

## **LEGISLATIVE COUNCIL BRIEF**

### **Town Planning Ordinance (Chapter 131) TOWN PLANNING BILL**

#### **INTRODUCTION**

At the meeting of the Executive Council on 18 January 2000, the Council ADVISED and the Chief Executive ORDERED that the Town Planning Bill, at Annex A, should be introduced into the Legislative Council.

#### **BACKGROUND AND ARGUMENT**

##### **Background**

2. The existing Town Planning Ordinance was first enacted in 1939. With the exception of a few piecemeal amendments and the more substantial changes made respectively in 1974 and 1991, the Ordinance has remained largely in its original form. With the increasing complexity of the social, economic and political environment in Hong Kong, as well as the increasing aspirations of the society, it has long been recognized that the Ordinance should be fundamentally reviewed and updated to provide guidance for and control over planning and development in Hong Kong to meet our prevailing needs.

3. In formulating the Town Planning Bill, the Administration has taken into special considerations and concerns often expressed about the existing statutory planning system such as :

- (a) the lengthy statutory planning procedures and delays to plan-making and approving planning applications frequently caused by the time taken to resolve objections;
- (b) insufficient public consultation and involvement;
- (c) lack of clear guidelines to address contemporary planning issues such as environment, urban design and conservation issues; and

- (d) insufficient planning control on building development.

## **Considerations**

4. In 1996, the Town Planning White Bill was published for public consultation. The comments and views received were diverse and some of them conflicting. On the one hand, the green groups, the then Municipal Councils and District Boards, professional institutes (like Hong Kong Institute of Planners) and the Law Society support proposals that would make the statutory planning system more open and involve the public more extensively in the entire planning process. On the other hand, real estate developers, business sector and other professional institutes such as the Hong Kong Institute of Surveyors, the Hong Kong Institute of Architects, the Hong Kong Institution of Engineers have expressed concern over whether a more open system would lead to further delay to the development process.

5. Given the complexity of the issues involved, the Administration decided to put aside the main bill for the time being and proceed with an interim amendment to the Ordinance to time-limit the processing of objections to draft town plans within a period of 9 months in order to improve the efficiency of the plan-making process. The amendment was subsequently enacted and came into effect in April 1998. The new statutory time-limit has contributed significantly towards curtailing the time required for processing a new draft plan or amending an existing plan, from previously an average of 34 months to under 9 months.

6. Since April 1998, we have further discussed with key stakeholders including all relevant professional institutes and the Real Estate Developers' Association and informally consulted all major political parties on the Bill. In addition, we have also briefed LegCo Panel on Planning, Lands and Works (23 March 1999), Land and Building Advisory Committee (LBAC) (22 April 1999) and Town Planning Board (TPB) (23 April 1999) on the key provisions of the Bill.

7. After having thoroughly reviewed the key issues raised by the parties in these discussions, the Administration have made suitable amendments to the Bill and prepared a revised Town Planning Bill attached at **Annex A**. A summary table providing a comparison between the existing Ordinance, the White Bill and the Town Planning Bill is at **Annex B**.

## **THE BILL**

8. The main provisions of the Bill are summarized below.

## **Part II of the Bill : Clauses 3 to 6 – The set-up and powers of the TPB**

9. The main changes to the existing Ordinance are aimed at enhancing the independence, openness and efficiency of the TPB, as follows-

- (a) members who are not public officers would form the majority of the quorum of any meeting of the TPB and its committees. The quorum of the TPB and its committee meetings has been increased, from originally 5 for both, to 9 and 7 respectively (*Clauses 3(2) and 4(3)*);
- (b) the Planning Authority may be delegated the power to determine applications for extension of the validity period of planning permission for not exceeding one-quarter of the length of the previously granted period, and whether any condition attached to planning permission has been fulfilled (*Clause 4(5)*); and
- (c) the TPB may give advice to the Government relating to overall planning for Hong Kong and any other planning matters as it thinks fit (*Clause 6(1)(h)*).

10. In this connection, the new *Schedule* to the Bill contains the following new provisions regarding the TPB -

- (a) a new statutory requirement for TPB members to declare interest and such record shall be made available to the public for inspection (*Clause 3(4) in the Schedule*); and
- (b) to improve efficiency, we propose that the TPB should have the power to conduct its business by way of circulation of papers (*Clause 4 in the Schedule*).

## **Part III of the Bill : Clauses 7 to 30 - Procedures for the preparation of draft town plans**

11. Compared to the existing Ordinance, the Bill provides a more open plan-making process involving more extensive public consultation at various stages of plan-making. However, to ensure that efficiency is not compromised as a result, the Bill also introduces statutory time-limits wherever possible to avoid any unnecessary delay. Diagrams comparing the existing and the proposed plan-making process and planning application process are at **Annexes**

**C & D** respectively, with changes highlighted. The following are the major new proposals -

- (a) to give due regard to environmental and urban design considerations in plan-making, the TPB is empowered to designate in town plans “Environmentally Sensitive Area” (ESA), “Special Design Area” (SDA) and “Designated Development” (DD) for more effective planning control (*Clauses 7(f), 7(k) & 9(2)*). Details of the planning control measures are set out in Part IV of the Bill (see paragraphs 12 & 13 below);
- (b) a new requirement that all planning studies should be published for public comments for a period of 1 month (originally 3 months in the White Bill) prior to the preparation of draft town plans (*Clauses 11 & 12*);
- (c) to standardize the publication period for new or replacement draft plan (originally 2 months in the White Bill) and amendment to draft plan (originally 6 weeks in the White Bill) to 1 month (*Clauses 16(1), 27(4), 28(2) & 29(5)*);
- (d) a new requirement that all representations made in respect of draft town plans gazetted should be published for two weeks (originally 1 month in the White Bill) for public comments (*Clause 18(1)*);
- (e) a new provision to enable the TPB to conduct one-stage inquiries (in place of the existing more time-consuming two-stage process under the Town Planning Ordinance) on unwithdrawn representations and comments where both representers and commenters are invited to attend instead of being heard separately (*Clause 21(1)*);
- (f) to provide the CE in C with additional power to amend draft town plans to meet any unwithdrawn adverse representations and to approve draft town plans in part (*Clause 26(1)*). This would avoid the circumstances whereby generally agreed draft town plans are being held up by isolated objections to particular sites on the plans; and would also provide flexibility for the CE in C in approving draft town plans;
- (g) a new provision to enable the TPB to consider application for amendments to draft or approved plan within 3 months (*Clause 29(3)*); and

- (h) a new provision to enable the CE to refer an approved plan to the TPB for replacement or further consideration and amendment to reduce the workload of the CE in C on procedural matters (*Clause 30(3)*).

#### **Part IV of the Bill : Clauses 31-44 - Statutory framework for exercising planning control**

12. This part of the Bill aims to provide a more open planning application system; strengthen planning control measures and give more emphasis to environmental and urban design considerations in planning control. The Bill provides for an IDC mechanism to ensure that the final decision of the TPB and the CE in C on draft town plans will not be pre-empted by any approval, in the interim, of either planning applications or building plans in respect of particular sites or developments. The planning control component of the IDC mechanism is included under this part of the Bill, whereas the building control component is in Part V of the Bill (see paragraph 14 below).

13. The following summarizes the new provisions and changes to the existing Ordinance -

- (a) all DDs and developments within ESA and SDA will require planning permission from TPB (*Clauses 31(2) & 31(3)*);
- (b) a new requirement for applicants of planning applications to obtain consent of or to notify the owner(s) of the application sites concerned (*Clause 32(1)*);
- (c) every planning application requiring publication must be accompanied by an environmental statement to highlight environmental implications of the proposed development (*Clause 32(2)*);
- (d) a new IDC mechanism: the TPB will defer determination of planning applications in respect of particular sites until the expiration of publication period of the relevant draft town plans. Where the application site is subject to a third-party adverse representation(s), determination will be withheld until CE in C has made a decision on the draft town plan concerned (*Clause 32(4)*);
- (e) a new statutory time-limit that requires the TPB to consider those planning applications requiring publication within 3 months; and

within two months for those that do not need to be published (*Clause 32(5)*). This will ensure efficiency in processing planning applications;

- (f) all applications for DD and developments within ESA must be accompanied by “Report on Key Environmental and Planning Issues” (*Clause 33(1)*);
- (g) all applications for development within SDA must be accompanied by urban design plans (*Clause 33(2)*);
- (h) a new requirement for the TPB to publish for public comments planning applications in respect of selected uses as may be determined by the TPB from time to time (*Clause 34(1)*);
- (i) a new provision for the TPB to require “performance bond” to ensure full compliance of planning conditions imposed (*Clause 37(1)*);
- (j) applicants and persons who have commented on the application shall be notified of TPB’s decision within 1 month of the determination (*Clause 38(1)*); and
- (k) a new statutory time-limit that requires applications for temporary development and minor amendments to previously granted planning permission must be processed within 45 days (*Clauses 43(2) & 44(2)*).

## **Part V of the Bill : Clauses 45 to 48 - Approval of plans of building works**

14. In consideration of the objection by the key stakeholders against the Planning Certificate System proposed in the White Bill, the Bill has subsequently dropped such a proposal. In its place, new proposals have been put forward aiming at strengthening planning control on building development. As explained in paragraph 12 above, building control of the IDC is also included under this part. Key features of the building control measures include -

- (a) the Building Authority (BA) shall not grant approval to any building plans which contravene the provisions of the Bill (*Clause 45*). However, provisions have been made in the Bill for the BA to continue exercising its discretionary power under the current Buildings Ordinance to exclude certain areas for providing better

facilities for buildings from gross floor area calculations (*Clause 2* under the interpretation of “gross floor area”);

- (b) the BA shall refuse to give approval of building plans during the exhibition period of a draft town plan or if the site concerned is subject to any adverse representation until CE in C has made a final decision on the draft town plan (*Clause 45(5)&(6)*); and
- (c) to empower the TPB to review the BA’s refusal to give approval of building plans made on planning grounds (*Clause 46(1)*). This proposal will ensure that reviews related to town planning issues would be considered by the TPB instead of the Building Appeal Tribunal under the Buildings Ordinance.

#### **Part VI of the Bill : Clauses 49 to 52 - Enforcement actions against unauthorized development**

15. The main provisions of this section of the Bill follow closely those of the existing Ordinance. The only changes relate to the increase in penalties to enhance deterrent effect against unauthorized developments and to widen the remit of the Appeal Board (AB) –

- (a) the maximum fines against unauthorized developments have been doubled (*Clause 50(2)*). It should be noted that the Bill has not taken up the imprisonment sentence proposed in the White Bill; and
- (b) the power of the AB will be expanded to consider appeals against reinstatement notice (as opposed to appeals being considered by the Secretary for Planning and Lands under the existing law) (*Clause 52(1)*).

#### **Part VII of the Bill : Clauses 53 to 64 - Establishment and powers of the AB**

16. The Bill proposes no changes to the composition of the AB but has included a few new provisions aimed at improving the efficiency of its operation –

- (a) a new statutory time-limit that requires the AB to consider an appeal within 3 months. However, subject to application by the parties concerned, the AB has the discretion to extend the 3-month period (*Clause 53(1)*);

- (b) a new provision that empowers the AB to determine appeals on the basis of “written submissions” subject to the consent of parties concerned (*Clause 57(3)(g)*); and
- (c) a new statutory time-limit that requires the AB to inform appellants of its decision within 1 month of its determination (*Clause 62(2)*).

**Part VIII of the Bill : Clauses 65 to 84 - Miscellaneous provisions**

17. This part of the Bill provides for miscellaneous provisions related to the power of entry, service of notices, registers, immunity and time-limit for prosecution of offences, etc., that are essential to the effective implementation of the Bill. The major changes to the existing Ordinance include-

- (a) a planning register of all statutory planning records will be set up for public inspection (*Clause 69*);
- (b) managers and directors of a company as well as partners in a partnership will be made liable to offences for unauthorized developments (*Clause 73*);
- (c) aerial photographs will be admissible as evidence in court for prosecution against unauthorized developments (*Clause 76*); and
- (d) notices served against unauthorized developments will be binding on successors of land titles (*Clause 78*).

**LEGISLATIVE TIMETABLE**

18. The legislative timetable as approved by the Executive Council is as follows -

Publication in the Gazette	28 January 2000
First Reading and commencement of Second Reading debate	16 February 2000
Resumption of Second Reading debate, Committee Stage and Third Reading	To be notified

## **BASIC LAW IMPLICATIONS**

19. The Department of Justice has advised that the proposed Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

## **HUMAN RIGHTS IMPLICATIONS**

20. The Department of Justice has confirmed that the proposed Bill is consistent with the human rights provisions of the Basic Law.

## **BINDING EFFECT OF THE LEGISATION**

21. The Bill proposes no changes to the binding effect of the existing Ordinance.

## **FINANCIAL AND STAFFING IMPLICATIONS**

22. The Planning Department requires additional resources to implement the proposals under the Bill due to a more rigorous time-limited town planning process. Hence, it has been provided with about \$14 million for the creation of 18 posts. Furthermore, it has been given an additional \$4 million per annum to meet increases in costs in advertising statutory notices and conducting land search, and increases in other expenses of the TPB. Increased workload for other departments arising from the Bill will be either absorbed by the departments concerned or met by additional resources to be sought in the normal way. Under the Bill, fees are payable in respect of certain services provided by the TPB.

## **ECONOMIC IMPLICATIONS**

23. The streamlining of the planning process as provided for under the Bill should expedite development and result in considerable economic gain to the community as a whole, albeit offset to some extent by other measures of the

Bill that provide for more extensive public participation which tends to lengthen the planning process.

24. Nevertheless, greater public involvement in the plan-making process and planning application system, greater fairness, greater attention to the environment and urban design aspects in the planning process and more effective development control are likely to be accepted by the wider community as a reasonable balance against the sole quest for economic gains.

## **ENVIRONMENTAL IMPLICATIONS**

25. The Bill has placed due emphasis on environmental planning and will be conducive to the creation of a better environment. We have included environmental factors in the proposed planning process so that environmental considerations would be taken into account at every stage of the planning process.

## **PUBLIC CONSULTATION**

26. During the consultation period of the Town Planning White Bill from July to December 1996, more than 30 briefings sessions and meetings with various public bodies were held. 59 written submissions were received. On 18.12.1996, the Legislative Council held a motion debate on the topic urging the Administration to expedite the introduction of the Town Planning Bill into the Legislative Council. The motion was carried. In 1999, we have held further 14 briefing sessions with the professional institutes and stakeholders (including LBAC, TPB, LegCo Panel on Planning, Lands and Works, etc.). There was general support of the Bill and early introduction of the Bill was urged.

## **PUBLICITY**

27. Press release will be issued on 21 January 2000. A press briefing will also be arranged on the same day. A spokesman will be available for answering media enquiries.

## **ENQUIRIES**

28. For any enquiries, please contact Mr Wilson Fung, Principal Assistant Secretary for Planning and Lands (Planning), at 2848 2119.

## **ATTACHMENTS**

Annex A - The Town Planning Bill

Annex B - Comparison between the Main Provisions under the Existing Town Planning Ordinance, the White Bill and the Town Planning Bill

Annex C - The Proposed Plan-Making Process

Annex D - The Proposed Planning Application Process

**Planning and Lands Bureau  
January 2000**

**BRIEF FOR THE LEGISLATIVE COUNCIL**

**TOWN PLANNING BILL**

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| Annex B | Comparison between Main Provisions Under the Existing Town Planning Ordinance, the White Bill and the Town Planning Bill |
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**TOWN PLANNING BILL**

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## A BILL

To

Promote the health, safety, convenience and general welfare of the community and the betterment of the environment by means of planning and control of the use and development of land.

Enacted by the Legislative Council.

## PART I

### PRELIMINARY

#### **1. Short title and commencement**

(1) This Ordinance may be cited as the Town Planning Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Planning and Lands by notice in the Gazette.

