreed. Guidelines are revised to take into account the comments, where appropriate.</p>

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			<p>fresh application will need to be submitted and the statutory time limit will only start when such application (not the date of submission of the further information) is submitted.</p> <p>A paragraph should also be added to clarify that if the further information constitutes a “material change” to the nature of an application, it will not prejudice the future application which is materially different from the previous application.</p>	<p>Each application will be considered by the TPB on its merits. This principle is applicable to all applications.</p>
31.	- re-publication of application and recounting of statutory time limit	<p>REDA</p> <p>HKBA</p> <p>REDA</p>	<p>If information does not constitute “material change”, it should not result in delay to the processing of an application and should not need to publish the information again.</p> <p>Whether all the statutory time limits for public inspection and comments are automatically restarted if the statutory time limit for consideration of an application restarts upon receipt and acceptance of further information and inclusion of which in the application?</p> <p>Technical submissions in response to departmental comments often involve “the submission of a new or revised technical assessment”. This should be exempted from</p>	<p>Information which does not constitute a “material change” might be exempted by the Secy/Board from the publication requirement and the requirement for re-counting the statutory time limit for processing the application (see para. 19 above).</p> <p>Generally speaking, technical clarification/responses to comments of relevant Government departments without changing the scheme or involving the submission of a</p>

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		HKBA	<p>recounting of 2-month statutory period.</p> <p>It should be clarified whether the exemption to be given by Secy/Board on the publication of accepted further information is automatic or subject to application of the applicant. If it is the latter situation, what is the supporting information needed to be provided.</p> <p>If the further information is accepted but not exempted from publication requirements, the applicant should be given a choice as to whether the application continues to be processed with or without the further information.</p>	<p>new or revised technical assessment is exempted from the publication and re-counting requirements. As new/revised technical assessments concerning an application often provide a significant reference for the public to comment on the application, such information should not be exempted so as to ensure sufficient transparency in the planning application system by allowing the public to inspect and comment on the documents.</p> <p>The Secy/Board will determine the acceptance/exemption of the further information upon receipt. There is no need for the applicant to make a separate application for the exemption provision.</p> <p>In submitting any further information, the applicant should clearly indicate whether he would proceed with the original application (i.e. without the further information) in case the Secy/Board decides that the further information is not accepted, or such information is accepted but not exempted from the publication and recounting requirements.</p> <p>Otherwise, any further information that is</p>

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				accepted but not exempted from the publication and recounting requirements will result in the relevant statutory time limit being recounted. For further information that is not accepted, the original application (i.e. without the further information) will continue to be processed, unless the applicant has indicated otherwise at the time of submitting the further information.
32.	- deadline for submission of further information	<p>REDA</p> <p>LSHK</p> <p>Consultee 4</p>	<p>The Guidelines states that additional information should be submitted seven days before the meeting. What is the basis of setting the requirement and is the deadline of submission realistic?</p> <p>If further information is required to be submitted 7 days before the scheduled meeting, it is better replaced by “one week” to avoid confusion on whether Saturday, Sunday and public holidays are counted.</p> <p>Strict deadlines should be set for allowing the applicants to submit further information. Sufficient time should be allowed for the TPB and the public to study the submitted materials. The latter should also be given</p>	<p>The 7-day period is considered reasonable to allow the Secy/Board to decide and inform the applicant whether the further information is accepted and/or exempted from the publication and “re-counting” requirements, and for the undertaking of other related administrative procedures (e.g. updating meeting agenda).</p> <p>Agreed. Guidelines are amended accordingly.</p> <p>The TPB Guidelines have stipulated that further information for an application should be submitted to the TPB at least one week before the scheduled meeting. If the further information is accepted by the</p>

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			sufficient time to make responses and comments.	Secy/Board, the statutory time limit for consideration of the application will be re-counted from the date when such information is received so as to allow time for processing the information and publishing it for public inspection and comments. There is a statutory period of three weeks for the public to comment on the further information.
33.	- reasons for deferment	REDA	<p>The phrase “decide to defer a decision on an application” should be replaced by “defer consideration of an application”.</p> <p>The TPB should not defer making a decision on an application (including s.16A applications) at the request of a Government department. Only the applicant can enjoy the right to request for deferment of decision.</p> <p>The deferment decision of the TPB impinges on the rights of the applicant in seeking a review or appeal provided under the Ordinance. Currently, only the relevant parties (other than Planning Department) could request a deferment. Deferring a</p>	<p>Notwithstanding that the TPB might decide to defer a decision on an application, the TP(A)O requires the TPB to consider an application within the relevant statutory time period. Indeed, sections 16 and 16A do not provide for deferment of consideration of the applications.</p> <p>While the “relevant parties” as defined in the TPB Guidelines or the PlanD could request the TPB to defer making a decision on an application, the decision still rests with the TPB. It is reasonable to allow the TPB, upon consideration of such request or of its own volition, to defer a decision on an application pending the availability of the recommendations of a major Government planning-related study or decision on a major infrastructure proposal which are/is due to be released shortly, as such</p>

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		LSHK	<p>decision awaiting a Government study induces uncertainty. The results of the Government study are irrelevant as they would only have statutory effect if the TPB includes them into the OZP. The applicant would be better served if the application is rejected and the right of review is then provided. The Guidelines needs to be significantly revised.</p> <p>The major Government study that may be used as a reason for deferring a decision on the application should confine to a study that</p>	<p>recommendations/ decision may have significant planning implications on the subject site and would affect the TPB's decision. Nonetheless, it is agreed that the proposed deferment should not be indefinite. In considering a request for deferment, the TPB will take into account whether the right or interest of the concerned parties will be affected. Guidelines have been revised to clearly specify that the TPB may specify the maximum period for deferment as it deems appropriate and no further deferment should be granted except under very special circumstances.</p> <p>According to the Department of Justice, sections 16 and 16A do not provide for deferment of consideration of applications. It is silent as to whether a decision must be made at the date of the meeting. The law only requires the TPB to consider the application within the statutory time limit. The applicant's right to review and appeal is subject to a decision being delivered by the TPB. The applicant's right to review and appeal would not be affected.</p> <p>Agreed. The major Government study concerned should be planning-related which might have significant planning implications</p>

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			requires amendment to the relevant outline zoning plan or will alter the planning context.	on the application site and would affect the TPB's decision on the application. Guidelines are amended accordingly.
34.	- period for deferment in plan making process	Public Forum	The proposed maximum period of 4 weeks for deferment in respect of representations/comments/further representations may be inadequate in some cases. Different deferment periods should be considered, depending on the circumstances of each request.	The TP(A)O requires the TPB to submit a draft plan to the Chief Executive in Council for consideration within a statutory time limit of 9 months from the expiration of the exhibition period of the draft plan. As such, the TPB will be working under a very tight schedule to complete all the required statutory procedures relating to the consideration of representations, comments, and/or further representations. The maximum deferment period of four weeks, as set out in the TPB Guidelines, is therefore suggested as a general guideline for the TPB in granting a request for deferment. Nevertheless, under special and exceptional circumstances, the TPB may apply to the Chief Executive for extending the aforementioned 9-month statutory period (for not more than 6 months) if there is a genuine need to do so.
35.	- number and timing of deferment in various applications	Consultee 4	How many times should an applicant be allowed to defer his/her application? Should an applicant be allowed to request for a deferment of his/her application 1 day	Guidelines have been revised to clearly specify that the proposed deferment should not be indefinite. Moreover, in considering a request for deferment, the TPB will take into account all relevant factors and whether

