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Panel on Planning, Lands and Works

**Background brief on
Fee proposal under the Town Planning (Amendment) Ordinance 2004**

Introduction

The Administration will brief the Panel on Planning, Lands and Works (the Panel) on the fee proposal under the Town Planning (Amendment) Ordinance 2004 (the Amendment Ordinance) at the meeting scheduled for 24 January 2006. This paper sets out the views expressed by Members and interested organizations on previous fees proposals under the Amendment Ordinance.

Deliberation of the Bills Committee on Town Planning (Amendment) Bill 2003

2. At present, applications for planning permission, amendments to planning permission and amendment of plans are free of charge. The Town Planning (Amendment) Bill 2003 (the Bill) provides that the Secretary for Housing, Planning and Lands (SHPL) may by regulation prescribe fees for planning applications made under sections 12A, 16 and 16A(2) to recover the costs for processing the applications. The fees prescribed may be fixed at levels sufficient to effect the recovery of expenditure incurred or likely to be incurred by the Town Planning Board (TPB) and the Government.

3. Members of the Bills Committee on Town Planning (Amendment) Bill 2003 supported the users pay principle and that processing of planning applications should not be borne by public money. However, members were concerned whether the fees charged would include the costs incurred by the Town Planning Board (TPB) and the Government in processing applications from Government departments as the proposed provision expressly provided that no fees should be payable by them unless they operated under a trading fund. The Administration assured members

that the fees would be calculated on a unit cost basis and there would be no cross subsidy of Government applications by non-Government applications. Moreover, the fees charged would not cover the costs incurred by TPB in discharging its other statutory functions such as plan-making. To allay the concern of the Bills Committee, the Administration introduced a Committee Stage amendment to delete the proposal to exempt Government departments from fee payment. With this and other amendments, the Bill was passed by the Legislative Council (LegCo) on 7 July 2004.

Consultation on the fee proposal in 2004

4. After the enactment of the Amendment Ordinance and before appointing its operation date by notice published in the Gazette, the Administration consulted stakeholders on the fee proposal and new/revised TPB Guidelines from September to December 2004. The consultation paper on the fee proposal was annexed to CB(1)1116/04-05(06) is reproduced at **Appendix I**.

5. Diverse views were received by the Administration on the fee proposal. Some respondents supported the charging of fees on a cost-recovery basis. Objection however was raised by a number of organizations to the proposed fee charging system. These include open storage trade operators and the HYK Open storage trade operators who considered that the proposed fee would impose a heavy financial burden on them. HYK was concerned that the proposed fee would deter applicants from submitting planning applications. HYK also considered it unfair to charge fees on applications for Small House developments. In its view, such applications were required only because there was insufficient land for Small Houses within the village environs. Besides, a number of organizations, including the Hong Kong Bar Association, some green groups, the Hong Kong Institute of Planners and the Hong Kong Institute of Architects considered that waiver of application fees should not be restricted to registered charitable organizations. Instead, it should be extended to all applications relating to 'public causes'.

Views received by Members

6. Various organizations have expressed views to LegCo Members concerning the fee proposal. In the view of the Real Estate Developers' Association of Hong Kong, there should be no fee for applications to amend plans (section 12A) as they should be seen as part of the plan making process rather than an application for approval. Imposition of fees for planning applications will discourage the public from participating in the planning process. If a fee is to be charged, it should not relate to land area because a proposal to change zoning may cover a substantial area,

much of which may not be owned by the applicant but should be changed for reasons of planning consistency. A fixed amount should be charged, possibly \$25,000, as there would be little variation in the amount of work involved. Fees should not be charged for public interest changes in any case.

7. HYK reiterated its objection to the fee proposal at its meeting with LegCo Members on 25 January 2005. In the view of HYK, applications relating to Small Houses should be exempted from payment of fees, or a separate charging mechanism be established for Small House applications.

8. At their meeting with LegCo Members on 28 April 2005, Yau Tsim Mong District Council (YTMDC) members also raised their concern about the financial means of some applicants such as green groups and community organizations to pay for the fees. The fee proposal might impede the participation of these organizations in the statutory planning process. YTMDC proposed that the Administration should consider waiving the application fees for certain organizations or introducing a planning assistance system with reference to the United Kingdom model.

Implementation of the Amendment Ordinance in June 2005 without a fees regulation

9. In view of the controversy over the fee proposal and in order not to delay the implementation of the Amendment Ordinance, the Administration proposed to the Panel to proceed with the Amendment Ordinance leaving the Town Planning (Fees) Regulation to be commenced at a later date. With the exception of the provisions concerning fees, the Amendment Ordinance came into operation on 10 June 2005.

10. A list of the relevant papers with their hyperlinks in the LegCo Website is in **Appendix II**.

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

**Fee proposal under the
Town Planning (Amendment) Ordinance 2004**

List of relevant papers

Council/Committee	Date of meeting	Paper
Bills Committee on Town Planning (Amendment) Bill 2003		<p>Legislative Council Brief File Ref. : HPLB(CR)(PL)184/02(2003) Pt. 63 (http://www.legco.gov.hk/yr02-03/english/bills/brief/b52_brf.pdf)</p> <p>Legal Service Division Report LC Paper No. LS109/02-03 (http://www.legco.gov.hk/yr02-03/english/hc/papers/hc0523ls-109.pdf)</p> <p>Report of the Bills Committee LC Paper No. CB(1)2256/03-04 (http://www.legco.gov.hk/yr02-03/english/bc/bc12/reports/bc12cb1-2256-e.pdf)</p>
Planning, Lands and Works (PLW) Panel	22 March 2005	<p>Information paper provided by the Administration LC Paper No. CB(1)1116/04-05(06) (http://www.legco.gov.hk/yr04-05/english/panels/plw/papers/plw0322cb1-1116-6e.pdf)</p> <p>Background brief LC Paper No. CB(1)1116/04-05(05) (http://www.legco.gov.hk/yr04-05/english/panels/plw/papers/plw0322cb1-1116-5e.pdf)</p> <p>Submission from The Real Estate Developers Association of Hong Kong LC Paper No. CB(1)557/04-05(01) (http://www.legco.gov.hk/yr04-05/english/panels/plw/papers/plwcb1-557-1e.pdf)</p> <p>Minutes of meeting LC Paper No. CB(1)1320/04-05 (http://www.legco.gov.hk/yr04-05/english/panels/plw/minutes/pl050322.pdf)</p>