#### **2. Interpretation**

In this Ordinance, unless the context otherwise requires - “Appeal Board” (上訴委員會) means an Appeal Board constituted under section 56;

“Authority” (監督) means the Director of Planning;

“Board” (城規會) means the Town Planning Board appointed under section 3;

“building” (建築物) has the same meaning as “building” in section 2(1) of the Buildings Ordinance (Cap. 123);

“Building Authority” (建築事務監督) has the same meaning as “Building Authority” in section 2(1) of the Buildings Ordinance (Cap. 123);

“building works” ( 建築工程 ) includes any kind of building construction, alteration, addition and building operation, as defined in section 2(1) of the Buildings Ordinance (Cap. 123), but does not include ground investigation, site formation works, demolition, drainage works and slope maintenance works;

“commenter” ( 評論人 ) means any person who makes written comments to the Board under section 19 on an adverse representation made on a draft plan;

“container” ( 貨櫃 ) includes a container converted for use as an accommodation or as storage or for any other use;

“designated development”( 指定發展 ) means any class or description of development that is so designated in regulations made under section 9(3), or is so designated by the Board on a plan under section 9(2);

“development” ( 發展 ) means carrying out building, engineering, mining or other operations in, on, over or under land, or making a material change in the use of land or buildings;

“development permission area” ( 發展審批地區 ) means an area so designated in a plan prepared under section 6(1) (a);

“environment” ( 環境 ) includes -

- (a) the components of the earth and “components of the earth”( 地球的組成部分 ) includes land, water, air and all layers of the atmosphere; all organic and inorganic matter and living organisms; and the interacting natural systems that include any of the foregoing;
- (b) any building, structure, machine or other device made by man; any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or

indirectly from the activities of man, or any part or combination of the foregoing and the interrelationships between any of them;

(c) physical and cultural heritage;

(d) any structure, site or other thing that is of historical or archaeological significance;

“environmental statement” (環境陳述書) means a statement sufficient to set out the possible impact of a particular development or use on the environment or the possible impact of the environment on the development or use and any mitigation measures proposed, which is included in an application for planning permission required under section 32 to which section 34 applies;

“existing use” (現有用途), in relation to -

(a) an area which having been previously included in a plan of an interim development permission area, is subsequently included in a plan of a development permission area, means a use in that area, of a building or land which was in existence immediately before the first publication in the Gazette of notice of the plan of the interim development permission area and which before that publication had not discontinued for an uninterrupted period exceeding 6 months and had not changed materially to another use; and

(b) an area which having not been previously included in a plan of an interim development permission area, is subsequently included in a plan of a development permission area, means a use in that area, of a

building or land which was in existence immediately before the first publication in the Gazette of notice of the plan of the development permission area and which before that publication had not discontinued for an uninterrupted period exceeding 6 months and had not changed materially to another use;

“gross floor area” (總樓面面積), in relation to plot ratio, means the gross floor area of a building determined in accordance with regulation 23 of the Building (Planning) Regulations (Cap. 123 sub. leg.) and where that provision is modified by virtue of section 42 of the Buildings Ordinance (Cap. 123) in accordance with that modification;

“interim development permission area” (中期發展審批地區) means an area so designated in a plan prepared under section 26 of the repealed Ordinance;

“land” (土地) means -

- (a) land, whether covered by water or not;
- (b) things attached to land or permanently fastened to anything attached to land;

“material change in the use of land or buildings” (土地或建築物用途的實質改變) includes depositing matter on land, whether or not all or part of the land is already used for depositing matter, if the area, height or amount of the deposit is increased;

“occupier” (佔用人) includes a tenant of an owner whether or not he pays rent, a person who resides on land or in a building and a person who carries on an occupation on land or in a building;

“outline zoning plan” (分區計劃大綱圖) means a plan provided for

under section 6(1) (a) other than a development permission area plan;

“owner” (擁有人) -

(a) has the same meaning as “owner” in section 2(1) of the Buildings Ordinance (Cap. 123); and

(b) means a manager registered under section 15 of the New Territories Ordinance (Cap. 97);

“plan”(圖則) means a draft or an approved outline zoning plan or development permission area plan prepared under Part III;

“plot ratio” (地積比率), in relation to a building, means the result obtained by dividing the gross floor area of the building by the area of the site on which the building is erected;

“property” (財產) includes anything contained in a vehicle or a container, but does not include immovable property;

“published” (公布), in relation to any plan, planning application, planning study, or representation, means the publication by the Board under this Ordinance of notice of any such plan, planning application, planning study, or representation;

“repealed Ordinance” (舊有條例) means the Town Planning Ordinance (Cap. 131) repealed under section 85;

“representation”(申述) means a written representation made to the Board under section 17 relating to a draft plan;

“representer” (申述人) means a person who makes a written representation relating to a draft plan to the Board under section 17;

“Secretary” (局長) means the Secretary for Planning and Lands;

“site coverage” (上蓋面積) means -

(a) in relation to a building erected on a site, the area of the site covered by that building; and

- (b) in relation to a part of a composite building erected on a site, the area of the site covered by that part of that building;

“unauthorized development”( 違規發展 ) means any development other than development

-

- (a) which is an existing use;
- (b) which was permitted under an interim development permission area plan prepared under section 26 of the repealed Ordinance and was undertaken, carried on or continued in the same area during the period when such interim development permission area plan had effect;
- (c) which is permitted under a draft or an approved development permission area plan;
- (d) which is permitted under a draft or an approved outline zoning plan;
- (e) which, despite not being permitted by reason of the circumstances mentioned in either paragraph (b), (c) or (d), was permitted on that land under a draft or an approved development permission area plan or under a draft or an approved outline zoning plan which has ceased to have effect, and was undertaken, carried on or continued in the same area during the period when such draft or approved development permission area plan or draft or approved outline zoning plan, as the case may be, had effect; or
- (f) where -
  - (i) planning permission has been granted by the Board under section 36(1) (b) (ii) or

40 or is deemed to have been granted by the Board by virtue of section 59;

(ii) permission has been granted by the Town Planning Board under section 16 or 17 of the repealed Ordinance;

(iii) permission has been granted by virtue of a decision of the Appeal Board under section 17B of the repealed Ordinance; or

(iv) permission in relation to the undertaking, carrying on or continuance of development in an interim development permission area has been granted by the Director of Planning under section 26(1) of the repealed Ordinance,

and continues to have effect, which is being carried out in accordance with any such planning permission or permission, as the case may be, and in compliance with the requirement of any condition of any such grant;

“zone” (地帶) means a zone or district shown or provision for which is made on a plan prepared under Part III.

## PART II

### APPOINTMENT OF TOWN PLANNING BOARD

#### **3. Town Planning Board**

(1) The Chief Executive may in writing appoint -

(a) a Town Planning Board (the “Board”) consisting of such members being public officers and such members

not being public officers as he may appoint;

(b) any member of the Board, either ex officio or personally, as Chairman;

(c) 1 or more than 1 member of the Board, either ex officio or personally, as a Deputy Chairman; and

(d) 1 or more than 1 public officer as a secretary to the Board.

(2) The quorum for a meeting of the Board shall be 9 members of the Board, 1 of whom must be the Chairman or a Deputy Chairman and 5 of whom must be persons who are not public officers.

(3) For the better discharge of the functions of the Board under this Ordinance the Chief Executive may, in writing appoint, from among the members of the Board, committees of the Board and a Chairman and Deputy Chairman of each committee, and appoint any public officer as secretary thereof.

(4) The Schedule shall have effect as respects the Board and its members.

(5) The Chief Executive in Council may by order amend the Schedule.

(6) It is declared that, save insofar as is inconsistent with the provisions of this Ordinance, Part VII of the Interpretation and General Clauses Ordinance (Cap. 1) shall apply as respects the Board and appointments to the Board.

(7) Any expense incurred with the sanction of the Chief Executive by the Board in connection with the exercise of its powers or the performance of its duties under this Ordinance or the regulations made thereunder shall be met from moneys voted by the Legislative Council.

**4. Delegation by Board to committees and to Authority**

(1) The Board may, with or without restrictions or conditions as it thinks fit, delegate in writing any of its powers and functions under this Ordinance to a committee appointed under section 3(3).

(2) The Board shall not delegate to any committee appointed under section 3(3) the power to -

- (a) recommend to the Chief Executive in Council the resumption of any land which interferes with the layout of an area shown on a draft or an approved plan or on an approved master layout plan (section 6(3));
- (b) give preliminary consideration to any representation made to the Board in respect of a draft plan and to any comment in respect of any adverse representation (section 20(1));
- (c) hold an inquiry to consider any unwithdrawn adverse representation and any comment thereon (section 21(1));
- (d) submit a draft plan to the Chief Executive in Council (section 25(1) or (2));
- (e) review a determination of the Board on an application for the grant of planning permission (section 39);
- (f) review a determination of the Building Authority under section 45 (section 46).

(3) The quorum for a meeting of a committee appointed under section 3(3) shall be 7 members, 1 of whom must be the Chairman or a Deputy Chairman of the committee as so appointed and 4 of whom

must be persons who are not public officers.

(4) Subject to the terms of any delegation by the Board or to any directions of the Board, a committee -

- (a) may exercise and perform the delegated powers with the same effect as if that committee were the Board itself;
- (b) shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary;
- (c) may regulate its own procedure.

(5) The Board may, with or without restrictions or conditions as it thinks fit, delegate in writing to the Authority its power to -

- (a) consult authorities and bodies including public authorities and public bodies in relation to the preparation of any draft plan;
- (b) determine an application for -
  - (i) a minor amendment under section 43 to planning permission as previously granted;
  - (ii) planning permission for temporary development or use of land under section 44 for a period of not more than 6 months from the date of the grant of planning permission;
  - (iii) the extension of the period of validity of planning permission, for a period of not more than one-quarter of the length of the period of validity of planning permission previously granted;

(iv) the extension of the specified period, on or before the expiration of which the requirement of a condition to which planning permission previously granted is subject, is to be complied with;

(c) determine whether or not -

(i) an application for planning permission is similar or substantially similar to a previous application;

(ii) it is appropriate that further information and particulars submitted by an applicant for planning permission should be treated as if it were an application for planning permission;

(iii) any information in relation to a representation or an application for planning permission or any comment made in respect of an adverse representation or any comment on an application for planning permission should be withheld from public inspection; and

(iv) a condition imposed on a grant of planning permission has been fulfilled to its satisfaction.

(6) Subject to the terms of any delegation by the Board or to any directions of the Board, the Authority or any public officer authorized in writing by the Authority for that purpose -

(a) may exercise and perform the delegated powers with the same effect as if the Authority or that public

officer were the Board itself;

- (b) shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

## **5. Special committee for purposes of section 21**

(1) Notwithstanding section 4(2)(c), the Board may appoint committees from among its members to exercise the Board's powers under section 21.

(2) A committee appointed under this section shall consist of not less than 5 members, 3 of whom must be persons who are not public officers.

(3) The Board shall appoint 1 member to be Chairman of the committee and may appoint 1 member to be Deputy Chairman of the committee.

(4) The quorum for a committee meeting is 3 members, 1 of whom must be the Chairman or the Deputy Chairman.

(5) Notwithstanding subsection (4), a committee shall not meet or continue to meet unless a majority of those present are not public officers.

## **6. Powers and functions of Board**

(1) With a view to the promotion of the health, safety, convenience and general welfare of the community and the betterment of the environment, the Board may -

- (a) prepare draft plans including outline zoning plans and development permission area plans for such areas of Hong Kong as the Chief Executive may, in writing, direct;

- (b) in the case of a new or replacement outline zoning plan or an amendment to an outline zoning plan, prepare a planning study before preparation of the outline zoning plan or of the amendment to an outline zoning plan;
- (c) determine whether a draft plan or a planning study is suitable for publication;
- (d) consider representations and related comments on a draft plan and shall conduct an inquiry into any unwithdrawn adverse representation;
- (e) submit draft plans together with any unwithdrawn adverse representation to the Chief Executive in Council;
- (f) receive planning applications and decide on and review its decisions on planning applications;
- (g) review the Building Authority's determinations under section 45; and
- (h) give advice to the Government relating to overall planning for Hong Kong and any other planning matter as it thinks fit.

(2) In the course of preparation of the draft plans referred to in subsection (1), the Board shall make such inquiries and arrangements including, if it thinks fit, the taking of any census of the occupants of any land or buildings or of the users of any thoroughfares or spaces as it may consider necessary for the preparation of such draft plans.

(3) The Board may recommend to the Chief Executive in Council the resumption of any land which interferes with the layout of an area shown on a draft or an approved plan or on a

master layout plan required under section 33(3) and approved in relation to the grant of an application for planning permission under this Ordinance or on a master lay-out plan approved under section 4A of the repealed Ordinance; and resumption to avoid such interference shall be deemed to be resumption for a public purpose within the meaning of the Lands Resumption Ordinance (Cap. 124).

(4) Except in the case of resumption under the Lands Resumption Ordinance (Cap. 124) no compensation shall be paid to the proprietor or any person interested in any holding by reason of the fact that it lies within or is affected by any zone or district set apart under section 4(1) (b) of the repealed Ordinance or is affected by any provision on a plan referred to in section 7.

(5) Subject to subsection (6), the Chief Executive may give to the Board such directions in writing as he thinks fit in respect of the exercise of its powers and functions, either generally or in any particular case.

(6) Subsection (5) shall not apply to the exercise by the Board of its power to -

- (a) conduct an inquiry into any unwithdrawn adverse representation on a draft plan under subsection (1)(d);
- (b) submit a draft plan to the Chief Executive in Council under subsection (1)(e);
- (c) receive planning applications and decide on and review its decisions on planning applications;
- (d) review the Building Authority's determinations under section 45; or
- (e) recommend to the Chief Executive in Council the resumption of land under subsection (3).

(7) The Board shall, in the exercise of its powers and functions under this Ordinance, comply with any direction given by the Chief Executive under subsection (5) in respect of that exercise.

### PART III

#### PREPARATION OF DRAFT PLANS

##### **7. Contents of draft plans and powers of Board**

The Board may show or make provision on a draft plan for -

- (a) streets, railways and other main communications;
- (b) zones or districts set apart for use for residential, commercial or industrial uses;
- (c) reserves for Government, institution or community purposes;
- (d) parks, recreation grounds and similar open spaces;
- (e) zones or districts set apart for undetermined uses;
- (f) comprehensive development areas, environmentally sensitive areas and special design areas;
- (g) country parks and special areas designated under the Country Parks Ordinance (Cap. 208), marine parks and marine reserves designated under the Marine Parks Ordinance (Cap. 476), coastal protection areas, sites of special scientific interest, green belts or other specified uses that promote conservation or protection of the environment;
- (h) zones or districts set apart for use for village type development, agriculture or other specified

rural uses;

- (i) zones or districts set apart for use for open storage;
- (j) zones or districts set apart for any other specified use;
- (k) designated development,

and any matter whatsoever may be shown or provided for in the plan by means of such diagrams, illustrations, notes or descriptive and prescriptive matters as the Board thinks appropriate; and any such diagrams, illustrations, notes or descriptive and prescriptive matters shall be part of the plan.

#### **8. Format and scope of draft plans generally**

(1) A draft plan may contain -

- (a) a layout proposing, in such detail as the Board thinks appropriate, the development and use of the land comprised in the draft plan, and any type and description of the development or use of such land as may be prescribed in section 7;
- (b) such diagrams, illustrations, notes or descriptive and prescriptive matters as the Board thinks appropriate for the purposes of explaining or illustrating the proposals and planning intention in the draft plan; and
- (c) such other information, material or particulars relating to the type and description of the development and use proposed for the land as the Board thinks appropriate.

(2) A draft plan may show or provide for -

- (a) the development or use of land that is always permitted; or
- (b) the development or use of land that may be permitted with or without conditions on application made to the Board.

(3) Any matter of the description mentioned in subsection (1)(a), (b) or (c) contained in or appended to a draft plan shall, unless a contrary intention is expressed on that plan, form and be part of the plan.

## **9. Contents of draft plans generally**

(1) Without affecting the generality of sections 7 and 8, in the preparation of a draft plan, the Board may, by note on a draft plan or by any other means, provide for -

- (a) the control of height, number of storeys, plot ratio, gross floor area, site coverage, number of flats, disposition and use of buildings, which may vary from building to building in the same land use zone;
- (b) the provision of services, facilities and amenities including open space and other recreational facilities;
- (c) landscaping and urban design requirements including the provision of landscaped space, tree planting or other requirements for the conservation, protection or enhancement of the environment;
- (d) the control of traffic impact and the provision of transport, parking, loading or unloading facilities;
- (e) the control of drainage impact and the provision of

the means for flood prevention, control and mitigation;

- (f) the conservation and protection of the environment including the control of environmental impact and the provision of the means for prevention, control and mitigation of pollution to the environment;
- (g) the designation of any area which, in the opinion of the Board, is environmentally sensitive to development or adjoins existing or potential pollution sources as an environmentally sensitive area;
- (h) the designation of any area which, in the opinion of the Board, is of architectural, archaeological, cultural or historical interest, as a special design area;
- (i) within an environmentally sensitive area, a special design area or a comprehensive development area, the control of flat size, design, character and external appearance of buildings, which may vary from building to building in the same area;
- (j) any matter or thing required in respect of an application for planning permission under section 32;
- (k) such other matters relating to the planning for the development or use of land as the Board thinks fit.

(2) The Board may designate on a draft plan any class or description of development which in the opinion of the Board may -

- (a) constitute a hazard to the health or safety of the public; or

(b) permit, cause or result in, significantly, an adverse environmental impact, as designated development.

(3) Without affecting the power conferred on the Board under subsection (2), the Secretary may, by regulations made for the purposes of this section, designate any class or description of development which in the opinion of the Secretary may -

(a) constitute a hazard to the health or safety of the public; or

(b) permit, cause or result in, significantly, an adverse environmental impact, as designated development.

#### **10. Draft development permission area plans**

(1) The Board shall not, unless otherwise directed by the Chief Executive, designate as a development permission area any area that is or was previously included in a plan under this Ordinance or under the repealed Ordinance.

(2) A development permission area plan, whether or not it becomes an approved plan, is effective for a period of 3 years after notice of the draft plan is first published in the Gazette under section 16, but on the application of the Board the Chief Executive may, before the end of the 3-year period, extend the period for up to 1 additional year. The Board shall cause notice of an extension under this subsection of the effective period of the development permission area plan to be published in the Gazette and in at least 2 Chinese and 1 English newspapers.

(3) Where the whole or part of a development permission area is included in a draft outline zoning plan published under section

16 the development permission area plan for the same area, whether or not it becomes an approved plan, shall cease to have effect.

(4) Notwithstanding that the plan referred to in subsection (2) ceases to be effective under subsection (3), sections 36 to 42 shall continue to apply to applications for planning permission made under section 32 during the effective period of 3 years or the period of up to 1 additional year as extended by the Chief Executive as referred to in subsection (2) until the right to be considered under section 36, right of review under section 39 and right of appeal under section 42 have been exhausted, abandoned or have expired; and the Board or the Appeal Board, as the case may be, shall consider under section 36, review under section 40 or hear an appeal made under section 42 in respect of the applications to the extent as shown or provided for or specified in the draft outline zoning plan referred to in subsection (3).