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		Member/SDC	<p>before the TPB meeting?</p> <p>The applicant should not be allowed to indefinitely defer his application for amendment to plan when there are local and departmental objections. A reasonable period of deferment should be imposed to minimize psychological pressure on local residents. If the developer is failed to address satisfactorily the concerns of Government departments within a reasonable period, the application should be withdrawn.</p>	<p>the right or interest of the concerned parties will be affected. The TPB may specify the maximum period for deferment as it deems appropriate and no further deferment should be granted except under very special circumstances.</p> <p>The TPB Guidelines have set out different procedures for dealing with a request for deferment for various applications received before or after the issue of the meeting agenda, depending on whether the request is based on reasonable grounds. The TPB will take into account whether the right or interest of the concerned parties will be affected and may specify the maximum period for deferment as it deems appropriate. To facilitate the public in tracking the progress of the case, the receipt of a request for deferment will be notified on the website of the TPB.</p>
36.	- needs of satisfying owner's consent/ notification requirements	<p>REDA</p> <p>LSHK</p>	<p>Although it is referred to as “streamlined approach”, it would appear that full consent of owners and public notification process is required. It is useful to mention this at the beginning of the Guidelines.</p> <p>Whether an application for renewal of planning approval for temporary use needs to satisfy the “owner’s consent/notification”</p>	<p>An application for renewal of planning approval for temporary use or development is in nature a s.16 application, which would need to satisfy the “owner’s consent/ notification” requirements. Guidelines are amended, where appropriate.</p>

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		Member/SDC	<p>requirements?</p> <p>Whether the application for planning approval for temporary use needs to satisfy the public consultation process?</p>	Ditto.
37.	- duration of total extension of time and permission period for s.16A approval	REDA	<p>It is arbitrary to limit the number of extensions to an approved application to a further period equal to that of the original approval, especially for complex projects. There is no reason why an unlimited number of extensions could not be considered under this process. This is different from the existing administrative procedures and no justification has been given for this change in approach.</p> <p>The TP(A)O does not specify that the approval for s.16A application should not run for a full period of 4 years. Unlike application for commencement of development, Class B amendments are normally made at an early stage of the 4-year period, so a full period of 4 years should be granted.</p>	As suggested in the TPB Guidelines, the time-limited condition attached to the planning permission is to ensure that the approved development proposal would be implemented within a reasonable period. If good justifications are provided by an applicant, the TPB may grant an extension of time for commencement of development under s.16A(2) of the TP(A)O, provided that the extension period or the aggregate of all such extensions does not exceed the original duration for commencement of the approved development proposal. Unlike s.16 applications, s.16A applications do not have to satisfy the “owner’s consent/ notification” and public consultation requirements. It is considered that eight years (four-year validity period plus four-year extension) should be more than sufficient for the developer to go through the development process. The planning circumstances and community aspirations may change a lot in eight years” time and it is only fair if the community is given the opportunity to

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				comment on the application again with such long lapse of time. If the applicant considers the original time limit inadequate, he can always ask for a review/appeal of the TPB's decision. In any event, an applicant with a genuine need to apply for a longer extension period could opt for a fresh s.16 application.
38.	- criteria for assessing applications for extension of time for commencement	REDA	<p>A "change in the planning policy" should not be a reason for not granting an extension for commencement of development unless it is a policy of TPB by way of an amendment to an OZP after going through proper statutory procedure.</p> <p>Taking "reasonable step" (not "all reasonable step" as the barrier is too high) to implement the development should be adequate.</p>	<p>Planning circumstances change frequently and it is not practicable to amend an OZP to reflect the change instantly. Change in planning circumstances is a material consideration. Nevertheless, the TPB would endeavour to publish or promulgate relevant statement of planning policy before the TPB would take account of it in considering a renewal application.</p> <p>Agreed. Guidelines are revised accordingly.</p>
39.	- procedure for handling application for Class B amendments	GLA	The procedure for handling applications for Class B amendments should be monitored and reviewed from time to time so as to prevent abuse in circumventing more rigid controls and public consultation, and to avoid corruption opportunities.	Agreed. The procedure will be reviewed whenever necessary to meet the changing circumstances.

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40.	- needs of satisfying owner's consent/ notification requirements	LSHK	Whether an application for extension of time for commencement of an approved development proposal needs to satisfy the "owner's consent/notification" requirements?	There is no such provision in s.16A of the TP(A)O. An application for Class B amendment is not required to satisfy the "owner's consent/notification" requirements.
41.	- status of applicant	REDA Member/PSC HKIP	The requirement that an application for Class B amendments should be submitted by the original applicant means the approval does not go with the land. The original applicant who has sold the development right should not have a right to apply for amendment to the approved scheme.	This requirement is to avoid having a third party to submit an application to amend an approved development proposal submitted by others. The original applicant may, however, appoint an authorized representative to submit an application for Class B amendments. In case there is a change in land ownership, a fresh s.16 planning application can be submitted.
42.	- Class A amendments	Member/SDC	If the Class A amendment proposed to be undertaken by the developer is subject to local objection, what will be the procedures in dealing with this situation? Has the provision on Class A amendment any retrospective effect?	There are existing TPB Guidelines for minor amendments to approved development proposals. The lists of Class A and B amendments are drawn up on the basis of the existing Guidelines. According to s.16A of the TP(A)O, the Class A amendments to planning permission are deemed to be permitted without the need to submit an application to the TPB. They are minor in nature and will not be substantially different from the application for which planning permission has been given by the

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				TPB. The new s.16A provision will apply to those permissions granted before the commencement of the TP(A)O.
43.	- consultation on applications for Class B amendments	REDA LSHK HKIP	Under the TP(A)O, consent and notification requirements do not apply to s.16A applications. The Government should not adopt administrative procedures that are beyond the provision of TP(A)O, including circulation to District Offices (DO). The application should not be referred to TPB if there is any adverse public comment conveyed by DO. Whether the details of these applications will be published or made available for public inspection or circulated to the District Office to obtain local views on the application?	The TP(A)O does not provide for publication of s.16A applications for public inspection and comment. PlanD will circulate these applications to concerned Government departments, including DO if necessary, for comments. According to the advice of the Department of Justice, in considering a s.16A application, there is no legal restriction under the TP(A)O on the TPB to take into account any comments as it sees fit. Under the Administrative Law principle, the authority shall only take into account relevant considerations in making a decision.
44.	- scope and requirements of Class A and Class B amendments	REDA	The new/revised Guidelines is more restrictive than the existing TPB Guidelines in respect of the scope and requirements of Class A and Class B amendments. Opportunity should be taken to see if some of the provisions in the existing TPB Guidelines can be deleted and not carried forward to the new Guidelines. The new/revised Guidelines should be significantly revised.	The Schedule of Class A and B amendments has been amended to broadly follow the requirements in the existing TPB Guidelines. A new requirement is added to the effect that where the TPB imposes a condition to the planning permission restricting the development scheme to a certain development level (e.g. maximum GFA or number of units), then “Class A amendment” will not apply.

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			<p>There are too many categories in the Guidelines. The Director of Planning (D of Plan) should be allowed to overrule departmental objection to an application for Class B amendment which is otherwise required to be submitted to TPB for consideration.</p> <p>Comparing the Schedule of Class A and B amendments with the existing TPB Guidelines, there is a trend to move those cases which are currently delegated to DPO to the D of Plan, while moving those cases that are delegated to the Director to the TPB for approval. This does not facilitate flexibility and efficiency. It is suggested that most of the amendments should fall under Class A or B amendment and the TPB</p>	<p>Compared with the existing TPB Guidelines, the applicant would have the right to review/appeal against the decision of the TPB regarding applications for Class B amendment in future.</p> <p>The TPB may delegate its authority to the D of Plan to consider the application for Class B amendments. In considering applications, the TPB has all along taken into account expert advice of Government departments, among other planning considerations. It is prudent to submit the application to the TPB for a comprehensive review again in case there is departmental objection. If the application for Class B amendments is rejected, the applicant can apply for review/appeal against the decision of TPB.</p> <p>The Schedule of Class A and B amendments has been amended to broadly follow the requirements in the existing TPB Guidelines. There are already public concerns on whether the applicant may abuse the system by circumventing controls and public consultation. The list of Class A and B amendments should therefore seek to strike a balance between the need for accommodating design changes at</p>

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		<p style="text-align: center;">HKIP</p> <p>Member/HKIS</p>	<p>should focus on first approval.</p> <p>A summary of the differences between the Schedule of Class A and B amendments and the existing TPB Guidelines is useful for public consumption.</p> <p>Whether the delegated authority to consider and approve the Class B amendment could be given to DPO instead of D of Plan?</p>	<p>implementation phase and public interest in consulting the public on the application.</p> <p>A summary of the differences will be prepared for public information.</p> <p>In processing the s.16A application, DPO assists in circulating the application for departmental comment, providing planning assessment on the “Class B” amendments, and preparing recommendations. The decision making power rests with D of Plan to attain a proper check and balance.</p>
45.	- detailed comments on Class A and B amendments	<p>REDA</p> <p>MTRC</p> <p>HKIA</p>	See Annex attached.	See Annex attached.
	III. Proposed Fee Schedule			
46.	- General	<p>Consultee 2</p> <p>HKBWS</p> <p>Mike Kilburn</p> <p>Consultee 3</p> <p>Public Forum</p>	The payment of application fees for cost recovery is warmly welcomed for reasons of basic equity. There is no reason why the taxpayers should subsidize activities that provide benefit only to the commercial organizations or private citizens.	Noted.

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		<p>Ruy Barretto</p> <p>HVK</p> <p>NTOSO</p>	<p>Fees on a cost recovery basis are a useful beginning and it is right in principle that there should be no hidden subsidy to developers.</p> <p>The proposed fees will deter applicants from submitting planning applications. Tenants will become reluctant to rent land from the owners where planning permission is required. This would indirectly freeze the land uses in the rural NT.</p> <p>No fee should be charged for planning applications because:</p> <ul style="list-style-type: none"> (a) the applicants already need to pay for the consultancy fees for preparing the applications; (b) land owners also have to pay tax for the rents collected from the tenants; (c) no similar fees are charged for other Government services such as applications for public housing and Comprehensive Social Security Assistance; and (d) other Government departments may follow suit by imposing fees on applications handled by them. <p>The proposed fee charging system is strongly objected because it will impose heavy financial burden to the operators in the rural</p>	<p>Noted.</p> <p>Charging of fees for public services on a full-cost recovery basis is in line with the user-pay principle.</p> <p>Ditto.</p>

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		<p data-bbox="663 608 757 635">MTRC</p> <p data-bbox="611 1123 808 1150">Member/SSPDC</p>	<p data-bbox="826 277 1422 564">NT. In order to obtain temporary permissions from the TPB, these operators have to employ consultants to prepare the applications. After obtaining the permissions, they may also need to spend \$100,000 to \$200,000 to comply with the approval conditions to the satisfaction of the appropriate authorities.</p> <p data-bbox="826 608 1422 863">As the function exercised by the TPB is in the interest of the whole community. It is more reasonable to adopt a “shared cost” principle by apportioning the administrative cost of processing a planning application between the applicant and the community. The latter’s share should be funded by public money.</p> <p data-bbox="826 938 1422 1082">High application fees based on full-cost recovery from the applicants alone may deter efforts from the private sector to pursue development proposals.</p> <p data-bbox="826 1123 1422 1267">The new amendments, e.g. “owner’s consent/notification” and fee proposal, will deter the public from participating in the planning process.</p>	<p data-bbox="1444 608 2031 895">It is unreasonable to require the taxpayers to subsidize the cost for processing planning applications submitted by individual applicants. In order to ensure cost-effectiveness, we have cautiously worked out the fee proposal based on streamlined procedures involved in processing planning applications.</p> <p data-bbox="1444 938 1525 965">Ditto.</p> <p data-bbox="1444 1123 2031 1374">Ditto. Indeed, one of the key objectives of the TP(A)O is to encourage public participation in the planning process. To achieve such objective, express provisions have been made for owner’s consent/notification and publication of applications for public comments. Similar</p>

Paragraph No.	Issue	Parties	Views/Comments	Government Response
				<p>provisions are also made for publication of representations/ comments/further representations in the plan-making process. There will be no fee charges for submissions of representations/ comments/further representations.</p>
47.	- Refund or discounted fee	<p>HKBA</p> <p>Member/SSPDC</p>	<p>Whether the Government would entertain any application for “refund” and if so, under what circumstances?</p> <p>In case where further information is submitted by an applicant but not accepted by the TPB because it is deemed to introduce a material change, it would be a matter of good Government policy to promote and encourage the withdrawal of application and the submission of a fresh application.</p> <p>If subsequent applications are given concessionary measures in terms of application fees, the applicant would have an incentive to withdraw incomplete application. This will save Government resources in processing the application.</p> <p>The maximum fee proposed for an application for amendment of plan is \$90,000.</p>	<p>The TP(A)O does not provide for any refund of fees. This is in line with the full-cost recovery approach as cost has been incurred once the processing of the application has started.</p> <p>Agreed. In the proposed fee schedule, a 50% discount is suggested for any resubmission of similar application within one year of withdrawal, subject to a minimum fee of \$7,500. This is based on the assumption that less workload would be involved in processing a similar application.</p> <p>Cost will be incurred in processing an application regardless whether it is</p>

Paragraph No.	Issue	Parties	Views/Comments	Government Response
			<p>Will the Government refund the fee to the applicant if the application for amendment of plan is agreed by the TPB?</p>	<p>eventually approved/accepted or not. There is no provision under the TP(A)O for any refund of fee.</p>
<p>48.</p>	<p>- Fee structure and scale</p>	<p>Kam Kin Pong</p> <p>HKBA</p> <p>Public Forum</p>	<p>Fee scale should not only base on scale of work but also take into account administrative work. Some applicants include bundles of reports in addition to the application forms. The workload in relation to these reports should also be taken into account.</p> <p>To accommodate the villagers' concern on the high fees for Small Houses, it may be considered to reduce the basic fee for application involving a site area in the region of 1,000 ft² (i.e. 100m²).</p> <p>The fee structure should be able to accommodate the full spectrum, from single private individual end-users to small businesses and large-scale developers, bearing in mind and balancing the varying interests of all different types of parties and applications.</p> <p>Representatives of HYK and the open storage trade operators object to the proposed fee scale for applications for Small Houses and temporary approvals.</p>	<p>Agreed. All these matters have been taken into account in the preparation of the fee scale. In general, the proposed fee scale is proportionate to the scale and complexity of the various types of applications.</p> <p>The issue will be further considered.</p> <p>Agreed. The proposed fee scale is proportionate to the scale and complexity of the various types of applications.</p> <p>The issue will be further considered.</p>

Paragraph No.	Issue	Parties	Views/Comments	Government Response
		NTOSO	The proposed fee scale is unfair for temporary permissions in the rural NT which are only valid for three years. The minimum fee for any application for renewal of such permissions is \$7,500 while the maximum fee for an application for permanent permission is only \$90,000.	The issue will be further considered.
		HYK	There should be different fees and handling procedures for applications for permanent permissions and temporary permissions. Some temporary permissions may only last for 1 to 2 years but another 1 to 2 years may be required for preparing the applications in order to meet the requirements as set out in the new guidelines.	The issue will be further considered.
		Goldrich	The proposed fee for temporary permission should be reduced. Otherwise, the open storage operators, which are mainly small/medium businesses essential to Hong Kong's economy may prefer taking risk to continue the unauthorized developments (UDs) in the rural NT.	The issue will be further considered.
		HKIP	Resubmission of an application which has been considered by the TPB before the commencement of the TP(A)O should not be required to pay the fee, or it should be subject	In the proposed fee schedule, a 50% discount is suggested for any resubmission of a similar application within one year of refusal/approval/withdrawal, subject to a