## **11. Planning study**

(1) In the case of a new or replacement outline zoning plan or, if the Board considers appropriate, an amendment to an outline zoning plan, the Board may prepare a planning study before the preparation of the outline zoning plan or an amendment to an outline zoning plan to examine the matters which may be expected to affect the development or use of land or the planning of the development or use of land in that area.

(2) A planning study prepared under subsection (1) shall contain background information including an analysis of planning issues and other related matters, and a broad indication of planning intentions and proposals for the area as the Board considers appropriate.

## **12. Publication and inspection of planning study**

(1) On completion of a planning study under section 11, the Board shall, for a period of 1 month starting on the day that it is first published, cause notice of the planning study to be published once every week in at least 2 Chinese and 1 English newspapers and shall notify in each regular weekly issue of the Gazette published during that period -

- (a) the places and hours at which the planning study is available for public inspection;
- (b) the place at which and to whom and the period within which comments, in writing, in respect of the planning study may be made.

(2) A copy of a planning study prepared under section 11 shall, on the publication of a notice under subsection (1), be available for public inspection free of charge at such offices of the Government as the Secretary may direct, during the hours when those offices are open to the public; and copies thereof may be provided at such fee, if any, as the Authority may require for the purposes of this section.

(3) The notice referred to in subsection (1) shall state that any person who wishes to do so may, during the period mentioned in that subsection, submit comments in writing to the Board on the planning study.

## **13. Responses to comments**

The Board shall respond to comments submitted to it under section 12(3) within such period and in such manner and form as the Board shall consider appropriate.

#### **14. Consultation on planning study**

The Board may, during the period mentioned in section 12(1), consult such authorities and bodies, including public authorities and public bodies, in relation to the planning study in such manner and form as the Board shall consider appropriate.

#### **15. Board to take into account comments, Government policy, etc. in preparing draft plans**

The Board shall, in the preparation of a draft plan under section 6, take into account -

- (a) where a planning study has been prepared under section 11 -
  - (i) the findings of the study;
  - (ii) any comments submitted to the Board on the study under section 12(3);
  - (iii) any matter arising from consultation with any authority or body under section 14;
- (b) any statement of Government policy relating to the subject matter of the draft plan;
- (c) any matter that the Chief Executive may, in writing, direct that the Board shall take into account; and (d) any other matter that the Board shall consider appropriate.

#### **16. Publication and inspection of draft plans**

(1) When preparing a draft plan under section 6, the Board shall, in respect of any draft plan which the Board deems suitable for publication, for a period of 1 month starting on the day that it is first published, cause notice of the draft plan to be published once every week in at least 2 Chinese and 1 English

newspapers and shall notify in each regular weekly issue of the Gazette published during that period -

- (a) the places and hours at which the draft plan is available for public inspection;
- (b) the place at which and to whom and the period within which representations, in writing, in respect of the draft plan may be made.

(2) A copy of a draft plan prepared under section 6 shall, on the publication of a notice under subsection (1), be available for public inspection free of charge at such offices of the Government as the Secretary may direct, during the hours when those offices are open to the public.

(3) The notice referred to in subsection (1) shall state that any person affected by the draft plan who wishes to do so may, during the period mentioned in that subsection, make representations to the Board on the content of the draft plan in the manner provided in section 17.

## **17. Representations relating to draft plans**

(1) Any person affected by the draft plan who wishes to make any representation to the Board in respect of a draft plan published under section 16 shall make that representation in writing in such manner and form as the Board may require, before the expiration of the period mentioned in section 16(1).

(2) A representation made under subsection (1) shall indicate -

- (a) the particular provision on the draft plan to which the representation relates and the manner in which the representer alleges that he will be affected by

- the provision on the draft plan to which the representation relates;
- (b) whether the representation is in support of, or in opposition to (an “adverse representation”), that particular provision;
- (c) the reasons for the representation; and
- (d) in the case of an adverse representation to a provision on the draft plan the amendment, if any, that the representer proposes should be made to the draft plan.

(3) A representation made under subsection (1) may be withdrawn in writing at any time before the Chief Executive in Council has decided, under section 26, whether or not any amendment should be made to the draft plan to which the representation relates; and if withdrawn, shall, as from the date that it is withdrawn, be treated as not having been made.

(4) A representation made under subsection (1) -

- (a) other than in such manner and form as the Board may have required; or
- (b) after the expiration of the period mentioned in section 16(1),

may be treated as not having been made.

## **18. Publication and inspection of representations**

### **relating to draft plans**

(1) On the expiration of the period mentioned in section 16(1), the Board shall in respect of any representation made to it under section 17, for a period of 2 weeks starting on the day that it is first published, cause notice of the representation to be published once every week in at least 2 Chinese and 1 English

newspapers and shall notify in each regular weekly issue of the Gazette published during that period -

- (a) the places and hours at which the representations are, subject to subsection (4), available for public inspection;
- (b) the place at which and to whom and the period within which comments, in writing, in respect of any adverse representation may be made.

(2) Subject to subsection (4), every representation referred to in subsection (1) shall, on the publication of a notice under subsection (1), be available for public inspection free of charge at such offices of the Government as the Secretary may direct, during the hours when those offices are open to the public.

(3) The notice referred to in subsection (1) shall state that any person who wishes to do so may, during the period mentioned in that subsection, submit comments to the Board in the manner provided in section 19 in respect of any adverse representation referred to in that subsection.

(4) On the application of the representer and on sufficient cause being shown to its satisfaction, the Board may direct that any representation or any part of it shall not be available for public inspection under this section.

(5) The Authority may provide copies of any representation or any part of it that is available for public inspection under this section on payment of such fee, if any, as the Authority may require for the purposes of this section.

## **19. Comments on adverse representations**

(1) The comments mentioned in section 18(3) shall be

submitted to the Board in writing in such manner and form as may be required by the Board for the purposes of this section. A commenter shall state whether he supports or opposes the adverse representation.

(2) The Board shall notify the representer in writing of any comment submitted in accordance with section 18(3) on his adverse representation and shall, subject to subsection (5), ensure that as far as is practicable, any comment on an adverse representation is available for inspection by the representer and for public inspection free of charge at such offices of the Government as the Secretary may direct, during the hours when those offices are open to the public.

(3) The notification referred to in subsection (2) shall advise the representer of the places and times that, by virtue of that subsection, any comment on his adverse representation is available for his inspection.

(4) Where an adverse representation is withdrawn under section 17(3), any comment made in respect of it shall, as from the date it is withdrawn, be treated as not having been made.

(5) On the application of the commenter and on sufficient cause being shown to its satisfaction, the Board may direct that any comment or any part of it shall not be available for public inspection under this section.

(6) The Authority may provide copies of any comment or any part of it that is available for public inspection under this section on payment of such fee, if any, as the Authority may require for the purposes of this section.

**20. Preliminary consideration of representations and comments**

(1) On the expiration of the period of 2 weeks mentioned in section 18(1), the Board shall give preliminary consideration to any representation made to it under section 17 and to any comment in respect of any adverse representation made to it under section 19.

(2) The preliminary consideration referred to in subsection (1) may be made in the absence of any representer or commenter.

(3) Before the expiration of 1 month after it has given the preliminary consideration referred to in subsection (1), the Board shall give notice in writing to every representer or commenter of the view it has taken as a result of that preliminary consideration.

(4) A representer who has made an adverse representation may, within 21 days from the date that he is given the notice referred to in subsection (3), notify the Board in writing that he wishes to withdraw his representation; and if withdrawn, the representation shall, as from the date that it is withdrawn, be treated as not having been made.

**21. Inquiry relating to unwithdrawn adverse representations**

(1) On the expiration of the period mentioned in section 20(4), the Board shall hold an inquiry to consider any unwithdrawn adverse representation and any comment thereon at which the representer and the commenter or their authorized representatives shall be entitled to attend and to be heard and shall fix a date, time and place for the inquiry and shall give not less than 2 months' notice thereof to the representer and to the commenter.

(2) If on the date and time fixed for the inquiry the representer, the commenter or their authorized representatives fail to attend at the inquiry or otherwise fail to make representations at the inquiry, the Board may -

(a) if satisfied that any such failure was due to illness or other reasonable cause, postpone or adjourn the inquiry for such period as it thinks fit; or

(b) proceed with the inquiry.

(3) The practice and procedure at an inquiry referred to in subsection (1) shall be such as the Board may determine for the purposes of this section.

(4) A representer or a commenter who is given notice under subsection (1) may, not less than 6 weeks before the date fixed for the inquiry, make submissions to the Board in writing relating to the representation and any submission so made shall be made available by the Board to any party to the inquiry.

(5) Any submission made to the Board under subsection (4) that is less than a period of 6 weeks before the date fixed for an inquiry under subsection (1) may be treated as not having been made.

(6) The Board may direct that any representation, comment and submission made in respect of the same draft plan shall be dealt with at the same inquiry and such representation, comment and submission may be entertained by the Board either individually or collectively as it may determine.

(7) On the conclusion of an inquiry under this section, the Board shall consider and take a view as to whether or not it will amend the draft plan in the manner proposed by the representer

under section 17(2)(d) or otherwise in a manner that, in the opinion of the Board, will meet the representation.

(8) Before the expiration of 1 month after it has held an inquiry referred to in subsection (1), the Board shall give notice in writing to every representer or commenter of the view it has taken under subsection (7) as a result of that inquiry.

(9) A representer who has made an adverse representation may, within 21 days from the date that he is given the notice referred to in subsection (8), notify the Board in writing that he wishes to withdraw his representation; and if withdrawn, the representation shall, as from the date that it is withdrawn, be treated as not having been made.

## **22. Amendment of draft plan by Board to meet**

### **unwithdrawn adverse representations**

(1) The Board may, after preliminary consideration of an adverse representation under section 20 or after an inquiry held under section 21 and before submission of the draft plan to the Chief Executive in Council under section 25, amend the draft plan in the manner proposed by a representer under section 17(2)(d) or otherwise in a manner that, in the opinion of the Board, will meet the representation if, and only if -

- (a) during the period mentioned in section 16(1) or 18(1), as the case may be, no other representation has been made under section 17 expressing a view contrary to the representation considered under section 20 or 21 or no comment in opposition to the representation so considered has been submitted to the Board under section 19; and
- (b) the amendment relates only to the particular

provision on the draft plan indicated by the representer under section 17 (2)

(a).

(2) The Board shall, before amending a draft plan under subsection (1), give to the representer and to the commenter, if any, notice in writing of its intention to do so; and shall invite the representer to withdraw his adverse representation on the condition that the Board will amend the draft plan in the manner proposed by the representer under section 17 (2) (d) or otherwise in a manner that, in the opinion of the Board, will meet the representation.

(3) Where notice is given to a representer under subsection (2), the representer may, before the expiration of a period of 21 days after the date of the notice, advise the Board in writing of his refusal to withdraw the representation and the reasons for such refusal.

(4) If on the expiration of the period mentioned in subsection (3) the Board has not been advised by the representer as provided in that subsection, the representation shall be deemed to have been withdrawn.

(5) An adverse representation that is withdrawn under subsection (2) or that is deemed to have been withdrawn under subsection (4) shall, as from the date that it is withdrawn or is deemed to have been withdrawn, be treated as not having been made.

### **23. Publication of amended draft plan**

On the amendment of a draft plan under section 22(1) the Board shall -

- (a) make a copy of the amended draft plan available for public inspection, for a period of not less than 14

days starting from the day that the draft plan is so amended, free of charge at such offices of the Government as the Secretary may direct, during the hours when those offices are open to the public; and

- (b) cause notice of that amended draft plan to be published in the Gazette and in at least 2 Chinese and 1 English newspapers.

**24. No further representation or comment to be considered in respect of amended draft plan**

The Board shall refuse to consider any representation or comment made in respect of a draft plan amended under section 22(1).

**25. Submission of draft plan to Chief Executive in Council**

- (1) The Board, in the case of a draft plan -
  - (a) in respect of which no adverse representation has been made; or
  - (b) where all adverse representations have been withdrawn,

shall, subject to subsection (3), submit the draft plan to the Chief Executive in Council together with any amendment incorporated in the draft plan by the Board under section 22(1).

- (2) The Board, in the case of a draft plan being the subject of an inquiry under section 21 to consider any unwithdrawn adverse representation, shall submit the draft plan to the Chief Executive in Council together with -

- (a) any amendment incorporated in the draft plan by the

Board under section 22(1);

- (b) particulars of the unwithdrawn adverse representation and any comment in respect of the unwithdrawn representation;
- (c) particulars of any representation in support of the draft plan; and
- (d) a statement of the view formed by the Board under section 21 (7).

(3) A submission to the Chief Executive in Council under subsection (1) shall be made before the expiration of a period of 9 months after the expiration of the period mentioned in section 16(1), 27(4), 28(2) or 29(5), as the case may be, unless, before the expiration of the period of 9 months, the Board publishes notice in the Gazette and in at least 2 Chinese and 1 English newspapers of the amendments to the draft plan under section 28 or 29.

(4) A submission to the Chief Executive in Council under subsection (2) shall be made before the expiration of a period of 9 months after the expiration of the period mentioned in section 16(1), 27(4), 28(2) or 29(5), as the case may be, or such further period being not more than 6 months as the Chief Executive may, on application by the Board, allow in any particular case.

## **26. Procedure on submission of draft plan to Chief Executive in Council**

(1) On the submission to the Chief Executive in Council of a draft plan under section 25, the Chief Executive in Council shall consider the draft plan together with any material submitted to it under that section and may -

- (a) refuse to approve the draft plan;

(b) approve the draft plan -

(i) in part only and order that the remaining part of the draft plan not so approved be dealt with in the manner provided in paragraph (d);

(ii) subject to such amendment in respect of any unwithdrawn adverse representation as the Chief Executive in Council shall specify;

(c) approve the whole of the draft plan; or

(d) order that the draft plan or any part thereof be referred back to the Board together with such directions relating to the amendment or the further consideration of the draft plan or any part thereof by the Board as the Chief Executive in Council thinks fit.

(2) The Chief Executive in Council may approve a draft plan under subsection (1) (b) or (c) notwithstanding that any requirement of this Ordinance applicable to that draft plan has not been complied with.

(3) The Chief Executive in Council may, in relation to any adverse representation, amend a draft plan under subsection (1) (b) (ii) to the extent only that the amendment relates to a particular provision on the draft plan which is the subject of the representation.

(4) No representation or comment made in respect of a draft plan amended by the Chief Executive in Council under subsection (1) (b) (ii) shall be considered or entertained.

(5) Where the Chief Executive in Council approves a draft plan under subsection (1) (b) or (c) the Board shall -

- (a) as soon as reasonably practicable after that approval, make a copy of the approved plan available for public inspection for a period of not less than 14 days, free of charge at such offices of the Government as the Secretary may direct, during the hours when those offices are open to the public; and
- (b) cause notice of that approved plan to be published in the Gazette and in at least 2 Chinese and 1 English newspapers.

(6) A draft plan that is refused the approval of the Chief Executive in Council under subsection (1) (a) shall, on the publication under subsection (9) of notice of the revival mentioned in subsection (8), cease to have effect.

(7) The refusal of the Chief Executive in Council under subsection (1) (a) to approve a draft plan shall not affect the ability of the Board to carry out the functions assigned to it under section 6.

(8) Unless the Chief Executive in Council orders to the contrary, the refusal of the Chief Executive in Council under subsection (1) (a) to approve a draft plan in respect of any area shall revive any published outline zoning plan or development permission area plan in respect of the same area in existence immediately before the day that the draft plan in respect of that area was first published under section 16 until -

- (a) the expiration of a period of 1 year after that refusal or such further period being not more than 6 months as the Chief Executive may, on application made by the Board, allow in any particular case; or

(b) the publication under section 16 of a further draft plan in respect of that area, whichever is the earlier.

(9) The Board shall cause notice of the refusal of the Chief Executive in Council under subsection (1) (a) to approve a draft plan and, unless the Chief Executive in Council has ordered to the contrary, of the revival mentioned in subsection (8) and of any such further period under subsection (8) (a) to be published in the Gazette and in at least 2 Chinese and 1 English newspapers.

(10) The Board shall, in respect of the revival of an outline zoning plan or development permission area plan under subsection (8), follow the same procedure as it is required to follow under subsection (5) in respect of a draft plan approved by the Chief Executive in Council under subsection (1) (b) or (c).

(11) On publication in the Gazette of notice of the revival mentioned in subsection (8) this Ordinance shall, during the effective period of that revival, continue to apply to outline zoning plans or development permission area plans revived by virtue of subsection (8), applications for planning permission made under section 32, plans of proposed building works requiring the approval of the Building Authority under section 45 and enforcement against unauthorized development under section 51 to the extent as shown or provided for or specified in those plans as so revived.

**27. Amendment of draft plan by Board on order  
of Chief Executive in Council**

(1) Where the Chief Executive in Council makes an order that a draft plan or any part thereof in respect of any area be referred back to the Board under section 26(1) (d) the draft plan

or any such part shall continue to have effect in respect of that area until -

- (a) the expiration of a period of 1 year after the order is made or such further period being not more than 6 months as the Chief Executive may, on application made by the Board, allow in any particular case; or
- (b) the first publication under subsection (4) of a further draft plan in respect of that area,

whichever is the earlier.

(2) The Board shall cause notice of an order of the Chief Executive in Council under section 26(1) (d) that a draft plan or any part thereof be referred back to the Board or of any such further period under subsection (1) (a) to be published in the Gazette and in at least 2 Chinese and 1 English newspapers.

(3) The Board shall comply with any direction contained in an order made by the Chief Executive in Council under section 26(1) (d) relating to the amendment or the further consideration of the draft plan or any part thereof by the Board.