Paragraph No.	Issue	Parties	Views/Comments	Government Response
		Member/SDC	<p>to a half fee, or a further reduced fee.</p> <p>The proposed fee (\$7,500) for application for relaxation of gross floor area is too low.</p>	<p>minimum of \$7,500. This proposal is applicable to cases where the original applications are submitted after commencement of the Fees Regulation.</p> <p>\$7,500 is only the amount for the first 1,000m² of the site area/total floor area of the entire development. The maximum fee proposed for such kind of applications is \$15,000.</p>
49.	- Implementation	Kam Kin Pong	Standard form can be used to facilitate the charging of fees as well as the assessment.	Agreed. We will include the detailed calculations of fees in the application forms.
50.	- Fee waiver or reduction to charitable bodies	<p>Consultee 2 HKBWS Mike Kilburn Consultee 3 Member/PSC</p> <p>Member/BSC</p>	<p>The proposed exemption from payment of fees for applications made in the public interest by accredited charitable organizations is welcomed.</p> <p>It is suggested that a blanket exemption of fee should be provided to all charitable bodies.</p>	<p>Noted.</p> <p>The TP(A)O provides that the Secretary for Financial Services and the Treasury may exempt payment of the prescribed fee on a case-by-case basis. In general, such fee will be waived if the application is submitted by a charitable body solely for charitable purpose. Given that not all proposals submitted by charitable organizations are for charitable purposes, it</p>

Paragraph No.	Issue	Parties	Views/Comments	Government Response
		<p data-bbox="667 384 752 411">HKIA</p> <p data-bbox="667 568 752 595">WWF</p> <p data-bbox="667 866 752 930">HKBA HKIP</p> <p data-bbox="667 1086 752 1114">HKIA</p>	<p data-bbox="824 384 1424 523">Fee waiver requirements should be clearly defined in the TPB Guidelines and fee waiver should not be considered on a case-by-case basis.</p> <p data-bbox="824 568 1424 675">Clear criteria and application guidelines on fee waiver should be provided to the public and charitable bodies.</p> <p data-bbox="824 719 1424 826">The application fee should not become a barrier to projects which are environmentally friendly and of public interest.</p> <p data-bbox="824 871 1424 1042">Waiver of application fees should not be restricted solely to registered charities. It should be open to all “public causes” and applications that relate to “public causes” or for public good.</p> <p data-bbox="824 1086 1424 1377">The “users pay and cost recovery” principles are in general supported but the fee charging system should not become a deterring factor for non-profit-making bodies/parties to submit applications for public purposes which do not generate any profit or financial gain. The proposed fee waiver to charitable bodies for charitable purposes is considered too</p>	<p data-bbox="1447 276 2033 339">is not appropriate to adopt the blanket exemption arrangement.</p> <p data-bbox="1447 384 1525 411">Ditto.</p> <p data-bbox="1447 568 2033 675">Agreed. Guidance Notes on application for fee waiver will be prepared and promulgated.</p> <p data-bbox="1447 719 1917 746">The issue will be further considered.</p> <p data-bbox="1447 871 1917 898">The issue will be further considered.</p> <p data-bbox="1447 1086 1917 1114">The issue will be further considered.</p>

Paragraph No.	Issue	Parties	Views/Comments	Government Response
		<p>Lam Ho Yeung KWB of DP Stanley Ng of DP</p> <p>HKBA Public Forum</p>	<p>restrictive. Applications not necessarily submitted by charitable bodies/ parties should also be exempted provided that:</p> <p>(a) the applications are directly and exclusively for charitable purposes; or</p> <p>(b) the applications are exclusively for public purposes and do not involve any commercial/business activity nor generate any profit.</p> <p>Some organizations such as owners’ incorporations, local groups, green groups, district councils and legislative council (LegCo), and individuals such as district council member and LegCo member may have difficulties in paying for the application fees (in particular for application for amendment of plan). This will hinder them from participating in the statutory planning process.</p> <p>It is suggested to exempt these organizations and individuals from the payment or to introduce a planning-aid system which has been adopted in the UK.</p> <p>There should be some guidance on the criteria that the Government would consider in assessing the application for fee waiver, and the procedures for such application. Each</p>	<p>The issue will be further considered.</p> <p>The issue will be further considered.</p> <p>Agreed. The Guidance Notes for application for fee waiver would include the assessment criteria to be adopted by Government. It is our intention that such</p>

Paragraph No.	Issue	Parties	Views/Comments	Government Response
		<p data-bbox="667 644 752 671">HKIP</p> <p data-bbox="667 794 752 821">HYK</p>	<p data-bbox="824 277 1424 341">application must be considered on a case-by-case basis.</p> <p data-bbox="824 389 1424 596">There should be a system of “pre-approval”. It is undesirable to leave the organizations in the situation that they have to pay the fees first and then apply the fee waiver later, and with no guarantee that there will be any such waiver.</p> <p data-bbox="824 644 1424 740">Either financial aid or fee waiver should be provided to those applicants who cannot afford the application fee.</p> <p data-bbox="824 788 1424 1011">For most cases, applications for Small Houses are required because the Government fails to provide sufficient land within 300 ft of the existing villages for Small House developments. No fee should be charged for this kind of application.</p>	<p data-bbox="1447 277 2024 341">application would be considered on a case-by-case basis.</p> <p data-bbox="1447 389 2024 596">Agreed. It is our intention to have a “pre-approval” system for waiving the application fee before the case is formally submitted to the TPB. The application procedure would be included in the aforesaid Guidance Notes.</p> <p data-bbox="1447 644 1912 671">The issue will be further considered.</p> <p data-bbox="1447 788 1912 815">The issue will be further considered.</p>
51.	- Fee for applications to amend plans	REDA	There should be no fee for section 12A applications as it is part of the plan-making process. Otherwise, it will discourage the public from participating in the planning process. If a fee is to be charged, it should not relate to land area and only a fixed amount (possibly \$25,000) should be charged as the amount of work vary little. The fee should not be charged for public interest	It is unreasonable to require taxpayers to subsidize the cost for processing applications on amendments of plans submitted by individual applicants. It should be noted that there will be no fee charges for submissions of representations/ comments/further representations to encourage public participation in the planning process. The suggestion for a

Paragraph No.	Issue	Parties	Views/Comments	Government Response
			change in any case.	fixed rate to be charged for rezoning request will be further considered.
52.	- Fee for plan-making process	HKIP	Whether fees will be required for submissions of representations, comments and further representations in the plan-making process?	No fee would be required for these submissions.
	IV. Other Comments			
53.	- Consultation on the Bill	新界西北 露天倉大聯盟 Operator/MPD	There was insufficient consultation with the operators before the passing of the Town Planning (Amendment) Bill 2003 by the LegCo.	<p>The Bill was submitted to the LegCo on 21.5.2003 for scrutiny by its Bills Committee (BC), and was passed by the LegCo on 7.7.2004. There had been a wide range of consultations conducted by the BC and the Administration on the Bill.</p> <p>In October 2003, the BC made an advertisement in local newspapers to invite the public to make views on the provisions of the Town Planning (Amendment) Bill 2003. In response, about 140 written submissions were received. One of them was made by The Association of the New Territories Open Storage Operators Limited (新界露天倉經營者協會) (i.e. one of the members of 「新界西北露天倉大聯盟」). Two representatives of The Association of the New Territories Open Storage Operators Limited were also invited to give verbal</p>

Paragraph No.	Issue	Parties	Views/Comments	Government Response
				<p>representations at the Bills Committee meeting held on 24.9.2003.</p> <p>Besides, BC had consulted the HYK on the Bill. The PlanD's representatives had attended HYK meetings held on 9.6.2003, 5.2.2004 and 28.5.2004 to discuss matters relating to the Bill. It was noted that some operators had participated in and expressed their opinions at the HYK meeting held on 28.5.2004, and the Bill had been amended to take account of some of these opinions.</p>
54.	- Implementation of the Amendment Ordinance	Consultee 4	Who will monitor whether the implementation of the TP(A)O is adhered to the relevant provisions?	In order to facilitate the implementation of the TP(A)O, a series of new TPB Guidelines have been produced. The Department of Justice was consulted in the preparation of these Guidelines so as to ensure the compliance with the relevant provisions of the TP(A)O. The TPB and PlanD, as the executive arm of the TPB, would undertake the monitoring work.
55.	- Chairman of TPB	HKIA	The chairman of the TPB and its committees should be a non-government official to enhance openness and objectiveness of the planning system.	Noted. We will continue to explore means to enhance the openness and transparency of the planning system.
56.	- Secretariat of TPB	HKIA	In order to ensure independency, an independent secretariat should be set up.	Noted. We will continue to look for ways to enhance the openness and transparency of

Paragraph No.	Issue	Parties	Views/Comments	Government Response
				the planning system.
57.	- Membership of the TPB	Consultee 4	<p>Is the existing membership of the TPB a fair representation of the public interest?</p> <p>Whether it is impartial for the TPB to have 30-50% business people who are executives of land development companies whose interests are to build more buildings?</p> <p>Why are there no representatives from non-government organizations or environmental groups in the existing TPB membership?</p> <p>How to prevent the developers from controlling the agenda for consideration of their applications only when their allies are present at the meeting?</p>	<p>TPB members are appointed in their personal capacities and on the basis of their expertise, experience, integrity, commitment to public service and relevance of their background to town planning. The current membership comprises a variety of professions and community interests including business, engineering, architecture, surveying, environment, social work, education, legal and heritage conservation. Membership of the TPB has been regularly reviewed to ensure that the interests of the community at large would be adequately represented.</p> <p>The TPB has adopted a set of detailed guidelines for declaration of interests which are drawn up in consultation with the Department of Justice and the Independent Commission Against Corruption. The guidelines are to ensure that the TPB acts fairly and impartially in making its decision. The guidelines, as set out in the “TPB Procedure and Practice”, and the register of members” interests are available for public inspection.</p>

Paragraph No.	Issue	Parties	Views/Comments	Government Response
58.	- Planning system in general	HKIA	<p>The existing “segmented” submission and approval processes managed by the Lands Department, Buildings Department and PlanD should be streamlined by keeping the procedures and fee charging systems of the three Government departments as simple as possible.</p> <p>The existing system of segregating urban planning and transport planning under different bureaux is ineffective and inefficient and often results in undesirable urban environment.</p> <p>The plan-making process should be led by planners and supported by a team of other professionals including urban designers, architects, traffic engineers and environmentalists.</p>	<p>The Lands Department, Building Department and PlanD are committed to providing a client-oriented service in helping applicants to obtain the relevant planning, land and building approvals. A task force comprising senior officials of the three departments has been formed to study measures to re-engineer and streamline the approval process. Joint Practice Notes have been/will be issued to promulgate these measures, where appropriate.</p> <p>Noted.</p> <p>Agreed. Planning studies relating to the plan-making process are planning-led. Where appropriate, other relevant professionals would be involved and expert advice would be sought from the relevant Government departments.</p>
59.	- Consultation in the preparation of draft plans	HYK	<p>Consultation with the affected land owners and HYK should be carried out prior to the publication of any draft plan or amendment to draft/approved plan under the TPO.</p>	<p>Administrative measures are currently adopted by the TPB and PlanD to consult the public through the relevant District Council/Rural Committee/Area Committee (collectively referred to as “DC”) and public</p>

Paragraph No.	Issue	Parties	Views/Comments	Government Response
				forums prior to the publication of any draft plan or amendment to draft/approved plan except for some special cases (e.g. where sensitive information is involved, and premature release of the information may lead to speculative action nullifying the effectiveness of the proposed development control, such as the publication of new Development Permission Area plan). A closer link with HYK will be introduced and similar consultation could be arranged on a need basis. However, for special cases mentioned above, consultation with the relevant DC would be undertaken as early as possible after gazetting the plan. Such measures would continue to be adopted after the implementation of the TP(A)O.
60.	- Registration of approvals of applications	Kam Kin Pong	Approvals of applications should be registered in the Land Registry for public inspection.	A planning register of the approved applications will be made available for public inspection, and the key information could be obtained from the e-PlanningInfo archives.
61.	- Planning application system	Consultee 1	The existing measures which allow the applicant to submit repeated applications for relaxation of plot ratio and building height restrictions for the same site must be regulated. Residents affected by the duplicated application are subject to	There is no provision in the TP(A)O to restrict the number of applications from an applicant. Nevertheless, the charging of application fee may also help prompt the prospective applicant to put in greater efforts in preparing the application in addressing

Paragraph No.	Issue	Parties	Views/Comments	Government Response
		Consultee 4	<p>unnecessary disturbance.</p> <p>There is no provision for the public to appeal against TPB's decisions on planning applications. However, ample opportunities are available to the applicants.</p> <p>The TP(A)O should include guidelines to require public consultation meetings for certain planning applications subject to their impacts, sizes of projects, number of comments/ objections, etc. The TP(A)O should specify that such meetings should be held no less than 4 weeks after the applications are made available for public inspection. At these meetings, the public should have chances to make presentations and make responses to the applicants.</p>	<p>the concerns of the TPB.</p> <p>Public participation in the planning system is already much enhanced under the TP(A)O. We will continue to look for ways to enhance the openness and transparency of the planning system.</p> <p>The TP(A)O has been passed by the LegCo in July 2004. However, the means of public consultation could be flexible enough to meet the circumstances of each case. PlanD will be most happy to explain the application to the local residents if required, and will, in consultation with DO, attend local meetings, if necessary.</p>
62.	- enforcement against UDs in rural NT	Consultee 2 HKBWS Mike Kilburn Consultee 3 WWF	<p>The removal of the opportunity to avoid prosecution for UD by applying for a temporary permit is warmly welcomed.</p> <p>Strongly welcome the enhancement of the efficiency and effectiveness of planning enforcement control and support the removal of incentives for unauthorized land-filling by eliminating the loophole of applying for a</p>	<p>Noted.</p> <p>Noted.</p>

Paragraph No.	Issue	Parties	Views/Comments	Government Response
		<p>Ruy Barretto</p> <p>GLA</p>	<p>temporary permit to avoid prosecution for UD.</p> <p>Welcome the power given to the authority to enter land for investigation. Nevertheless, creditable procedures on the empowerment should be formulated to avoid unnecessary conflicts between the authority and the land owners.</p> <p>The removal of the device of applying for a temporary permit to avoid prosecution for UD is supported. This amendment is crucial and must be fully and fairly enforced without delay.</p> <p>Why the power of inspection is not extended to domestic premises? As many rural holdings can be said as “domestic” in that people reside on the land, this could be a considerable loophole. There is often an associated agricultural land, which is filled and degraded and used for informal industries.</p> <p>Why the powers do not provide for</p>	<p>Noted. According to s. 22(2)(a) of the TP(A)O, the Planning Authority shall not exercise such entry power unless he has reasonable grounds to suspect that there is or was UD and it is necessary to enter the land/premises in question. Proper administrative procedures will be undertaken before exercising entry power to avoid unnecessary conflict with the land owners.</p> <p>Noted.</p> <p>Both the investigations and enforcement works on UD in the rural New Territories seldom require entry into domestic premises. If this is necessary, the TP(A)O empowers the Planning Authority to obtain magistrate warrants to do so. As for conversion of agricultural land to informal industries, it would be subject to enforcement action if UD is involved. S. 23(3) of the existing TPO allows the Planning Authority to issue</p>