(4) Where the Board amends a draft plan under subsection (3), the Board shall, for a period of 1 month starting on the day that it is first published, cause notice of the amendments to the draft plan to be published once every week in at least 2 Chinese and 1 English newspapers and shall notify in each regular weekly issue of the Gazette published during that period -

- (a) the places and hours at which the amendments to the draft plan are available for public inspection;
- (b) the place at which and to whom and the period within which representations, in writing, in

relation to the amendments to the draft plan may be made.

(5) A copy of a draft plan amended under subsection (3) shall, on the publication of a notice under subsection (4), be available for public inspection free of charge at such offices of the Government as the Secretary may direct, during the hours when those offices are open to the public.

(6) The notice referred to in subsection (4) shall state that any person affected by the amendments to the draft plan who wishes to do so may, during the period mentioned in that subsection, make representations to the Board on the amendments to the draft plan in the manner provided in section 17 and any representation so made shall, for all purposes, be treated as having been made by virtue of that section.

**28. Amendment of draft plan by Board prior to  
submission to Chief Executive in Council  
under section 25**

(1) The Board may, prior to the submission to the Chief Executive in Council of a draft plan under section 25, amend any part of that draft plan not being the subject of an adverse representation under section 17.

(2) Where the Board amends a draft plan under subsection (1), the Board shall, for a period of 1 month starting on the day that it is first published, cause notice of the amendments to the draft plan to be published once every week in at least 2 Chinese and 1 English newspapers and shall notify in each regular weekly issue of the Gazette published during that period -

- (a) the places and hours at which the amendments to the draft plan are available for public inspection;

(b) the place at which and to whom and the period within which representations, in writing, in relation to the amendments to the draft plan may be made.

(3) A copy of a draft plan amended under subsection (1) shall, on the publication of a notice under subsection (2), be available for public inspection free of charge at such offices of the Government as the Secretary may direct, during the hours when those offices are open to the public.

(4) The notice referred to in subsection (2) shall state that any person affected by the amendments to the draft plan who wishes to do so may, during the period mentioned in that subsection, make representations to the Board on the amendments to the draft plan in the manner provided in section 17 and any representation so made shall, for all purposes, be treated as having been made by virtue of that section.

## **29. Amendment of draft or approved plan by**

### **Board on application of any person**

(1) On the application of any person in writing in such manner and form as may be required by the Board for the purposes of this section, the payment of such fee, if any, as the Secretary may prescribe for the purposes of this section and on sufficient cause being shown to the Board's satisfaction, the Board may, subject to this section -

- (a) in the case of a draft plan, amend the whole or any part of that draft plan;
- (b) in the case of an approved plan, submit the matter to the Chief Executive in the manner provided in subsection (8).

(2) The Board may refuse to consider an application under this section where the fee, if any, prescribed by the Secretary under subsection (1) for the making of the application has not been paid.

(3) An application under this section shall be considered by the Board before the expiration of a period of 3 months starting on the day that the application is received by the Board.

(4) The Board shall not amend any part of a draft plan being the subject of an adverse representation under section 17 or any part of a draft plan that has been submitted to the Chief Executive in Council under section 25 and in respect of which the Chief Executive in Council has not made any of the decisions mentioned in section 26(1).

(5) Where the Board amends a draft plan under subsection (1), the Board shall, for a period of 1 month starting on the day that it is first published, cause notice of the amendments to the draft plan to be published once every week in at least 2 Chinese and 1 English newspapers and shall notify in each regular weekly issue of the Gazette published during that period -

(a) the places and hours at which the amendments to the draft plan are available for public inspection;

(b) the place at which and to whom and the period within which representations, in writing, in relation to the amendments to the draft plan may be made.

(6) A copy of a draft plan amended under subsection (1) shall, on the publication of a notice under subsection (5), be available for public inspection free of charge at such offices of the Government as the Secretary may direct, during the hours when

those offices are open to the public.

(7) The notice referred to in subsection (5) shall state that any person affected by the amendments to the draft plan who wishes to do so may, during the period mentioned in that subsection, make representations to the Board on the amendments to the draft plan in the manner provided in section 17 and any representation so made shall, for all purposes, be treated as having been made by virtue of that section.

(8) Where the Board is of the view that sufficient cause relating to the amendment of an approved plan has been shown to its satisfaction under subsection (1), the Board shall submit the matter to the Chief Executive and any submission so made shall, for all purposes, be treated as having been a request made by the Board by virtue and for the purposes of section 30(3) (a) or (b).

### **30. Revocation, replacement and amendment of approved plan**

(1) The Chief Executive in Council may, at the request of the Board or of his own volition revoke the whole or any part of an approved plan.

(2) An approved plan or any part thereof that is revoked by the Chief Executive in Council under subsection (1) shall, on the publication of a notice under subsection (4), cease to have effect to the extent that it is so revoked.

(3) The Chief Executive may, at the request of the Board or of his own volition -

- (a) order that an approved plan or any part thereof, other than an approved development permission area plan or any part thereof, be referred back to the Board for replacement by a new draft plan; or

(b) order that an approved plan be referred back to the Board for further consideration and amendment.

(4) The Board shall cause notice of any decision of the Chief Executive in Council under subsection (1) or, of the Chief Executive under subsection (3), to be published in the Gazette and in at least 2 Chinese and 1 English newspapers.

(5) On the making of an order by the Chief Executive under subsection (3) (a) or (b), a new plan in replacement of the plan referred back to the Board or any amendment to the plan referred back to the Board, as the case may be, shall be prepared, published, considered, submitted and approved in accordance with this Ordinance in like manner as the plan it replaces or amends.

(6) An approved plan or any part thereof that is referred back to the Board under subsection (3) (a) or (b) shall continue to have effect until a new plan in replacement of the approved plan or any part thereof is published under section 16 or until an amended draft plan is published under section 28.

#### PART IV

#### PLANNING CONTROL

### **31. Restriction on development or use**

#### **without planning permission**

(1) No development or use shall be carried out in respect of any land being the subject of a draft or an approved plan unless -

- (a) planning permission has been granted by the Board under section 36(1) (b) (ii) or 40 or is deemed to have been granted by the Board by virtue of section 59 in respect of that development or use; or
- (b) that development or use is permitted under the

draft or approved plan.

(2) No designated development shall be carried out in respect of any land, whether or not that land is land being the subject of a draft or an approved plan, unless planning permission has been granted by the Board under section 36(1)(b)(ii) or 40 or is deemed to have been granted by the Board by virtue of section 59 in respect of that designated development.

(3) No development or use within any area designated as an environmentally sensitive area or as a special design area under section 9(1) (g) or (h), shall be carried out on any land being the subject of a draft or an approved plan unless planning permission has been granted by the Board under section 36(1) (b) (ii) or 40 or is deemed to have been granted by the Board by virtue of section 59 in respect of that development or use.

(4) No building works which are a development or use and which, in the opinion of the Board in relation to the determination of the gross floor area of any building, or any part of a building comprised in the building works, involve the transfer of development potential, shall be carried out in respect of any land being the subject of a draft or an approved plan unless planning permission has been granted by the Board under section 36(1) (b) (ii) or 40 or is deemed to have been granted by the Board by virtue of section 59 in respect of those building works.

(5) For the purposes of subsection (4) “transfer of development potential” - (發展潛力轉移) -

(a) means the circumstances, in relation to the determination of the gross floor area of a building, which apply or will result when the gross floor

area of any building or any part of any building comprised in the building works to be carried out on any part of a site situated on any zone exceeds the gross floor area which can be obtained or will result when the land area of that part of the site within the zone on which the building or any part of the building will be located following the carrying out of the building works is multiplied -

- (i) where a plot ratio is stipulated on the draft or approved plan for that zone on which the building or any part of the building will be located following the carrying out of the building works, by the plot ratio as so stipulated; or
  - (ii) where no plot ratio is stipulated on the draft or approved plan for that zone on which the building or any part of the building will be located following the carrying out of the building works, the maximum plot ratio permitted under paragraph (1) or (2), as the case may be, of regulation 21 of the Building (Planning) Regulations (Cap. 123 sub. leg.); and
- (b) means such other circumstances, in relation to the determination of the gross floor area of a building, which apply or will result as may be prescribed by regulations made by the Secretary for the purposes of this section.

(6) For the purposes of subsection (5), “site” (地盤) includes a site which is situated on 2 or more than 2 adjacent or contiguous zones whether or not provision for those zones is made on 1 or more than 1 draft or approved plan.

### **32. Application for planning permission**

(1) An application for planning permission for the purpose of the development, including designated development, or use of any land may be made by any person being -

- (a) the owner of the land;
- (b) a person whom the Board is satisfied is authorized in writing by the owner of the land for that purpose;
- (c) a person whom the Board is satisfied has given notice to the owner of the land in writing in such manner and form as the Board may require, of his intention to make such application to the Board; or
- (d) where the owner of the land cannot be found, a person whom the Board is satisfied has taken all reasonable steps to find the owner of the land for the purposes of paragraph (b) or (c).

(2) An application under this section shall be made to the Board in writing in such manner and form as shall be required by the Board for the purposes of this section and shall be accompanied by such fee, if any, as the Secretary may prescribe for the purposes of this section, such information and particulars as the Board may require and in the case of an application to which section 34 applies, an environmental statement.

(3) The Board may refuse to consider an application under

this section where -

- (a) the fee, if any, prescribed by the Secretary under subsection (2) for the making of the application has not been paid;
- (b) the requirements of subsection (1) or (2) have not been satisfied; or
- (c) otherwise than in the case of a material change in circumstances, the application is, in the opinion of the Board whether in relation to the land and to the development or use, similar or substantially similar to or the same or substantially the same as an application -

- (i) considered by the Board and refused the granting of planning permission of the Board under section 36; or

- (ii) of the description mentioned in subparagraph (i) and in respect of which an appeal made to the Appeal Board under section 42 has been dismissed by the Appeal Board,

within a period of 2 years prior to the date that the application under subsection (1) was made to the Board.

- (4) The Board may consider but shall not grant an application under this section

where -

- (a) the application is made in respect of land included in -

- (i) a draft plan published under section 16(1) and is made before the expiration of the

period mentioned in that section; or

- (ii) an amendment to a draft plan published under section 27(4), 28(2) or 29(5) and is made before the expiration of the period mentioned in any of those sections; or

(b) the application is made in respect of land included in a draft plan published under section 16(1) or included in an amendment to a draft plan published under section 27(4), 28(2) or 29(5) being the subject of an adverse representation under section 17 other than where -

- (i) the applicant is the person who made the adverse representation and that representation is the only one made in respect of that land;
- (ii) the Board is of the opinion that any adverse representation so made is frivolous, vexatious or was made in the absence of good faith; or
- (iii) the Board is of the opinion that the grant of planning permission in respect of that development or use would not or is likely not to -
  - (A) significantly reduce the value of any property owned or occupied by the representor;
  - (B) affect injuriously the infrastructure, amenities or

character of the neighbourhood in which any property of the  
representer is situated or in which the representer resides or  
works;

(C) result in a loss or reduction in the provision of public facilities  
for the neighbourhood in which any property of the representer  
is situated or in which the representer resides or works;

(D) affect injuriously the ecology of any locality or disfigure the  
natural beauty of any scenery;

(E) deprive the community of valuable natural resources;

(F) deprive the community of a valuable physical and cultural  
heritage or of a structure, site or other thing that is of historical,  
archaeological or architectural significance; or

(G) result in a loss or reduction in the provision of territorial  
facilities.

(5) Subject to subsections (3) and (4), an application under this section shall -

(a) in the case of application to which section 34 applies, be considered by the  
Board before the expiration of a period of 3 months starting on the day that  
the application is received by the Board;

and where an applicant submits further information and particulars before such expiration, shall be considered before the expiration of a period of 3 months starting on the day that any such submission is received by the Board; and

- (b) in the case of every other application, be considered by the Board before the expiration of a period of 2 months starting on the day that the application is received by the Board; and where an applicant submits further information and particulars before such expiration, shall be considered before the expiration of a period of 2 months starting on the day that any such submission is received by the Board.

(6) On the submission by an applicant of further information and particulars, the Board may to the extent that it considers appropriate, from the date that it is of that opinion

-

- (a) treat that submission as if it were an application under this section; and
- (b) treat the application being the subject of the submission as not having been made.

(7) An applicant may, at any time prior to the determination of his application under section 36, notify the Board in writing that he wishes to withdraw his application; and if withdrawn, the application shall, as from the date that it is withdrawn, be treated as not having been made.

### **33. Requirements for particular types of application for planning permission**

- (1) An application under section 32 for -

- (a) any development or use of land within an environmentally sensitive area; or
- (b) a designated development,

shall be accompanied by a report on key environmental and planning issues prepared in accordance with regulations made by the Secretary for the purposes of this subsection.

(2) An application under section 32 relating to a special design area shall, if required by a note on the draft or the approved plan, be accompanied by -

- (a) an urban design plan which shall include an assessment of the proposed development or use on the architectural, archaeological, cultural or historical interests of the special design area to which the application relates;
- (b) a master layout plan including information in respect of the layout of the development and its relationship with the surrounding area, disposition and dimensions of buildings, provisions of public facilities, floor area of each development or use, road and pedestrian network, or programme of implementation;
- (c) a landscape plan including information in respect of types of planting, landscape features or programme of implementation.

(3) An application under section 32 relating to a comprehensive development area shall, if required by a note on the draft or the approved plan, be accompanied by -

- (a) a master layout plan of the description mentioned in subsection (2) (b);

- (b) a landscape plan of the description mentioned in subsection (2) (c).

### **34. Publication and inspection of application**

#### **for planning permission**

(1) On receipt of an application under section 32 to which this section applies by virtue of subsection (7), the Board shall, for a period of 1 month starting on the day that it is first published, cause notice of the application made to the Board under that section to be posted in a prominent position on the land to which it relates and, during that period, to be published once every week in at least 2 Chinese and 1 English newspapers -

- (a) the places and hours at which the application is, subject to subsection (4), available for public inspection;
- (b) the place at which and to whom and the period within which comments, in writing, in respect of the application may be made.

(2) Subject to subsection (4), every application referred to in subsection (1) shall, on the publication of a notice under subsection (1), be available for public inspection free of charge at such offices of the Government as the Secretary may direct, during the hours when those offices are open to the public.

(3) The notice referred to in subsection (1) shall state that any person who wishes to do so may, during the period mentioned in that subsection, submit comments to the Board in the manner provided in section 35 in respect of any application referred to in that subsection.

(4) On sufficient cause being shown to its satisfaction by the applicant, the Board may direct that any application or any

part of it shall not be available for public inspection under this section.

(5) The Authority may provide copies of any application or any part of it that is available for public inspection under this section on payment of such fee, if any, as the Authority may require for the purposes of this section.

(6) Any comment made to the Board after the expiration of the period mentioned in subsection (1) shall be treated as not having been made.

(7) This section applies to such class and description of application made under section 32 as shall be determined by the Board by notice in the Gazette.

(8) A notice under subsection (7) is not subsidiary legislation.

### **35. Comments on application for planning permission**

(1) The comments mentioned in section 34 shall be made to the Board in writing in such manner and form as may be required by the Board for the purposes of this section.

(2) The Board shall notify the applicant in writing of any comment made in accordance with section 34(3) and shall, subject to subsection (5), ensure that as far as is practicable, any comment made in accordance with that section is available for inspection by the applicant and for public inspection free of charge at such offices of the Government as the Secretary may direct, during the hours when those offices are open to the public.

(3) The notification referred to in subsection (2) shall advise the applicant of the places and times that, by virtue of that subsection, any comment on his application is available for

his inspection.

(4) Where an application is withdrawn under section 32(7), any comment made in respect of it shall, as from the date that it is withdrawn, be treated as not having been made.

(5) On the application of any person who has made a comment to the Board and on sufficient cause being shown to its satisfaction, the Board may direct that any such comment or any part of it shall not be available for public inspection under this section.

(6) The Authority may provide copies of any comment or any part of it that is available for public inspection under this section on payment of such fee, if any, as the Authority may require for the purposes of this section.

### **36. Determination of application for**

#### **planning permission**

(1) On consideration of an application under section 32, the Board may -

(a) defer for not more than 3 months the consideration of the application and give notice in writing to the applicant of that deferment and the duration of it;

or

(b) determine the application and -

(i) refuse to grant the planning permission applied for; or

(ii) grant the planning permission to the extent applied for and in the case of land being the subject of a draft or an approved plan, to the extent provided for under the draft or approved plan, subject

to such conditions as the Board thinks fit to impose.

(2) The consideration of an application under section 32 may not be deferred under subsection (1) (a) more than once.

(3) In determining an application under subsection (1) (b) the Board shall have regard to -

- (a) any statement of Government policy and any planning intention relating to the subject matter of any draft or approved plan in respect of the land or the development or use of the land to which the application relates;
- (b) any comment made to the Board under section 35 in respect of the application;
- (c) the impact of the proposed development or use, including its economic impact, social impact, environmental impact and its impact on the provision of amenities, the landscape or scenic quality;
- (d) the compatibility of the proposed development or use with other developments or uses in the area;
- (e) any implication for traffic conditions, drainage facilities and other infrastructure;
- (f) any environmental statement and report on key environmental and planning issues in respect of the application and where the environment is likely to be adversely affected, any means that may be employed by the applicant to eliminate or to mitigate that adverse effect;
- (g) any other matter which, in the opinion of the Board,

is relevant to the application.

(4) Subject to section 43(1) (b), a grant of planning permission under subsection (1) (b) (ii) shall have effect for a period of 3 years from the date of the grant or such other period as the Board shall determine unless before the expiration of the period of 3 years, or where the Board has determined some other period, before the expiration of that other period the development or use to which the grant of planning permission relates has commenced, or where it has not so commenced, the period of the validity of that permission has been extended.