Paragraph No.	Issue	Parties	Views/Comments	Government Response
		Operator/MPD	<p>reinstatement of the land? Cessation of the UD is a good starting point, but the land remains degraded.</p> <p>Unlike the present practice, the Planning Authority can take enforcement action without awaiting the outcome of s.16 application. Discontinuing the development is the only way to comply with the Enforcement Notice (EN).</p> <p>This provision is too restrictive and no grace period is given to the operators for relocation. Implementation of the provision governing the enforcement power should be withheld and separated from other provisions of the TP(A)O. Alternatively, all open storage uses existed before the publication of the TP(A)O in the gazette should be exempted from this new provision.</p>	<p>statutory notices to require the concerned parties to reinstate the land involving UD. The recipients will commit an offence if they fail to comply with the requirements specified in the notices. There is no proposed amendment to this provision in the TP(A)O.</p> <p>The relevant amendments in the TP(A)O is intended to plug a loophole in the existing TPO whereby some EN recipients are using submissions of applications to abuse the enforcement system.</p> <p>There is no strong justification to either withhold the implementation of enforcement provisions or separate their implementation from other provisions. According to the Department of Justice, the proposal of exempting all open storage uses existed before the publication of the TP(A)O from the new provision would be ultra vires. Withholding the implementation of provisions governing enforcement action is also not appropriate as it is not in line with the legislative intent.</p>
63.	- temporary uses in urban areas	HYK	It is not fair that temporary uses in the urban area require no planning permission whilst	Control on land uses in the rural New Territories was introduced by the legislation

Paragraph No.	Issue	Parties	Views/Comments	Government Response
	and rural NT		those in the rural NT do. The Government should critically review the zonings for conservation area, recreation, green belt and agricultural use to ensure better utilization of such land.	in 1991, the main objective of which was to address the problem of proliferation of open storage uses. Unlike temporary uses in the urban area which are subject to other controls such as lease conditions and building control, open storage uses in the rural areas cannot be effectively regulated except by planning control. In view of the potential environmental nuisance that may generate from the temporary developments like open storage uses, it is considered that the present control on temporary uses in New Territories should remain unchanged.
64.	- Transitional arrangements	LSHK Member/EDC	What will happen to the pending applications submitted before the effective date of the new Guidelines?	The new s.16 and s.17 provisions in the TP(A)O do not apply to the s.16 applications submitted before the commencement of the TP(A)O.
65.	- editorial comments	HKBA	Editorial comments on various paragraphs are proposed.	Noted. Guidelines amended where appropriate.

Abbreviations:

GLA	Green Lantau Association
Goldrich	Goldrich Planners & Surveyors Ltd.
HKBA	The Hong Kong Bar Association
HKBWS	The Hong Kong Bird Watching Society
HKIA	The Hong Kong Institute of Architects
HKIP	The Hong Kong Institute of Planners
HYK	Heung Yee Kuk New Territories
KWB of DP	The Kowloon West Branch of Democratic Party
Lam Ho Heung	Mr. Lam Ho Yeung, Member of Yau Tsim Mong District Council
LSHK	The Law Society of Hong Kong
Member/BSC	Views of individual member of Building Sub-Committee of the Land and Building Advisory Committee (LBAC)
Member/EDC	Views of individual member of Eastern District Council (DC) raised at the Housing Committee held on 2.12.2004
Member/HKIS	Views of individual member of the Hong Kong Institute of Surveyors raised at a consultation forum held on 17.11.2004
Member/LSC	Views of individual member of Land Sub-Committee of the LBAC
Member/PSC	Views of individual member of Planning Sub-Committee of the LBAC
Member/SDC	Views of individual member of Southern DC raised at the Planning, Works and Housing Committee held on 18.10.2004
Member/SSPDC	Views of individual member of Sham Shiu Po DC raised at the Housing Committee held on 18.11.2004
MTRC	MTR Corporation
NTOSO	The Association of the New Territories Open Storage Operators Limited
Operator/MPD	Views of open storage operators raised at the Liaison Meeting between the Government and the Container Industry, the Operators of the Open Storage Sites and the Vehicle Parts Industry held on 26.10.2004
PlanArch	PlanArch Consultants Ltd.
Public Forum	Views of individual participants raised at a Public Forum held on 19.10.2004
REDA	The Real Estate Developers Association of Hong Kong
RPOC	Robinson Place Owners' Committee
WWF	Worldwide Fund for Nature (Hong Kong)

Detailed Comments on the Schedule of Class A and Class B Amendments

Paragraph No.	Category in the Schedule	Parties	Views/Comments	Government Response
A1.	Total Gross Floor Area (GFA)	REDA	<p>Any increase in GFA permitted by the BA under B(P)R 22(1) or (2) as “non-accountable” or “bonus GFA” should be a Class A Amendment. “Double approval” is not needed.</p> <p>Any amendment arising from setting out of site boundary at processing of land grant should also be Class A.</p> <p>Class B amendments should be the same as under the relevant existing Guidelines with the Director able to consider those not exceeding 4,000m² or 10% whichever is the greater (sic).</p>	<p>The inclusion of additional GFA arising from B(P)R 22(1) or (2) may result in corresponding changes to the building height, site coverage limit and built form etc. of the proposed development. Depending on the circumstances of each case, such changes may have adverse planning implications and therefore should be subject to different level of planning control as set out in the proposed schedule. In any event, following the principles as advocated in the relevant TPB Guidelines for “Submission of Concept Plan in support of section 16 application”, the broad arrangement and the additional GFA to be claimed could also be indicated in the planning application, hence obviating the need for further planning approval at the detailed stage.</p> <p>No objection if the resultant amendments fall within the proposed Class A. However, other amendments would be subject to appropriate planning control as set out in the schedule.</p> <p>Agreed to follow more closely the control under the relevant existing TPB Guidelines. However, there may be circumstances where due to infrastructural constraints or other planning considerations, the TPB may need to</p>

Paragraph No.	Category in the Schedule	Parties	Views/Comments	Government Response
				specify the total GFA/plot ratio as an approval condition in the original planning permission and in such cases, “Class A amendment” for increase in GFA/PR will not apply. The Guidelines have been amended accordingly.
A2.	Site area/ boundary	REDA	<p>Any reduction in site area with a corresponding reduction in GFA should be permitted under Class A and not limited to a site less than 1 ha.</p> <p>Any change to site boundary at processing of land grant should be permitted as Class A amendment.</p> <p>The only ones which should be Class B are those which do not fall into Class A and are not greater than 10% of the gross site area.</p>	<p>Agreed to remove the 1 ha threshold of gross site area (GSA). However, such reduction should not exceed 5% of the GSA in order to safeguard against material changes to the original approved scheme where the achievement of any desirable planning objectives such as phasing out of non-conforming use may be undermined.</p> <p>Class A amendments should be of minor/technical nature arising from setting out the site boundary during the processing of land grant. Any change to site boundary which would deviate significantly from the approved development proposal, e.g. inclusion or exclusion of certain areas, might have planning implications, and thus would require planning permission from the TPB.</p> <p>Noted. See response to proposed Class A amendments above.</p>
A3.	Number of units	REDA	Allowance should be made for those situations where a range of units is specified in the	Agreed. This is in line with the principles advocated in the TPB Guidelines for