**37. Conditions relating to provision of public facilities which may be imposed on grant of planning permission**

(1) Without affecting the generality of section 36(1) (b) (ii), the power of the Board to impose conditions under that section shall include a power to -

- (a) determine a period within which any condition shall be complied with;
- (b) require the provision of such public facilities as is, in the opinion of the Board, necessary to serve the proposed development or use by means of all or any of the matters mentioned in subsection (3);
- (c) require the provision of a performance bond either in relation to the grant of planning permission in general or in relation to any condition so imposed.

(2) In subsection (1) (c), “performance bond” (履約保證) means a first demand performance bond or bank guarantee in such form and in such sum as shall be determined by the Secretary issued by a bank within the meaning of section 2(1) of the Banking Ordinance

(Cap. 155) in favour of the Government in relation to the grant of planning permission in general or to secure the compliance by an applicant with any condition of a grant of planning permission.

(3) The matters referred to in subsection (1) (b) are -

- (a) the dedication or surrender of land without cost to the Government for the provision of such public facilities;
- (b) the payment to the Government of a monetary contribution for the provision of such public facilities; and
- (c) the construction and maintenance without cost to the Government of such public facilities.

(4) The Board may include as a condition of a grant of planning permission any offer by the applicant to provide, construct and maintain without cost to the Government, a public facility not directly related to the development or use of the land in respect of which the application is made.

### **38. Notification of result of application**

#### **for grant of planning permission**

(1) The Board shall, before the expiration of 1 month after the result of an application is determined under section 36(1), give notice in writing of that result to the applicant and to every person who has submitted comments to the Board under section 35.

(2) Notification to the applicant under subsection (1) of a refusal to grant planning permission shall be accompanied by -

- (a) an adequate statement of the reasons for that refusal;
- (b) advice as to the substance of section 39.

(3) Notification to the applicant under subsection (1) of the grant of planning permission shall be accompanied by advice as to -

- (a) the conditions, if any, to which the grant is subject;
- (b) the substance of section 39.

(4) Notification under subsection (1) to any person who has submitted comments to the Board under section 35 may be accompanied by such statement of information and particulars relating to the determination of the application as the Board thinks fit.

### **39. Board may review its own determination**

(1) An applicant aggrieved by a determination of the Board made in respect of him under section 36(1) (b) may, before the expiration of a period of 21 days after notice is given to him under section 38(1), apply to the Board for a review of its determination.

(2) An application for a review under this section shall be made in writing in such manner and form as the Board may require for the purposes of this section.

(3) On receipt of an application for a review under this section, the Board shall cause a date, time and place to be fixed for the review, which shall be on a date before the expiration of a period of 3 months after that receipt and shall give notice in writing to the applicant of that date.

### **40. Procedure for review**

(1) Subject to this section, the practice and procedure for

a review under section 39 shall be as required by the Board for the purposes of this section.

(2) For any review -

- (a) the applicant or his authorized representative shall be entitled to attend at the review and be heard;
- (b) the Board shall, at the request of the applicant, provide him with copies of all documents considered by the Board in the determination of the application and of all minutes of meetings of the Board held in respect of the determination;
- (c) the date, time and place to be fixed for the review under section 39(3) shall be fixed before the expiration of 21 days after the application for the review is received;
- (d) if on the date and time fixed for the review the applicant or his authorized representative fails to attend at the review or otherwise fails to make representations at the review the Board may -
  - (i) if satisfied that any such failure was due to illness or other reasonable cause, postpone or adjourn the review for such period as it thinks fit; or
  - (ii) proceed with the review;
- (e) the applicant may make submissions in writing to the Board for the purposes of the review;
- (f) any submission made to the Board under paragraph (e) that is less than a period of 6 weeks before the date fixed for the review under section 39(3) may

be treated as not having been made;

- (g) the Board may before the date fixed for the review under section 39(3) defer for not more than 3 months the consideration of the review, fix another date for the review and give notice in writing to the applicant of that deferment, the duration of it and the date so fixed.

(3) The consideration of a review under this section may not be deferred under subsection (2) (g) more than once.

(4) Where the Board is of the opinion that a submission made to it under subsection (2) (e) constitutes a material departure from the proposed development or use being the subject of the application, the Board may to the extent that it considers appropriate, from the date that it is of that opinion, treat the application for review made to the Board under section 39 to which the submission relates -

- (a) as not having been made; and
- (b) as if it were an application for planning permission made under section 32.

(5) The Board shall cause a copy of every submission made to it by the applicant under subsection (2) (e) to be made available for inspection as soon as reasonably practicable by every person who has made comments to the Board under section 35 in respect of the application; and shall notify each of those persons of that availability and invite them to make comments in writing to the Board on those submissions, within such period being not less than 14 days as it may specify.

(6) The Board shall cause a copy of every comment on a submission made to it under subsection (5) to be made available

for inspection as soon as reasonably practicable by the applicant who made the submission under subsection (2) (e) and shall notify him of that availability.

(7) The Authority may provide copies of any submission made to the Board under subsection (2) (e) and of any comment on a submission made to it under subsection (5) on payment of such fee, if any, as the Board may require for the purposes of this section.

(8) On a review, the Board may -

- (a) confirm, vary or reverse its refusal to grant the planning permission applied for;
- (b) confirm, vary or reverse the grant of the planning permission to the extent applied for and in the case of land being the subject of a draft or an approved plan, to the extent provided for under the draft or approved plan, subject to such conditions as the Board thinks fit to impose; or
- (c) vary such grant and such conditions imposed, if any.

#### **41. Notification of result of review**

(1) On the determination of a review under section 40 the Board shall, before the expiration of a period of 1 month after it has made the determination, give notice in writing to the applicant and to every person who has submitted comments to the Board under section 35 or 40(5), of the result of that determination.

(2) Notification to the applicant under subsection (1) of a confirmation, variation or reversal of a decision of the Board under section 40(8), other than notification of the reversal by the Board of its refusal to grant the planning permission applied

for, shall be accompanied by -

- (a) an adequate statement of the reasons for that confirmation, variation or reversal; and
- (b) to the extent that it considers appropriate, advice as to the substance of section 42.

(3) Notification under subsection (1) to any person who has submitted comments to the Board under section 35 or 40(5) may be accompanied by such statement of information and particulars relating to the determination of the review as the Board thinks fit.

#### **42. Appeals to Appeal Board against result of review**

(1) An applicant aggrieved by the determination, by the Board, of a review made in respect of him under section 40 may, before the expiration of a period of 60 days after notice is given to him under section 41(1), appeal to the Appeal Board.

(2) An appeal under subsection (1) shall be made to the Appeal Board in writing in such manner and form as shall be prescribed in regulations made by the Secretary for the purposes of this section.

#### **43. Minor amendments to planning permission**

- (1) An application may be made, in writing, to the Board for -
  - (a) what, in the opinion of the Board, is a minor amendment to the planning permission as previously granted;
  - (b) an extension of any period prescribed under or determined by the Board under section 36(4) for

which the grant of planning permission shall have effect; or

- (c) an extension of any period prescribed under or determined by the Board under section 37(1) (a) for which any condition imposed under that section shall be complied with.

(2) An application under subsection (1) shall be made to the Board in writing in such manner and form as shall be required by the Board for the purposes of this section, shall be accompanied by such fee, if any, as the Secretary may prescribe for the purposes of this section and, subject to section 32(3), shall be considered by the Board before the expiration of a period of 45 days starting on the day that the application is received by the Board.

(3) An applicant may, at any time prior to the determination of his application, notify the Board in writing that he wishes to withdraw his application; and if withdrawn, the application shall, as from the date that it is withdrawn, be treated as not having been made.

(4) Subject to subsection (5), an application made under subsection (1) shall be treated as having been made under section 32.

(5) Sections 32(4), 34 and 35 shall not apply to an application made under subsection (1).

#### **44. Application for grant of planning permission**

##### **for temporary development or use**

- (1) Any person of the description mentioned in section 32(1) may apply -
  - (a) for planning permission for the temporary

- development or use of any land being the subject of a draft or an approved plan in accordance with the provisions made in the draft or approved plan; or
- (b) for planning permission for the temporary development or use, involving no permanent building structure, of any land being the subject of a draft or an approved plan, if the Board by a note on any such plan so permits, notwithstanding that no provision is made for the grant of planning permission in respect of the intended temporary development or use in the draft or approved plan.

(2) An application under subsection (1) shall be made to the Board in writing in such manner and form as may be required by the Board for the purposes of this section, shall be accompanied by such fee, if any, as the Secretary may prescribe for the purposes of this section and, subject to section 32(3), shall be considered by the Board before the expiration of a period of 45 days starting on the day that the application is received by the Board.

(3) An applicant may, at any time prior to the determination of his application, notify the Board in writing that he wishes to withdraw his application; and if withdrawn, the application shall, as from the date that it is withdrawn, be treated as not having been made.

(4) Subject to subsection (5), an application made under subsection (1) shall be treated as having been made under section 32.

(5) Sections 32(4), 34, 35 and 36(4) shall not apply to an application made under subsection (1).

(6) A grant of planning permission under this section shall

have effect for such period as the Board shall determine.

(7) In subsection (1) (b), “permanent building structure”(永久建築結構物) means any building structure not within the definition of “temporary buildings” in regulation 50 of the Building (Planning) Regulations (Cap. 123 sub. leg.).

## PART V

### PLANS OF BUILDING WORKS NOT TO BE APPROVED IN CERTAIN CIRCUMSTANCES

#### **45. Grounds on which Building Authority shall refuse to give his approval of plans of building works**

(1) For the purposes of this Ordinance and of and subject to section 16A of the Buildings Ordinance (Cap. 123) the Building Authority shall, save as provided in subsections (2) and (3), refuse to give his approval of any plans of building works.

(2) The Building Authority may give his approval where the plans of the proposed building works are a development or use which requires the grant of planning permission under this Ordinance and -

- (a) planning permission for that development or use has been granted under section 36, 40 or 59 and the period of the validity of any such grant has not expired;
- (b) the development or use conforms with the proposals outlined in the application for that planning permission;
- (c) except where the time, if any, determined under section 37(1) (a) within which any condition shall be complied with is at a time subsequent to the

time of the giving of his approval, the development or use does not or will not involve a contravention of any condition imposed on the grant of planning permission;

- (d) the development or use is within a comprehensive development area or a special design area and the proposed building works conform with the master layout plan, if any, required under section 33(2) or (3) and approved in relation to the grant of an application for planning permission under this Ordinance or, as the case may be, conform with a master lay-out plan approved under section 4A of the repealed Ordinance.

(3) The Building Authority may give his approval where the plans of the proposed building works conform with a draft plan or an approved plan published under this Ordinance.

(4) The requirement that the plans of the proposed building works must conform with a draft plan or an approved plan published under this Ordinance shall not apply in the case of plans of building works which, in the opinion of the Authority, constitute -

- (a) a minor alteration or addition to an existing building which does not result, significantly, in -
  - (i) any additional floor or additional floor area; or
  - (ii) any material change in the use or form of the building, the carrying out of which requires the permission of the Board; or
- (b) a minor alteration to a plan of a proposed building

approved by the Building Authority under the Buildings Ordinance (Cap. 123)

which does not result, significantly, in -

- (i) any additional floor or additional floor area;
- (ii) any material change in layout or disposition of the proposed building; or
- (iii) any material change in the use or form of the building,

the carrying out of which requires the permission of the Board.

(5) Notwithstanding subsection (3), the Building Authority shall refuse to give his approval of any plans of building works to be carried out on land included in -

- (a) a draft plan published under section 16(1) and the application to the Building Authority for his approval was made before the expiration of the period mentioned in that section; or
- (b) an amendment to a draft plan published under section 27(4), 28(2) or 29(5) and the application to the Building Authority for his approval was made before the expiration of the period mentioned in those sections.

(6) Notwithstanding subsection (3), the Building Authority shall refuse to give his approval of any plans of building works to be carried out on land which is the subject of an adverse representation, included in a draft plan published under section 16(1) or included in an amendment to a draft plan published under section 27(4), 28(2) or 29(5) other than where, in the opinion of

the Authority -

- (a) the adverse representation is frivolous, vexatious or was made in the absence of good faith;
- (b) the plans of the proposed building works are submitted by the representer and no other adverse representation has been made; or
- (c) the proposed building works, if carried out, in relation to any private right of the representer in respect of an interest in that land, would not or is likely not to -
  - (i) significantly reduce the value of any property owned or occupied by the representer;
  - (ii) affect injuriously the infrastructure, amenities or character of the neighborhood in which any property of the representer is situated or in which the representer resides or works;
  - (iii) result in a loss or reduction in the provision of public facilities for the neighborhood in which any property of the representer is situated or in which the representer resides or works;
  - (iv) affect injuriously the ecology of any locality or disfigure the natural beauty of any scenery;
  - (v) deprive the community of valuable natural resources;
  - (vi) deprive the community of a valuable

physical and cultural heritage or of a structure, site or other thing that is of historical, archaeological or architectural significance; or (vii) result in a loss or reduction in the provision of territorial facilities.

**46. Board may review Building Authority's**

**determination under section 45**

(1) For the purposes of this Ordinance and of section 16B of the Buildings Ordinance (Cap. 123), any person aggrieved by a determination of the Building Authority made in respect of him by virtue of section 45 may, before the expiration of a period of 21 days after notice is given to him of that determination, apply to the Board for a review of the Building Authority's determination.

(2) An application for a review under this section shall be made in writing in such manner and form as shall be required by the Board for the purposes of this section.

(3) On receipt of an application for a review under this section, the Board shall, before the expiration of a period of 21 days after the application for the review is received -

(a) cause a date, time and place to be fixed for the review, which shall be on a date before the expiration of a period of 3 months after that receipt; and

(b) give notice in writing to the applicant and to the Building Authority of that date, time and place, and advice as to the substance of section 47.

(4) In this section and in sections 47 and 48 "applicant" (申請人) means a person who applies to the Board for a review of

the Building Authority's determination made in respect of him by virtue of section 45.

#### **47. Procedure for review**

(1) Subject to this section, the practice and procedure for a review under section 46 shall be as required by the Board for the purposes of this section.

(2) The Authority or the Building Authority, if they are members of the Board, or any public officer nominated by the Authority or the Building Authority to be their representatives on the Board, shall not take part in any deliberation of the Board on a review under this section.

(3) For any review -

- (a) the applicant or his authorized representative shall be entitled to attend and be heard;
- (b) if on the date and time fixed for the review the applicant or his authorized representative fails to attend at the review or otherwise fails to make representations at the review the Board may -
  - (i) if satisfied that any such failure was due to illness or other reasonable cause, postpone or adjourn the review for such period as it thinks fit;
  - (ii) proceed with the review;
- (c) the Building Authority, as the person who made the determination in respect of the applicant, or his authorized representative shall be entitled to attend and be heard;
- (d) the Board shall, at the request of the applicant,

provide him with copies of all documents considered by the Building Authority in the determination of the application and of all minutes of meetings held in respect of the determination;

- (e) the applicant may make submissions in writing to the Board for the purposes of the review;
- (f) any submissions that are made to the Board under paragraph (e) less than a period of 6 weeks before the date fixed for the review under section 46(3) may be treated as not having been made;
- (g) the Board may before the date fixed for the review under section 46(3) defer for not more than 3 months the consideration of the review, fix another date, time and place for the review and give notice in writing to the applicant and to the Building Authority of that deferment and the duration of it and the date, time and place so fixed.

(4) The consideration of a review under this section may not be deferred under subsection (3) (g) more than once.

(5) On a review, the Board may confirm or reverse the determination made by the Building Authority in respect of the applicant.

#### **48. Notification of result of Board's review**

(1) On the determination of a review under section 47(5) the Board shall, before the expiration of a period of 1 month after it has made the determination, give notice in writing to the applicant of the result of that determination.

(2) Notification to the applicant under subsection (1) of

confirmation of the determination of the Building Authority under section 47(5) shall be accompanied by an adequate statement of the reasons for that confirmation.

## PART VI

### UNAUTHORIZED DEVELOPMENT

#### **49. Application of this Part**

This Part applies, and only applies -

- (a) to land included in an interim development permission area;
- (b) to land included in a draft or an approved development permission area plan during the period when such plan has effect; and
- (c) where the whole or part of that land is, during the period referred to in paragraph (b), included in a draft or an approved outline zoning plan, to that land as so included.

#### **50. Prohibition against unauthorized development**

(1) No person shall undertake, carry on or continue or cause or permit to be undertaken, carried on or continued any development on any land in any area in respect of which a draft or an approved development permission area plan is in effect, or in respect of which a draft or an approved outline zoning plan is in effect unless that development is development -

- (a) which is an existing use;
- (b) which was permitted under an interim development permission area plan prepared under section 26 of

the repealed Ordinance and was undertaken, carried on or continued in the same area during the period when such interim development permission area plan had effect;

(c) which is permitted under a draft or an approved development permission area plan;

(d) which is permitted under a draft or an approved outline zoning plan;

(e) which, despite not being permitted by reason of the circumstances mentioned in either paragraph (b), (c) or (d), was permitted on that land under a draft or an approved development permission area plan or under a draft or an approved outline zoning plan which has ceased to have effect, and was undertaken, carried on or continued in the same area during the period when such draft or approved development permission area plan or draft or approved outline zoning plan, as the case may be, had effect; or

(f) where -

(i) planning permission has been granted by the Board under section 36(1) (b) (ii) or 40 or is deemed to have been granted by the Board by virtue of section 59;

(ii) permission has been granted by the Town Planning Board under section 16 or 17 of the repealed Ordinance;

(iii) permission has been granted by virtue of a decision of the Appeal Board under section 17B of the repealed Ordinance; or

(iv) permission in relation to the undertaking, carrying on or continuance of development in an interim development permission area has been granted by the Director of Planning under section 26(1) of the repealed Ordinance,

and continues to have effect, which is being carried out in accordance with any such planning permission or permission, as the case may be, and in compliance with the requirement of any condition of any such grant.

(2) Any person who contravenes subsection (1) commits an offence and is liable -

(a) on first conviction to a fine of \$1,000,000;

(b) on second or subsequent conviction to a fine of \$2,000,000; and

(c) to an additional fine -

(i) in the case of first conviction, of \$100, 000;

(ii) in the case of second or subsequent conviction, of \$200,000,

for each day during which the offence continues.

(3) An offence under this section may be charged by reference to any day or longer period and a person may be convicted of a second or subsequent offence and an additional fine may be imposed under subsection (2) by reference to any period following the date of the institution of the proceedings in respect of the preceding conviction for such second or subsequent offence.

(4) Where an offence under this section is committed by any person who is not the owner or the occupier of the land being the subject of the offence and it is proved in a prosecution for an offence under this section that the offence was committed with the consent or connivance of, or was attributable to any act, neglect or omission on the part of, the owner or the occupier of the land, such owner or occupier, as the case may be, shall be guilty of the like offence.

(5) Where an offence under this section is committed by a contractor on or near the land being the subject of the offence, the principal contractor of that contractor shall be guilty of the like offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

## **51. Enforcement against unauthorized development**

(1) Where the Authority is of the opinion that any unauthorized development is being undertaken, carried on or continued on any land, the Authority may by notice (“enforcement notice”) served on all or any person being -

- (a) the owner of the land;
- (b) the occupier of the land; or
- (c) any person whom the Authority has reason to believe is responsible for that undertaking, carrying on or continuance of that unauthorized development,

specify the matters that, in the opinion of the Authority, constitute the unauthorized development and -

- (i) specify the date by which the Authority requires that those matters be discontinued; or

(ii) where the matters that, in the opinion of the Authority, constitute the unauthorized development also, in the opinion of the Authority, constitute a contravention of any condition of a grant of planning permission imposed under section 36, 40 or 59 -

(A) specify the steps, if any, which the Authority requires to be taken by the person so served so as to secure compliance with that condition; and

(B) specify the date by which the Authority requires those steps to be taken.

(2) Where the Authority is of the opinion that the continuance of the matters that, in the opinion of the Authority, constitute the unauthorized development being undertaken, carried on or continued on any land could also -

(a) constitute a threat to the health or safety of the public;

(b) adversely affect the environment; or

(c) make it impracticable or uneconomic to reinstate the land within a reasonable period,

the Authority may serve a notice (“stop notice”) on any person on whom an enforcement notice may be served, specifying -

(i) the matters that, in the opinion of the Authority, constitute the unauthorized development;

(ii) a date not more than a period of 30 days after the date of the service of the stop notice, by which the Authority requires that the matters so specified be discontinued; and

(iii) the steps, if any, required to be taken by the date so specified or a further date specified in that regard under this paragraph to prevent anything related to the matters that, in the opinion of the Authority, constitute the unauthorized development from causing any effect referred to in paragraph (a), (b) or (c).

(3) Subject to subsection (4), the Authority -

(a) where after the date specified in -

(i) an enforcement notice served under subsection (1) (i) or (ii); or

(ii) a stop notice served under subsection (2) (ii) or (iii),

whichever is the later; or

(b) in the case where an enforcement notice or a stop notice has not been served under subsection (1) (i) or (ii) or (2) (ii) or (iii), as the case may be, and the Authority is of the opinion that any unauthorized development is or was being undertaken, carried on or continued on any land, where -

(i) the matters that, in the opinion of the Authority, constitute the unauthorized development are not permitted under the draft or the approved plan; or

(ii) the matters that, in the opinion of the Authority, constitute the unauthorized development are permitted under the draft or the approved plan subject to the grant of planning permission under section 36

but -

(A) no application for planning permission has been made under section 32; or

(B) an application for planning permission made under section 32 has been refused and all rights of review or appeal under this Ordinance have been exhausted, abandoned or have expired,

may, in a notice (“reinstatement notice”) served on all or any person being -

(i) the owner of the land;

(ii) the occupier of the land; or

(iii) any person whom the Authority has reason to believe is or was responsible for that undertaking, carrying on or continuance of the matters that, in the opinion of the Authority, constitute or constituted that unauthorized development,

specify the matters that, in the opinion of the Authority, constitute or constituted the unauthorized development and require such person, by a date not earlier than a period of 30 days after service of the notice, to reinstate the land to the condition it was in immediately before the date that notice of the draft development permission area plan affecting that land was first published in the Gazette, or to such other condition more favourable as regards the person so served, as the Authority shall specify in the reinstatement notice.

(4) Where the unauthorized development referred to in subsection (3) was on land included in a plan of an interim development permission area, a notice under that subsection may require the reinstatement of the land to the condition it was in immediately before the date that notice of the plan of the interim development permission area was first published in the Gazette, or to such other condition more favourable as regards the person so served, as the Authority shall specify in the reinstatement notice.

(5) Where the Authority is of the opinion -

(a) in the case of an enforcement notice served under subsection (1), that -

- (i) the matters that, in the opinion of the Authority, constitute or constituted the unauthorized development have been discontinued;
- (ii) any steps required by the Authority under subsection (1) (ii) to be taken to secure compliance with any condition of a grant of planning permission have been taken; or
- (iii) planning permission for the development has been obtained and the conditions of the planning permission, if any, have been complied with;

(b) in the case of a stop notice served under subsection (2), that -

- (i) the matters that, in the opinion of the Authority, constitute or constituted the unauthorized development have been

discontinued; and

(ii) the steps have been taken as required by the stop notice;

(c) in the case of a reinstatement notice served under subsection (3) or (4), that the land has been reinstated as required by the notice,

the Authority shall as soon as reasonably practicable serve a notice (“compliance notice”) stating that -

(i) the matters that, in the opinion of the Authority, constitute or constituted the unauthorized development have been discontinued;

(ii) the steps have been taken as required by the enforcement notice or the stop notice;

(iii) planning permission for the development has been obtained and the conditions of the planning permission, if any, have been complied with; or

(iv) the land has been reinstated as required by the reinstatement notice,

as the case may be, and shall as soon as reasonably practicable register such compliance notice in the Land Registry.

(6) Any -

(a) enforcement notice;

(b) stop notice;

(c) reinstatement notice; and

(d) compliance notice,

served by the Authority under this section shall be deemed to be an instrument affecting land and shall be registrable in the Land Registry in the manner required by or under the Land Registration Ordinance (Cap. 128); and, in the case of an enforcement notice, a

stop notice and a reinstatement notice, if and for so long as an enforcement notice, stop notice or reinstatement notice remains registered and no compliance notice in relation to any such enforcement notice, stop notice or reinstatement notice has been served under subsection (5), the enforcement notice, stop notice or reinstatement notice, as the case may be, shall have perpetual validity and shall run with the land identified in any such notice in the manner provided in section 78.

(7) Where, by the date specified in that regard in a notice served under this section -

- (a) the matters that, in the opinion of the Authority, constitute the unauthorized development have not been discontinued;
- (b) steps have not been taken as required under subsection (1) or (2); or
- (c) land has not been reinstated as required by subsection (3) or (4),

as the case may be, the person who was served with the notice commits an offence and is liable -

- (i) on first conviction to a fine of \$1,000,000;
- (ii) on second or subsequent conviction to a fine of \$2,000,000; and
- (iii) to an additional fine -
  - (A) in the case of first conviction, of \$100,000;
  - (B) in the case of second or subsequent conviction, of \$200,000,for each day after the date so specified in that regard in the notice during which the person continues to fail to so comply.

(8) An offence under this section may be charged by reference to any day or longer period and a person may be convicted of a second or subsequent offence and an additional fine may be imposed under subsection (7) by reference to any period following the date of the institution of the proceedings in respect of the preceding conviction for such second or subsequent offence.

(9) In a prosecution for an offence under this section -

(a) it shall not be necessary to prove in respect of a notice served under this section -

- (i) that the unauthorized development that, in the opinion of the Authority formed prior to the service of the notice, was being undertaken, carried on or continued was not development of any of the descriptions mentioned in section 50(1) (a) to (e);
- (ii) that the matters that, in the opinion of the Authority formed prior to the service of the notice, constituted the unauthorized development were not development of any of the descriptions mentioned in section 50(1) (a) to (e);
- (iii) that the matters that, in the opinion of the Authority formed prior to the service of the notice, constituted the unauthorized development and that also, in the opinion of the Authority formed prior to the service of the notice,

constituted a contravention of any condition of a grant of planning permission imposed under section 36, 40 or 59 were not development of any of the descriptions mentioned in section 50(1) (f);

(b) it shall be a defence -

- (i) for a person charged to show that, notwithstanding the opinion of the Authority, the matters specified in a notice served under this section did not constitute an unauthorized development;
- (ii) in the case, and only in the case, where the person so charged is the owner but not the occupier of the land, for that person to show that he took all reasonable steps in the circumstances to comply with the notice.

(10) Where, by the date specified in that regard in a notice served under this section -

- (a) the matters that, in the opinion of the Authority, constitute the unauthorized development have not been discontinued;
- (b) steps have not been taken as required under subsection (1) or (2); or
- (c) land has not been reinstated as required by subsection (3) or (4),

as the case may be, the Authority or any person or public officer authorized in writing by the Authority in that behalf may enter

the land and take whatever steps he considers necessary to ensure the discontinuance of the matters that, in the opinion of the Authority, constitute the unauthorized development, to secure compliance with any condition of a grant of planning permission, to prevent the effects referred to in subsection (2) (a), (b) or (c) or to reinstate the land.

(11) In forming an opinion in respect of any matter mentioned in subsection (1), (2), (3), (5), (7), (9) or (10), the Authority may have regard to -

- (a) any photograph of the land or a copy of a photograph of the land admissible as evidence under section 76;
- (b) any draft plan or approved plan published under Part III;
- (c) any record kept by the Authority under section 69(1) (h) and (i) in respect of determinations of the Board and section 69(1) (j) in respect of decisions of the Appeal Board; and
- (d) any other information or thing available to the Authority which appears to it to be relevant to the taking of enforcement action against unauthorized development.

(12) The Authority or any person or public officer authorized by the Authority may on entering the land under subsection (10) take possession of, remove, detain or dispose of any movable property that is on the land to which a notice served under this section relates.

(13) Expenses incurred by the Authority under subsection (10) or (12) are recoverable as a civil debt from any person on whom

notice is served under this section.

(14) Where the Authority enters land for the purpose referred to in subsection (10) any person or public officer authorized in writing by the Authority in that behalf who has entered any land under that subsection may take possession of, remove, detain or dispose of any movable property on that land in such manner and in such circumstances as shall be prescribed in regulations made by the Secretary for the purposes of this section.

(15) Subject to any regulation that may be made under subsection (14), the Government is not liable for the loss of or damage to any property by the Authority or any person or public officer authorized by the Authority under subsection (10), (12) or (14), unless the Authority or that person or public officer has caused it wilfully, fraudulently or negligently, nor is the Authority or that person or public officer authorized by the Authority to take possession of, remove, detain or dispose of the property under subsection (12) or (14) liable for the loss or damage, unless the Authority or that person or public officer has caused it wilfully, fraudulently or negligently.

(16) Where in any regulation made under subsection (14) provision is made for the claim by any person who may be so entitled to ownership of any movable property taken possession of by the Authority or any person or public officer authorized by the Authority under subsection (12) and for a period within which any such claim is to be made, such movable property, if not claimed within any period as may be provided, may be disposed of by the Authority by sale or otherwise, as if it were the property of the Government free from the rights of any person, in which event a claim may only be made by any person who may be so entitled to

ownership in respect of the proceeds of sale, and the Authority may deduct from the proceeds of sale the expenses incurred by the Authority in connection with the taking possession of, removal, detention and disposal of the property.

**52. Appeal against requirement of reinstatement notice**

(1) Any person aggrieved by any requirement of a reinstatement notice served on him under section 51(3) or (4) may, before the expiration of 30 days after notice is so served, appeal to the Appeal Board.

(2) An appeal under subsection (1) shall be made in writing in such manner as shall be prescribed in regulations made by the Secretary for the purposes of this section.

(3) A reinstatement notice in respect of which an appeal is made under subsection (1) shall, as regards any person on whom it was served, be suspended in its operation as from the day on which the appeal is received until the appeal is disposed of, withdrawn or abandoned unless such suspension would, in the opinion of the Authority, be contrary to the public interest and the reinstatement notice contains a statement to that effect.

PART VII

APPEAL BOARD

**53. Appeal Board**

(1) Every appeal under this Ordinance shall, before the expiration of a period of 3 months after the date that the appeal is received, or such longer period as the Chairman of the Appeal Board panel or a Deputy Chairman of that panel, on the application

of any of the parties to the appeal, may allow in any particular case, be considered by the Appeal Board.

(2) The Chief Executive shall in writing, subject to subsection (4), appoint a panel of persons whom he considers suitable for appointment under section 56 as members of the Appeal Board to hear any appeal under that section.

(3) The Chief Executive shall in writing appoint from among the panel of persons referred to in subsection (2) -

- (a) a Chairman of the Appeal Board panel; and
- (b) 1 or more than 1 Deputy Chairman of the Appeal Board panel.

(4) The Chief Executive shall not appoint -

- (a) a member of the Board;
- (b) a public officer;
- (c) a Justice of Appeal of the Court of Appeal,

to the Appeal Board panel; and in this subsection the expression “public officer” (公職人員) does not include a judge of the Court of First Instance, a recorder of the Court of First Instance, a deputy judge of the Court of First Instance, or a District Judge.

(5) Subject to subsection (6), a person appointed as Chairman or a Deputy Chairman or to the panel of persons shall be appointed for a term of 2 years.

(6) Any person appointed under this section may resign by notice in writing to the Chief Executive.

(7) The remuneration, if any, of the Chairman, any Deputy Chairman and any member of the Appeal Board panel shall be determined by the Chief Executive.

#### **54. Secretary to Appeal Board panel**

(1) There shall be 1 or more than 1 secretary to the Appeal Board panel who shall be appointed in writing by the Chief Executive.

(2) The remuneration, if any, of the secretary to the Appeal Board panel, if he is not a public officer, shall be determined by the Financial Secretary.

#### **55. Provisions where Chairman, Deputy**

##### **Chairman or member absent**

(1) If, for any period, the Chairman of the Appeal Board panel has a direct or indirect interest in the appeal, or is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, a Deputy Chairman of the panel designated for the purpose by the Chairman of the panel shall act as Chairman and as such shall exercise and perform all the functions of the Chairman during that period.

(2) If the Deputy Chairman designated under subsection (1) has a direct or indirect interest in the appeal, or is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, the Chief Executive may appoint another Deputy Chairman or another member of the panel to act as Chairman.

(3) If, for any period, a Deputy Chairman presiding at a hearing or a person appointed under section 56 to hear an appeal has a direct or indirect interest in the appeal, or is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, the Chairman may appoint any other person from the panel to act in his place and in so acting, to exercise and perform all the functions of the Deputy Chairman so presiding or of that person, during that period.

(4) The hearing of an appeal may, with the consent of the parties to the appeal, continue notwithstanding a change in the membership of the Appeal Board.

(5) If the term of appointment of the Chairman or a Deputy Chairman presiding at a hearing or of any person appointed under section 56 expires during the hearing of any appeal, the Chairman or such Deputy Chairman or such person may continue to hear the appeal until the appeal is determined.

#### **56. Constitution of Appeal Board**

For the purposes of section 53(1), an Appeal Board shall consist of the Chairman or a Deputy Chairman and not less than 4 persons from the panel referred to in section 53(2) as the Chairman or a Deputy Chairman or a member of the panel so appointed by the Chief Executive under section 55(2) may appoint to be members thereof to determine any appeal.

#### **57. Procedure for appeals**

(1) Subject to this section, the practice and procedure for the hearing of any appeal shall be as prescribed in regulations made by the Secretary for the purposes of this section.

(2) For any appeal -

- (a) the appellant or his authorized representative and the respondent and his authorized representative in the appeal shall be entitled to attend and be heard;
- (b) not less than 28 days' notice shall be given to the appellant and to the respondent ("the parties to the appeal") of the date, time and place fixed for the hearing;

- (c) the appellant may abandon the whole or any part of the appeal by notice in writing lodged with the Appeal Board and served on the respondent.
- (3) For the purposes of any appeal an Appeal Board may -
- (a) consider and determine whether a party should have access to documents which the party claims are relevant to the appeal and which are in the possession or control of another person and order that other person to give the party access to such documents;
  - (b) receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, whether or not such material would be admissible in evidence in civil or criminal proceedings;
  - (c) by notice in writing signed by the secretary to the Appeal Board, require any person to attend before it at any hearing and to give evidence and produce documents;
  - (d) administer oaths and affirmations;
  - (e) examine on oath, affirmation or otherwise any person attending before it and require such person to answer all questions put by or with the consent of the Appeal Board;
  - (f) determine the manner in which the material referred to in paragraph (b) shall be received;
  - (g) with the consent of the parties to the appeal, determine the appeal without an oral hearing on the basis of written submissions only;

- (h) adjourn the determination of any appeal as it may think fit;
- (i) subject to section 59, confirm, vary or reverse the decision of the respondent that is appealed against or substitute therefor such other decision or make such other order as it may think fit;
- (j) if in the case of an appeal under section 42 in respect of an application for planning permission, it appears to the Appeal Board that any material submitted by the appellant and received and considered by the Appeal Board under paragraph (b) constitutes a material departure from the proposed development or use to which the application relates, order that the case be referred back to the Board to be dealt with by the Board as if it were an application made to the Board under section 32;
- (k) subject to section 58, make an award to any of the parties to the appeal of such costs, legal or otherwise as it considers reasonably incidental to the preparation and presentation of an appeal;
- (l) pay an allowance for the expenses of any witness summoned under this Ordinance;
- (m) do all things -
  - (i) ancillary to the powers conferred by this section; or
  - (ii) reasonably necessary for the discharge of its functions under this Ordinance.