Paragraph No.	Category in the Schedule	Parties	Views/Comments	Government Response
			<p>approved application. Any change within an approved range is a Class A Amendment.</p> <p>The remarks should permit an increase above the upper limit of a range being a Class B Amendment.</p> <p>Any increase not exceeding 10% or 200 units whichever is the greater, should be permitted as Class A.</p> <p>Class B should be any increase greater than 10% or 200 units with no increase in GFA.</p>	<p>“Submission of Concept Plan in support of section 16 Application” and for “Submission of Master Layout Plan Under Section 4A(2) of The Town Planning Ordinance”.</p> <p>This is in line with the relevant TPB Guidelines, i.e. the corresponding limits in the Schedule of Class A and Class B amendments apply to both the upper and lower range of the number of units in the approved development proposal.</p> <p>Agreed to follow more closely the control under the existing TPB Guidelines. In this regard, any increase not exceeding 100 units or 5% of the approved provision, whichever is the less, will be Class A amendment. Changes other than those specified under Class A and increase not exceeding 200 units or 10% of the approved provision, whichever is the less, will be Class B amendment.</p> <p>However, there may be circumstances where due to infrastructural constraints or other planning considerations, the TPB may need to specify the maximum number of units as an approval condition in a planning permission and in such cases, “Class A amendment” for increase in number of units will not apply. The Guidelines have been amended to reflect this.</p>

Paragraph No.	Category in the Schedule	Parties	Views/Comments	Government Response
		MTRC	<p>The proposed Class B amendment in relation to the number of units is more stringent than the current level allowed in the relevant TPB Guidelines. This will unnecessarily restrict design flexibility and represent a backward move.</p> <p>As minor increases in number of units and change in unit size are very common, the spirit of the current TPB Guidelines should be retained and a small percentage of change should be accepted as Class A amendments.</p>	Ditto.
A4.	Unit size	MTRC	<p>If the total gross floor area remains unchanged and a reduction in number of units is a Class A amendment, it would be unreasonable to classify the corresponding increase in unit size as a Class B amendment</p>	<p>According to the advice of the Transport Department (TD), the parking demand adjustment ratio changes quite significantly from one range of unit sizes to the other, as set out in the Hong Kong Planning Standards and Guidelines (Chapter 8: Item 2 of Table 11 Section 1). If the unit size is already at the high end of a range, a small increase in unit size could mean a large increase in the parking provision. To strike a balance between TD's concern for a more cautious approach and the views of the consultees for relaxing the control, revision has been made to allow change in unit size not exceeding 5% of the approved provision as Class A amendments.</p>
		HKIA	<p>Minor change in unit size as a result of minor change in total gross floor area, site area and/or</p>	Ditto

Paragraph No.	Category in the Schedule	Parties	Views/Comments	Government Response
		REDA	<p>number of units, which are Class A amendments, should also be regarded as Class A amendment.</p> <p>This category should be deleted as the unit size is not a significant planning criteria.</p>	Ditto.
A5.	Building blocks	REDA	Minor changes in the disposition of blocks should be a Class A Amendment not Class B.	Class A amendments must be set out in clear terms with no ambiguity since they would not require separate planning permission. Besides, any changes in the disposition of building blocks may have an impact on the surrounding developments and it is considered appropriate to treat “minor changes” as Class B amendments. The Schedule is more or less the same as the existing restrictions in the relevant TPB Guidelines.
A6.	Building height	REDA	Reference should only be made to the restrictions on the Outline Zoning Plan and not to any Town Planning Board Guidelines on Building Height Control as they have no statutory power.	Similar to the case of “Building Height Restrictions on Kowloon Bay and Kwun Tong Business Areas”, such restrictions may first be promulgated in the form of interim control in the TPB Guidelines to facilitate public consultation before they are formally incorporated into the relevant OZPs. Reference to such guidelines is therefore appropriate so that any changes to the approved scheme would not undermine the effectiveness of the intended control.

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A7.	Site coverage	REDA	<p>The Town Planning Board has been encouraging the relaxation of site coverage restrictions in some zones and this should be reflected in the Guideline.</p> <p>All changes in site coverage should be permitted as Class A amendments unless they require a minor relaxation of a stated restriction on the Outline Zoning Plan.</p> <p>Class B application should relate to those where the site is subject to a restriction on the Outline Zoning Plan and a relaxation has previously been granted and a further relaxation of up to 10% is requested.</p>	<p>Back in 2000, the TPB agreed, as a general guideline, to relax the maximum permissible domestic site coverage for sites zoned as "Residential (Group B)" or "Residential (Group C)" on statutory plans and corresponding amendments have been incorporated into the relevant statutory plans wherever local circumstances permit.</p> <p>Any increase in site coverage not exceeding the restriction on the statutory plan or planning brief will be regarded as Class A amendment.</p> <p>The current division of Class A and Class B amendments, which are largely the same as the existing TPB Guidelines, should be maintained to balance the concern on the possible environmental impact arising from site coverage changes and the need for allowing flexibility in project implementation.</p>
A8.	Type/Mix of uses	REDA	<p>This should be significantly simplified. There should be no distinction between domestic and non-domestic, just a % change;</p> <p>The changes permitted under Class A should be increased from 5% to 10% and not subject to a maximum of 2,000 m² as there are other controls on maximum GFA;</p>	<p>The distinction is required as different planning implications may result from the change in type.</p> <p>There are potential traffic or environmental impacts associated with the change in GFA for non-domestic uses from one category to another (e.g. from office to retail), particularly for large-scale project. Capping the change to</p>

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			<p>The Class B category appears to duplicate the Class A category. It is suggested that the Class B category be for changes between 10% and 20%.</p>	<p>2,000m² will not affect project with a total GFA of less than 40,000m². For larger projects, it is prudent to put the change under proper planning control.</p> <p>There is no duplication in the Class A and Class B categories. Class A is on the changes in GFA within different categories of non-domestic uses; whereas Class B is the changes in GFA from domestic to non-domestic uses, or vice versa. The proposed control under Class B amendments is more or less the same as the existing control under the relevant TPB Guidelines</p>
A9.	Changes in internal layout/disposition	REDA	No comment.	Noted.
A10.	Provision of GIC facilities	REDA	<p>If changes in the type of facilities or deletion of facilities are approved by the relevant Government Departments then the amendments should be Class A amendments. They are usually covered by lease conditions with and lengthy Technical Schedules.</p>	<p>Class A amendments must be set out in clear terms with no ambiguity since they would not require separate planning permission. In a planning application, provision of GIC facilities is usually necessary either to serve the need of the proposed development or the wider community (as a form of planning gain). Deletion of the previously proposed GIC facilities, if initiated by relevant Government departments, will be submitted to the Planning Committee for consideration. If the deletion is not initiated by relevant Government departments, fresh application should be</p>

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			Double approval is not required.	<p>submitted in the form of section 16 application in accordance with the provision of the Ordinance (including republication for public comment). The Guidelines has been amended to clearly set out the revised procedure.</p> <p>The deletion of GIC facilities is a planning concern and should be properly dealt with in the form of planning permission.</p>
A11.	Provision of public open space	REDA	No comment.	Noted.
A12.	Provision of private open space	REDA	<p>This is a new category and is unnecessary and should be deleted.</p> <p>Provision of open space whether public and private should be subjected to the same criteria.</p> <p>This category should be deleted and combined with Category 11 above, as “Provision of Open Space”, with the remarks amended to state that this applies to both private and public open space.</p> <p>Usually subject to conditions in s.16 or lease.</p>	<p>We consider that the control for public open space should be different from that for private open space, hence the two categories. The control on provision of private open space is needed to ensure that the standard of provision of local open space as set out in the Hong Kong Planning Standards and Guidelines (HKPSG) is met. Any substantial reduction in private open space may upset the overall provision of local open space in the district, and thus, proper planning control is considered necessary. Indeed, the proposed control under Class A and Class B amendments roughly follows the existing control under the TPB Guidelines.</p>
A13.	Car parking, etc.	REDA	REDA is currently discussing with Lands Department greater flexibility in interpretation	Agreed that greater flexibility can be allowed in Class A and Class B amendments for the car