(4) The Appeal Board shall have the powers which are vested in the Court of First Instance in the exercise of its powers under subsection (3).

(5) Any person who -

(a) without reasonable excuse, on being summoned as a witness before the Appeal Board makes default in attending;

(b) being in attendance as a witness refuses to take an oath required by the Appeal Board to be taken, or to produce any document or other thing in his possession or control required by the Appeal Board to be produced by him, or to answer any question to which the Appeal Board may require an answer;  
or

(c) disturbs or otherwise interferes with the proceedings of the Appeal Board,

commits an offence and is liable to a fine of \$100,000.

## **58. Provision relating to costs and**

### **witness expenses**

(1) The Appeal Board shall only make an award as to costs under section 57(3) (k) -

(a) against an appellant, if it is satisfied that he has conducted his case in a frivolous or vexatious manner or in the absence of good faith; and

(b) against the respondent, if it is satisfied that in all the circumstances of the case it would be unjust and inequitable not to do so.

(2) For the purposes of subsection (1) (a), the reference to an appellant having conducted his case in a frivolous or vexatious manner or in the absence of good faith includes the abandonment by

the appellant of his appeal without adequate prior notice in writing to the Appeal Board and to the respondent.

(3) Any sum awarded to the respondent under section 57 (3) (k) shall be a debt due from the appellant to the Government and recoverable as a civil debt; and any sum payable by the respondent to the appellant under such an award shall be charged on the general revenue.

(4) Any sum payable under section 57 (3) (l) as an allowance for the expenses of any witness shall be a charge against the respondent or against the appellant, as the Appeal Board may order and, if against the appellant, shall be a debt due from the appellant to the Government and recoverable as a civil debt; and any sum payable by the respondent shall be charged on the general revenue.

(5) The Appeal Board may -

- (a) assess the amount of costs to be awarded under section 57 (3) (k); or
- (b) order that those costs be taxed on the basis of any one of the scale of costs specified in the First Schedule to the District Court Civil Procedure (Costs) Rules (Cap. 336 sub. leg.),

and the Schedules to Order 62 of the Rules of the High Court (Cap. 4 sub. leg.) shall apply to the award, taxation and recovery of costs.

## **59. Appeals relating to planning permission**

(1) The Appeal Board, in the exercise of its powers under section 57 (3) (i) on an appeal under section 42 (1), shall have regard to any statement of Government policy and any planning

intention relating to the subject matter of the draft or approved plan to which the appeal relates, if it is satisfied that at the time the application for planning permission made under section 32 and being the subject of the appeal was considered by the Board, the appellant was or could reasonably have been expected to be aware of that Government policy.

(2) Where the Appeal Board, in the exercise of its powers under section 57 (3) (i), reverses a determination of the Board made under section 36 (1) (b) (i) to refuse to grant the planning permission applied for, the planning permission shall, subject to subsections (3) and (4), be deemed to have been granted by the Board.

(3) Where planning permission is deemed to have been granted under subsection (2) -

- (a) the grant shall have effect for a period of 3 years from the date of the reversal of the determination or such other period as the Appeal Board shall specify unless before the expiration of the period of 3 years, or where the Appeal Board has specified some other period, before the expiration of that other period the development or use to which the grant of planning permission relates has commenced, or where it has not so commenced, the validity period of the grant of that permission has been extended;
- (b) the planning permission, other than planning permission for designated development, shall be deemed to have been granted only to the extent applied for and as may be provided for or specified

in the draft or approved plan;

(c) the grant shall be subject to such conditions as the Appeal Board thinks fit.

(4) For the purposes of subsection (3) (c), the Appeal Board shall have the powers which are vested in the Board to impose conditions under sections 36(1) (b) (ii) and 37, in the imposition of conditions under that subsection.

#### **60. Questions to be decided by majority**

Every question before the Appeal Board shall be determined by the opinions of the majority of members hearing the appeal and in the case of an equality of votes the Chairman shall have a casting as well as a deliberative vote.

#### **61. Case may be stated for Court of Appeal**

(1) The Appeal Board may, before an appeal is determined, refer any question of law arising in the appeal to the Court of Appeal for determination by way of case stated.

(2) On the hearing of the case the Court of Appeal may amend the case or order it to be sent back to the Appeal Board for amendment in such manner as the Court of Appeal may order and the Appeal Board shall comply with such order.

#### **62. Decision of Appeal Board**

(1) The Appeal Board shall give reasons in writing for its decisions, and those reasons shall include its findings on material questions of fact and a summary of the evidence or other material on which those findings were based.

(2) The secretary to the Appeal Board shall, before the expiration of a period of 1 month after the date that the Appeal Board gives its decision, serve a copy of the Appeal Board's decision and of the reasons for its decision on the parties to the appeal.

(3) Where the Appeal Board orders that its decision is not to come into operation until a specified date, the decision comes into operation on that date; in other cases, the decision of the Appeal Board comes into operation on the date which it is given.

(4) A document purporting to be a copy of a decision or order of the Appeal Board and to be certified by the secretary to the Appeal Board to be a true copy of the decision or order is admissible in any proceedings as evidence of the decision or order.

### **63. Immunity**

(1) The Chairman, Deputy Chairmen and members of the Appeal Board have, in the performance of their duties under this Ordinance, the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that court.

(2) A witness before the Appeal Board shall be entitled to the same privileges and immunities as if he were a witness in civil proceedings in the Court of First Instance.

### **64. Chairman of Appeal Board may make rules**

The Chairman of the Appeal Board may make rules -

- (a) providing for the practice and procedure applying to proceedings before the Appeal Board;
- (b) relating to the payment of allowances for expenses of witnesses under section 57 (3) (1);

- (c) generally for the better carrying out of this Part.

## PART VIII

### MISCELLANEOUS

#### **65. Authorization by Authority**

The Authority may authorize in writing any public officer to exercise any powers and to perform any duties conferred or imposed on the Authority by or by virtue of this Ordinance.

#### **66. Power of entry of Authority**

(1) The Authority or any person authorized by the Authority in writing may, without warrant or notice but at a reasonable time, enter any land and any premises on it for the purposes of -

- (a) the preparation of draft plans under Part III;
- (b) planning control under Part IV;
- (c) the control of building works under Part V;
- (d) the control of unauthorized development under Part VI;
- (e) the service of any notice under this Ordinance; or
- (f) ascertaining whether there is, or has been, on or in connection with the land or the premises, any contravention of any of the provisions of this Ordinance or of any regulation made thereunder.

(2) Notwithstanding subsection (1), the Authority shall not, save with the consent of the occupier or person in charge of the premises, enter domestic premises without a warrant issued by a magistrate under subsection (3).

- (3) If a magistrate is satisfied that there are reasonable

grounds for entry into any land or any premises on it for any purpose mentioned in subsection (1), the magistrate may issue a warrant authorizing the Authority or any person authorized by the Authority in writing to enter the land or any premises on it.

(4) A warrant issued under subsection (3) may authorize -

- (a) the Authority or any person authorized by the Authority in writing before the issue of the warrant to enter the land or any premises on it on such occasions and at such times as may be necessary for the purpose for which the warrant was issued;
- (b) any police officer of or above the rank of inspector and any other police officer acting under his direction to enter the land or any premises on it in company with, and for the purpose of preventing the obstruction of, any person authorized under paragraph (a), and in the execution of the warrant any such police officer may use such force as may be necessary.

(5) Where the Authority or any person authorized by the Authority in writing enters any land or any premises on it under a warrant issued under subsection (3) he shall produce his warrant and may require any person present on that land or premises -

- (a) to give details of his identity, name and address and produce his identity card issued under the Registration of Persons Ordinance (Cap. 177) for inspection;  
or
- (b) who appears at the time to be a person responsible for or in charge of that land or premises to give

such information or render such assistance as may be necessary for the purposes of this section.

(6) A warrant issued under subsection (3) shall continue in force until the purpose for which the entry is necessary has been satisfied.

(7) Any person who -

- (a) obstructs the Authority or any person authorized by the Authority in writing from entering or inspecting any land or any premises on it under this section;
- (b) refuses to give details of his identity, name and address and produce his identity card issued under the Registration of Persons Ordinance (Cap. 177) for inspection when so required under subsection (5) (a); or
- (c) refuses, without reasonable excuse, to give such information or render such assistance as may be necessary for the purposes of this section when so required under subsection (5) (b),

commits an offence and is liable to a fine of \$100,000.

#### **67. Authority may obtain information**

(1) The Authority or any person authorized by the Authority in writing may by notice in writing to any person require him to furnish to the Authority, within a period and in a form stipulated in the notice, any information specified in the notice being information which the Authority may reasonably require for the purpose of exercising his powers, and performing his functions and duties under this Ordinance.

(2) A person who -

- (a) fails without reasonable excuse to comply with the requirements of a notice served on him under subsection (1); or
- (b) in compliance or purported compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular or knowingly omits any material particular,

commits an offence and is liable to a fine of \$100,000.

#### **68. Service of notices**

A notice to be served under this Ordinance may be served by serving a copy -

- (a) personally;
- (b) by registered post addressed to the last known place of business or residence of the person to be served;
- (c) where the notice relates to a building, structure or part thereof, by leaving the same with an adult occupier of the building, structure, or part thereof to which the notice relates or by posting the same in a prominent position upon or near such land or upon a conspicuous part of such building, structure or part thereof; or
- (d) where the notice relates to land, by posting the same in a prominent position upon or near such land.

**69. Authority may keep records and registers**

- (1) The Authority may keep records and establish and maintain a register of -
  - (a) draft plans and approved plans published under Part III;
  - (b) planning studies prepared under section 11 and published under section 12;
  - (c) representations made in respect of draft plans under section 17;
  - (d) comments made on adverse representations under section 19;
  - (e) applications for planning permission, including master layout plans and landscape plans, under Part IV;
  - (f) master layout plans required under section 33(2) or (3) and approved in relation to the grant of an application for planning permission under this Ordinance;
  - (g) comments on applications for planning permission made under section 35;
  - (h) determinations of the Board under section 36 on applications for planning permission;
  - (i) determinations of the Board under section 41 on reviews under section 40;
  - (j) decisions of the Appeal Board on appeals under section 42 against the result of reviews;
  - (k) notices served by the Authority under section 51;
  - (l) decisions of the Appeal Board on appeals under section 52 against the requirements of a

reinstatement notice served under section 51(3);

(m) such other matters as the Authority may require for the purpose of this Ordinance.

(2) A register kept under this section shall at all reasonable times be open to public inspection, and copies and extracts of any entry in a register may be provided on payment of such fee, if any, as the Authority may require for the purposes of this section.

#### **70. Rectification of errors**

(1) The Secretary may, by order published in the Gazette, correct or rectify any omission from or any clerical or printing error appearing in any plan approved by the Chief Executive in Council.

(2) The Board may, by order published in the Gazette, correct or rectify any omission from or any clerical or printing error appearing in any planning study or in a draft plan prepared under Part III.

(3) The Secretary shall cause notice of any order made under subsection (1) or (2) to be published in at least 2 Chinese and 1 English newspapers.

#### **71. Limited liability for errors**

No person shall have any right against the Government or any public officer or any person employed by the Government in the administration of this Ordinance by reason only of the fact of -

(a) any omission from or any clerical or printing error appearing in any plan approved by the Chief Executive in Council;

- (b) any omission from or any clerical or printing error appearing in any planning study or in a draft plan prepared under Part III;
- (c) any omission from or any error appearing in any register established and maintained by the Authority under section 69.

**72. Immunity, etc.**

(1) No liability shall rest on the Government, members of the Board, the Authority, any public officer or any person employed in the administration of this Ordinance by reason only of the fact that the Government, members of the Board, the Authority, any public officer or any person so employed exercised any function, duty or power authorized under this Ordinance.

(2) No person shall have any right against the Government, members of the Board, the Authority, any public officer or any person employed in the administration of this Ordinance to restrain or compel anything authorized under this Ordinance.

(3) Sections 50 and 51 shall not have effect to permit proceedings to be taken against or to impose any criminal liability on the Government, any public officer, or any person employed by the Government in the administration of this Ordinance who undertakes, carries on or continues any unauthorized development in the course of carrying out his duties in the service of the Government.

(4) A member of the Board, the Authority, a public officer or any person employed in the administration of this Ordinance shall not be personally liable in respect of any act or omission of his if it was done or made by him in the honest belief that it

was required or authorized in the exercise of any function, duty or power of his under this Ordinance.

(5) The protection conferred on members of the Board, the Authority, public officers and persons employed in the administration of this Ordinance by subsection (4) in respect of any act or omission shall not in any way affect any liability of the Government in tort for that act or omission.

(6) A person who complies with a requirement made under this Ordinance shall not incur any liability in respect of any person by reason only of that compliance.

### **73. Liability of directors and partners**

(1) Where an offence under this Ordinance is committed by a body corporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, shall be guilty of the like offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

(2) Where an offence under this Ordinance is committed by a partner in a partnership, every other partner of the partnership and every person concerned in the management of the partnership shall be guilty of the like offence.

### **74. Time limit for prosecutions**

Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), any information or complaint relating to an offence under this Ordinance may be tried if it is laid or made, as the case may

be, within 12 months from the time when the matter of such information or complaint, as the case may be, arose.

#### **75. Prosecution of offences by Authority**

(1) Any offence under this Ordinance may be prosecuted by the Authority in the Authority's own name but, where under this subsection the Authority prosecutes an offence, the offence shall be tried before a magistrate as an offence which is triable summarily.

(2) For the purposes of the prosecution of an offence mentioned in subsection (1) and only for those purposes, a public officer authorized in writing by the Authority who apart from this subsection is not qualified to act as a barrister or solicitor may appear and plead before a magistrate any case of which he has charge and shall, in relation to the prosecution, have all the other rights of a person qualified to practise as a barrister or solicitor under the Legal Practitioners Ordinance (Cap. 159).

(3) Nothing in this section shall derogate from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.

#### **76. Evidence**

(1) Any photograph, plan, publication, record or other document purporting to be a photograph, plan, publication, record or other document, or a copy of a photograph, plan, publication, record or other document, executed, signed or issued under this Ordinance and purporting to be signed or initialled by any person employed in the administration of this Ordinance shall in any proceedings, in the absence of evidence to the contrary, be

admissible as evidence of the facts stated therein, and it shall not be necessary to prove the signature or initials of the person purporting to sign or initial the photograph, plan, publication, record or other document.

(2) Any photograph, plan, publication, record or other document purporting to be a photograph, plan, publication, record or other document, or a copy of a photograph, plan, publication, record or other document, executed, signed or issued by the Lands Department and purporting to be signed or initialled by any person employed in the Lands Department shall in any proceedings, in the absence of evidence to the contrary, be admissible as evidence of the facts stated therein, and it shall not be necessary to prove the signature or initials of the person purporting to sign or initial the photograph, plan, publication, record or other document.

(3) The Authority may, upon request by any person and payment of such fee, if any, as the Authority may require for the purposes of this section, certify a copy of a photograph, plan, publication, record or other document, executed, signed or issued under this Ordinance or by the Lands Department to be the true copy of such photograph, plan, publication, record or other document.

#### **77. Notices not to be defaced**

Where a notice to be served under this Ordinance has been served under section 68(c) or (d) by means of posting the same in a prominent position upon or near such land or upon a conspicuous part of a building, structure or part thereof, any person who obliterates, defaces or otherwise renders illegible any such

notice or, without being authorized to do so by the Authority, removes it commits an offence and is liable on conviction to a fine of \$100,000.

**78. Notices served under section 51, if registered,  
to have perpetual validity, run with land and  
be enforceable against successors**

(1) Notwithstanding any rule of law or equity -

- (a) an enforcement notice;
- (b) a stop notice; and
- (c) a reinstatement notice,

served by the Authority under section 51 shall, if and for so long as it remains registered in the Land Registry in the manner required by or under the Land Registration Ordinance (Cap. 128), and no compliance notice in relation to any such enforcement notice, stop notice, or reinstatement notice has been served under section 51(5), have perpetual validity and shall run with the land identified in any such notice and, in addition to being enforceable against the person who was served with the notice, shall be enforceable by the Authority under or by virtue of this Ordinance against any occupier of the land and the owner of the land and his successors in title and persons deriving title under or through him or them.

(2) For the purposes of the enforcement under or by virtue of this Ordinance by the Authority of any such notice under this section -

- (a) the Authority shall, as against any occupier of the land and the owner of the land and his successors in title and persons deriving title under or through him or them, have the same remedies as he has against any person who is served with an enforcement notice, a stop notice, or a reinstatement notice, as the case may be, under section 51;

- (b) any occupier of the land and the owner of the land and his successors in title and persons deriving title under or through him or them shall acquire and be subject to the same liabilities and obligations, including liability in respect of any offence under this Ordinance, as if he or they had, on the date that any deed, conveyance or other instrument in writing identifying the fact of that occupation, succession or derivation in title, as the case may be, is registered in the Land Registry under the Land Registration Ordinance (Cap. 128), been served with an enforcement notice, a stop notice, or a reinstatement notice, as the case may be, under section 51.