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			<p>of car parking requirements as demand for spaces has significantly dropped.</p> <p>Any change to the number of parking spaces which conforms to the car parking and L/UL bay ratio should be a Class A amendment, irrespective of the number of spaces involved.</p> <p>Any change which involves a change to the car parking or L/UL ratio should be Class B.</p> <p>Changes to the location of ingress/egress points, footbridge connections should be Class A amendments, not Class B, as they are usually covered by lease conditions.</p>	<p>parking and L/UL requirements. After consulting the Transport Department, the Guidelines have been amended to cater for demand and design flexibility in the provision of car parking and loading/unloading facilities, i.e. change in the number of parking spaces for motor vehicles not exceeding 5% of the approved provision for the purposes of demand flexibility, plus change in the number of each type of parking, loading and unloading spaces not exceeding 50 spaces or 5% of the approved provision for the purposes of design flexibility fall within “Class A amendment”; and other changes in the number of each type of parking, loading and unloading spaces fall within “Class B amendment”.</p> <p>Changes to the location of ingress/egress etc. may entail planning implications which need to be properly addressed by concerned departments.</p>
A14.	Non-Building Area	REDA	This should be deleted as it relates to lease matters.	This is a planning concern. Changes required by Government departments are already Class A amendments. For changes initiated other than Government departments, they should be properly addressed as different planning implications on the overall design and layout of the approved development may be resulted.

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A15.	Landscape Master Plan (LMP)	REDA	<p>Changes in soft/hard landscape design, programme etc. should be Class A amendments as these normally happen during implementation.</p> <p>Any amendments should be approved by way of submission of an amended LMP under the Town Planning Board's landscape condition, or approved under the lease conditions.</p> <p>Increase in trees to be felled should be Class B as stated.</p>	<p>In most circumstances, the TPB will impose an approval condition to require the applicant to submit and implement a LMP. The applicant can make the necessary changes in compliance with the approval condition and no separate planning application under section 16A(2) will be required. The Class B amendment mainly captures those cases where an approval condition on LMP has not been imposed, and is largely the same as the existing control under the TPB Guidelines.</p> <p>Noted. The Guidelines have been amended to also specify that "changes in trees identified for preservation" is a "Class B amendment".</p>
A16.	Provision of public indoor recreational facilities	REDA	<p>This is covered by Item 10 and is an unnecessary duplication.</p> <p>Changes in public recreational facilities agreed by relevant departments should be Class A amendments.</p> <p>Class B should relate to those for which agreement of the Government Department may not have been obtained at time application is made.</p>	<p>Agreed. The original Item 16 (Provision of public indoor recreational facilities) and Item 17 (Provision of private indoor recreational facilities) have been combined. Changes in the provision of private indoor recreational facilities will be a "Class A amendment".</p> <p>Changes in provision of public indoor recreational facilities, including but not limited to changes in location, layout, type and floor area will be a "Class B amendment" as comments from relevant departments will be required to confirm if the proposed changes are acceptable or not.</p>

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A17.	Provision of private indoor recreational facilities	REDA	<p>This is a new category and is considered unnecessary and should be deleted.</p> <p>If it is retained, provision of private recreational facilities is not usually a requirement but a voluntary provision and should be Class A.</p> <p>There is no provision for increase in provision of GFA which should be a Class A amendment. The Remark does not appear to relate to the description of the two classes. Any excluded GFA does not count and therefore should be not require an application.</p>	Ditto.
A18.	Location of ancillary major utility installations	REDA	No comment.	Noted.
A19.	Phasing and implementation	REDA	<p>This category should be deleted as it is unnecessary.</p> <p>If it is retained, the only amendments for Class B should be changes relating specifically to GIC or public open space facilities which are subject to provision by a certain time under a condition of approval by the Board.</p> <p>This is usually covered by lease conditions.</p>	Agreed. Changes in phasing and implementation schedule with no GIC facilities and public open space involved is defined as “Class A amendment”, whereas minor changes in phasing and implementation schedule affecting the provision of GIC facilities and public open space is put under “Class B amendment”.
A20.	Extension of time for commencement of	REDA	Class B Amendments should be without limitation in terms of the period of time for	The time-limited condition attached to planning permission is to ensure that the approved

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	development		which the extension should be granted provided planning circumstances on the Outline Zoning Plan have not changed.	development proposal would be implemented within a reasonable period. In the Hong Kong context, it is considered that 8 years (4 years validity period plus 4 years extension) should be more than sufficient for going through the development process. The planning consideration and community aspiration may change a lot in 8 years” time and it is only fair if the community is given the opportunity to comment on the application again with such long lapse of time.
A21.	Time for compliance with planning conditions	REDA	No comment.	Noted.

Abbreviations:

HKIA The Hong Kong Institute of Architects
MTRC MTR Corporation
REDA The Real Estate Developers Association of Hong Kong

List of Briefing Sessions

Date	Organization
18.10.2004	Planning, Works and Housing Committee of the Southern District Council
19.10.2004	Planning Sub-committee of the Land and Building Advisory Committee
26.10.2004	Liaison Meeting between the Government and the Container Industry, the Operators of the Open Storage Sites and the Vehicle Parts Industry
27.10.2004	Representatives of the Urban Renewal Authority
1.11.2004	Land Sub-committee of the Land and Building Advisory Committee
2.11.2004	Hong Kong Institute of Planners
11.11.2004	The Real Estate Developers Association of Hong Kong
12.11.2004	Building Sub-committee of the Land and Building Advisory Committee
17.11.2004	Hong Kong Institute of Surveyors
18.11.2004	Housing Committee of the Sham Shui Po District Council
25.11.2004	Heung Yee Kuk New Territories
30.11.2004	Planning Officers of Housing Department
2.12.2004	Works and Development Committee of the Eastern District Council
13.12.2004	Planning Department - Heung Yee Kuk Liaison Meeting

List of Written Submissions

Date	Submitted by
26.10.2004	新界西北露天倉大聯盟
27.10.2004	The Owners' Committee of Robinson Place
4.11.2004	Mr. Kam Kin Pong
5.11.2004	Green Lantau Association
18.11.2004	Consultee 1
18.11.2004	Worldwide Fund for Nature (Hong Kong)
18.11.2004	Mr. Mike Kilburn
18.11.2004	Consultee 2
18.11.2004	Consultee 3
19.11.2004	The Hong Kong Bird Watching Society
19.11.2004	Mr. Ruy Barrento S.C.
3.12.2004	The Hong Kong Bar Association
14.12.2004	The Law Society of Hong Kong
15.12.2004	The Association of the New Territories Open Storage Operators Limited
17.12.2004	The Real Estate Developers Association of Hong Kong

Date	Submitted by
17.12.2004	The Hong Kong Institute of Architects
17.12.2004	Goldrich Planners & Surveyors Ltd.
18.12.2004	Consultee 4
18.12.2004	Heung Yee Kuk New Territories
18.12.2004	MTR Corporation
18.12.2004	Mr. Lam Ho Yeung, Member of Yau Tsim Mong District Council
19.12.2004	PlanArch Consultants Ltd.
20.12.2004	The Hong Kong Institution of Engineers
20.12.2004	Mr. Stanley Ng Wing Fai, Deputy Spokesman, Lands, Planning and Works, Democratic Party
20.12.2004	The Kowloon West Branch of Democratic Party
4.1.2005	The Hong Kong Institute of Planners

* No consent has been obtained from consultees 1, 2 and 3 for disclosing their identity. Consultee 4 wishes to remain anonymous but agrees to release the name and contact methods to the Legislative Council or relevant Government officers if necessary.