## **79. Regulations**

- (1) The Secretary may make regulations for or in relation to -
  - (a) any matter which is to be prescribed or for which provision for regulations is made in this Ordinance; and
  - (b) the better carrying out of the purposes and provisions of this Ordinance.
- (2) Regulations made under this section may provide that a contravention of specified provisions of the regulations shall be an offence and may provide penalties therefor not exceeding a fine of \$100,000.
- (3) Fees prescribed under this section for the purposes of section 29(1), 32(2), 43(2) or 44(2) shall be payable to the

Authority and -

- (a) may be fixed at levels sufficient to effect the recovery of expenditure incurred, or likely to be incurred, by the Board in performing its functions or by the Government or the Authority in relation generally, to the carrying out of the purposes and provisions of this Ordinance;
- (b) shall not be limited by reason only of the amount of administrative or other costs incurred, or likely to be incurred, by the Board in providing any service or otherwise performing any function under this Ordinance as regards any particular person or in providing any service which is of a particular class or description or by the Government or the Authority in relation generally, to the carrying out of the purposes and provisions of this Ordinance.

(4) Regulations made under this section may provide that the amount of any fees may be fixed by reference to a scale prescribed in the regulations and for the payment of different fees or other charges by or in relation to persons or cases of different classes or descriptions.

(5) No fee required for the purposes of this Ordinance shall be payable by any Government department which does not operate under a trading fund within the meaning of the Trading Funds Ordinance (Cap. 430).

## **80. Power of Authority to determine forms**

- (1) The Authority may determine the form of any notice or

form required by the Board or by the Authority for the purposes of this Ordinance.

(2) The Authority may include in a notice or a form a statutory declaration to be made by the person completing or responding to the notice or form confirming that the particulars contained in the form are correct to the best of the person's knowledge and belief.

### **81. Power of Authority to determine fees**

#### **for copies**

(1) The Authority may, with the approval of the Financial Secretary, determine the fee, if any, required for the provision or certification of any copies under section 12(2), 18(5), 19(6), 34(5), 35(6), 40(7), 69(2) or 76(3) by notice published in the Gazette.

(2) A notice published under subsection (1) is not subsidiary legislation.

(3) Fees determined under this section shall be payable to the Authority.

### **82. Works authorized under Roads (Works, Use and Compensation) Ordinance**

Any works or use authorized under the Roads (Works, Use and Compensation) Ordinance (Cap. 370) shall be deemed to be approved under this Ordinance, whether or not those works or that use form part of a plan approved by the Chief Executive in Council under section 26.

### **83. Schemes authorized under Railways Ordinance**

Any scheme authorized under the Railways Ordinance (Cap. 519),

shall be deemed to be approved under this Ordinance, whether or not that scheme forms part of a plan approved by the Chief Executive in Council under section 26.

#### **84. Transitional**

(1) The Town Planning Board appointed under section 2 of the repealed Ordinance shall, until the Board is established under section 3, be deemed to be the Board for the purposes of this Ordinance.

(2) All rights, obligations and liabilities of the Town Planning Board prior to the commencement of this Ordinance are as from such commencement the rights, obligations and liabilities of the Board and the Board shall have all necessary powers to enforce those rights and discharge those obligations and liabilities.

(3) Without limiting the generality of subsection (2), every agreement, whether in writing or not, to which the Town Planning Board was a party prior to the commencement of this Ordinance and whether or not of such a nature that the rights, obligations and liabilities thereunder could be assigned shall have effect as from such commencement as if -

- (a) the Board had been a party to such agreement in lieu of the Town Planning Board; and
- (b) for any reference, however worded and whether express or implied, to the Town Planning Board there were substituted in respect of anything to be done or omitted on or after the commencement of this Ordinance a reference to the Board.

(4) Where necessary for the purpose of giving effect to subsection (2), subsection (3) (b) shall also apply to any document,

not being an agreement, having therein references to the Town Planning Board.

(5) Where anything has been done or commenced by or under the authority of the Town Planning Board or a committee of the Town Planning Board appointed under the repealed Ordinance prior to the commencement of this Ordinance such thing shall continue to have effect and may be carried on and completed by, or under the authority of the Board or under the authority of a committee of the Board, as the case may be.

(6) Where anything has been done or commenced by or under the authority of the Authority under the repealed Ordinance prior to the commencement of this Ordinance such thing shall continue to have effect and may be carried on and completed by, or under the authority of the Authority.

(7) Where, prior to the commencement of this Ordinance, a draft plan has been prepared under section 3(1) (a) of the repealed Ordinance or, a draft development permission area plan has been prepared under section 3(1) (b) of the repealed Ordinance and such draft plan or draft development permission area plan, as the case may be, has, prior to the commencement of this Ordinance, been exhibited under section 5 or 7(2) of the repealed Ordinance but which has not been dealt with in the manner provided in section 9 of the repealed Ordinance, sections 6, 7, 8 and 9 of the repealed Ordinance shall, until the Chief Executive in Council deals with and considers the draft plan or draft development permission area plan, as the case may be, and makes any of the decisions in respect of it mentioned in section 9 of the repealed Ordinance, continue to apply to any such draft plan or draft development permission area plan, as the case may be, and -

- (a) in the case where a draft plan or draft development permission area plan, as the case may be, is approved by the Chief Executive in Council under section 9(1) (a) of the repealed Ordinance, that draft plan or draft development permission area plan, as the case may be, shall be treated for all purposes as if it were a draft plan approved by the Chief Executive in Council under section 26(1) (c);
- (b) in the case where a draft plan or draft development permission area plan, as the case may be, is referred to the Board by the Chief Executive in Council under section 9(1)(c) of the repealed Ordinance, that draft plan or draft development permission area plan, as the case may be, shall be treated for all purposes as if it were a draft plan referred back to the Board under section 26(1)(d).

(8) Any approved plan published under section 9(5) of the repealed Ordinance and which remained in force at the commencement of this Ordinance shall, until it is revoked or is replaced by a plan prepared under this Ordinance, continue in force after such commencement and have effect according to its tenor as if any such plan was a plan prepared, approved, published and in force under this Ordinance.

(9) Where, prior to the commencement of this Ordinance, an application for the grant of permission for any purpose has been made to the Town Planning Board under section 16 of the repealed Ordinance, sections 17, 17B and 17C of the repealed Ordinance shall, until the Town Planning Board or the Appeal Board constituted under section 17A of the repealed Ordinance, as the

case may be, makes any of the decisions in respect of that application mentioned in that section, continue to apply in respect of any such application.

(10) Any permission which, prior to the commencement of this Ordinance, was granted under section 16(3) of the repealed Ordinance and remained in force, shall continue in force after such commencement and have effect according to its tenor as if it were a grant of planning permission under section 36.

(11) Any right of review subsisting under section 17 of the repealed Ordinance prior to the commencement of this Ordinance shall be treated as being a right of review to the Town Planning Board under that section as if this Ordinance had not been enacted.

(12) Any review pending under section 17 of the repealed Ordinance prior to the commencement of this Ordinance shall be treated and disposed of as if it were a review pending to the Town Planning Board under that section as if this Ordinance had not been enacted.

(13) The Appeal Board constituted under section 17A of the repealed Ordinance shall, until the Appeal Board is constituted under section 56, be deemed to be the Appeal Board for the purposes of this Ordinance.

(14) Any right of appeal subsisting under section 17B of the repealed Ordinance prior to the commencement of this Ordinance shall be treated as being a right of appeal to the Appeal Board under that section as if this Ordinance had not been enacted.

(15) Any appeal pending under section 17B of the repealed Ordinance prior to the commencement of this Ordinance shall be treated and disposed of as if it were an appeal pending to the Appeal Board under that section as if this Ordinance had not been

enacted.

(16) Records of approved plans and approved master lay-out plans deposited in the Land Registry under the repealed Ordinance may be kept by the Authority under section 69.

(17) Records of appeals kept by the secretary to the Appeal Board under the repealed Ordinance may be kept in a register established and maintained by the Authority under section 69.

(18) Any right of review subsisting under section 24 of the repealed Ordinance prior to the commencement of this Ordinance shall be treated as being a right of review to the Secretary under that section as if this Ordinance had not been enacted.

(19) Any review pending under section 24 of the repealed Ordinance prior to the commencement of this Ordinance shall be treated and disposed of as if it were a review pending to the Secretary under that section as if this Ordinance had not been enacted.

(20) Any proceedings for an offence or any investigation relating to an offence which is alleged to have been committed under the repealed Ordinance commenced prior to the commencement of this Ordinance may be continued as if this Ordinance had not been enacted.

(21) In this section, “repealed Ordinance” (舊有條例) means the Town Planning Ordinance (Cap. 131) repealed under section 85, and includes all subsidiary legislation repealed under sections 86, 87 and 88.

## PART IX

### REPEALS AND CONSEQUENTIAL AMENDMENTS

### **Town Planning Ordinance**

#### **85. Repeal**

The Town Planning Ordinance (Cap. 131) is repealed.

### **Town Planning Regulations**

#### **86. Repeal**

The Town Planning Regulations (Cap. 131 sub. leg.) are repealed.

### **Town Planning (Appeals) Regulations**

#### **87. Repeal**

The Town Planning (Appeals) Regulations (Cap. 131 sub. leg.) are repealed.

### **Town Planning (Taking Possession and Disposal of Property) Regulation**

#### **88. Repeal**

The Town Planning (Taking Possession and Disposal of Property) Regulation (Cap. 131 sub. leg.) is repealed.

### **Land Development Corporation Ordinance**

#### **89. Sections amended**

The Land Development Corporation Ordinance (Cap. 15) is amended -

- (a) in section 2, by repealing the definition “Town

Planning Board” and substituting -

““Town Planning Board” ( 城市規劃委員會 ) means the Town Planning Board appointed under section 3 of the Town Planning Ordinance ( of 1999).”;

- (b) in section 13(2)(a), by repealing “section 3 or 4 of the Town Planning Ordinance (Cap. 131)” and substituting “Part III of the Town Planning Ordinance ( of 1999)”;
- (c) in section 13(3), by repealing “permission under section 16 of the Town Planning Ordinance (Cap. 131)” and substituting “planning permission under Part IV of the Town Planning Ordinance ( of 1999)”;
- (d) by repealing section 14 and substituting -

**“14. Submission of plans to  
Town Planning Board**

(1) The Secretary may, at the request of the Corporation made in writing to him in that behalf, submit any plan prepared under section 13(2)(a) or this section to the Town Planning Board for approval under this section.

(2) Upon submission of a plan the Town Planning Board may

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(a) approve it; or

(b) refuse to approve it.

(3) A plan approved by the Town Planning Board under this section shall be deemed to be a draft plan prepared by the Town Planning Board for the purposes of the Town Planning

Ordinance ( of 1999) and the provisions of that Ordinance shall apply accordingly.

(4) Where under Part III of the Town Planning Ordinance ( of 1999) a plan which is deemed to be a draft plan by virtue of subsection (3) is published, such plan shall, from the date that the publication of the plan is first notified in the Gazette, replace or amend according to its tenor, any approved or draft plan under that Ordinance relating to the area delineated and described therein

(5) Where under Part III of the Town Planning Ordinance ( of 1999) the Chief Executive in Council refuses to approve a plan which is deemed to be a draft plan by virtue of subsection (3), such refusal shall be notified in the Gazette and shall revive any approved or draft plan under that Ordinance which, under subsection (4), was amended or replaced thereby.”;

(e) in section 15(3)(a), by repealing “section 9 of the Town Planning Ordinance (Cap. 131)” and substituting “Part III of the Town Planning Ordinance ( of 1999)”;

(f) in section 15(4)(a)-

(i) by repealing “(Cap. 131)” and substituting “( of 1999)”;

(ii) by repealing “permission under section 16” and substituting “planning permission

under Part IV”.

## **Buildings Ordinance**

### **90. Sections amended**

The Buildings Ordinance (Cap. 123) is amended -

- (a) in section 15(1), by repealing “Where” and substituting “Subject to section 16A(3), where”;
- (b) in section 16(1)(d), by repealing”, or would contravene any approved or draft plan prepared under the Town Planning Ordinance (Cap. 131)”;
- (c) by repealing section 16(1)(da);
- (d) by adding-

#### **“16A. Mandatory refusal of approval or consent**

(1) For the purposes of section 45 of the Town Planning Ordinance ( of 1999), the Building Authority shall refuse to give his approval of any plans of building works save as provided in subsections (2) and (3) of that section.

(2) Save as is necessary for the purpose of section 45 of the Town Planning Ordinance ( of 1999), nothing in this section shall affect the power of the Building Authority to give or refuse to give his approval of any plans of building works by virtue of section 16.

(3) Section 15 shall not apply in the case of an application made in the specified

form for the Building Authority to approve plans or to consent to the commencement of building works or street works where the circumstances mentioned in this section and in section 45 of the Town Planning Ordinance ( of 1999) apply.

**16B. Review of Building Authority's refusal or consent**

An applicant aggrieved by a determination of the Building Authority made in respect of him by virtue of section 16A and of section 45 of the Town Planning Ordinance ( of 1999) may apply to the Town Planning Board appointed under that Ordinance for a review of the Building Authority's determination in accordance with section 46 of that Ordinance.”;

(e) by repealing section 25(2) and substituting-

“(2) Subject to subsection (2A), where in the opinion of the Building Authority any building is not suitable by reason of its construction for its present or intended use, he may by order in writing served on the owner or occupier-

- (a) within 1 month of the receipt of a notice under subsection (1), prohibit such intended use; or
- (b) require the owner or occupier to discontinue such present use

of the building within 1 month from the service of the order.

(2A) Notwithstanding subsection (2), the Building Authority may, unless he is of the opinion that the carrying out of the building works or that the present or intended use would contravene the Town Planning Ordinance ( of 1999) or any approved or draft plan prepared under that Ordinance, by notice in writing permit such building works as he deems necessary for the purpose of rendering the building suitable for its present or intended use.”;

(f) in section 42(5), by adding “or 16A” after “14”.

### **Lands Resumption Ordinance**

#### **91. Additional rules for determining compensation**

Section 12(aa) of the Lands Resumption Ordinance (Cap. 124) is repealed and the following substituted-

“(aa) no account shall be taken of the fact that the land lies within or is affected by any area, zone or district reserved for any purpose under the Town Planning Ordinance ( of 1999) or is affected by any provision on a plan referred to in section 7 of that Ordinance;”.

## **Land Acquisition (Possessory Title) Ordinance**

### **92. Rules for assessing compensation**

Section 8(3)(b) of the Land Acquisition (Possessory Title) Ordinance (Cap. 130) is repealed and the following substituted -

“(b) no account shall be taken of the fact that the land lies within or is affected by any area, zone or district reserved for any purpose under the Town Planning Ordinance (of 1999) or is affected by any provision on a plan referred to in section 7 of that Ordinance;”.

## **Water Pollution Control (Sewerage) Regulation**

### **93. Compensation rights and assessment**

The Water Pollution Control (Sewerage) Regulation (Cap. 358 sub. leg.) is amended in section 5 of Part II of Schedule 1 by repealing “(Cap. 131)” and substituting “(of 1999)”.

## **Roads (Works, Use and Compensation) Ordinance**

### **94. Procedure after publication of plan and scheme**

Section 11(3) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370) is repealed and the following substituted –

“(3) Before exercising the power under subsection (2), the Chief Executive in Council may refer the plan, the scheme and the objections to the Town Planning Board appointed under the Town Planning Ordinance ( of 1999) and the Town Planning Board shall, whether or not the works are shown on any draft or approved plan under that Ordinance -

- (a) deal with the plan and scheme under Part III of that Ordinance as if it were a draft plan;
- (b) consider the objections lodged under section 10 and any other objections received by the Town Planning Board, as if all objections were adverse representations made in respect of a draft plan under Part III of that Ordinance;
- (c) report to and advise the Chief Executive in Council of its views, if any, regarding the plan, the scheme and the objections as the Town Planning Board thinks fit.”.

### **Land Drainage Ordinance**

#### **95. Sections and Schedule amended**

The Land Drainage Ordinance (Cap. 446) is amended in sections 26(6) and 27(6) and section 4 of Part I of the Schedule by repealing “(Cap. 131)” and substituting “(of 1999)”.

### **Non-local Higher and Professional Education**

#### **(Regulation) Rules**

#### **96. Premises in which registered course or exempted course is conducted**

Section 5(3)(c)(vi) of the Non-local Higher and Professional Education (Regulation) Rules (Cap. 493 sub. leg.) is amended by repealing” (Cap. 131)” and substituting “(of 1999)”.

## Environmental Impact Assessment Ordinance

### 97. Interpretation

Schedule 1 to the Environmental Impact Assessment Ordinance (Cap. 499) is amended

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- (a) in the definitions “coastal protection area” and “conservation area”, by repealing “section 3 of the Town Planning Ordinance (Cap. 131)” and substituting “Part III of the Town Planning Ordinance ( of 1999)”;
- (b) in the definition “planned use”, by repealing “(Cap. 131)” and substituting “( of 1999)”.

### SCHEDULE

[s 3]

#### PROVISIONS AFFECTING THE TOWN PLANNING BOARD AND ITS MEMBERS

1. (1) A member of the Board shall hold his office in accordance with the terms of his appointment.
  - (2) A member not being a public officer appointed under section 3 of this Ordinance may by notice in writing to the Chief Executive resign his office.
  - (3) A public officer appointed under section 3 of this Ordinance may nominate any public officer to be his representative on the Board.
  
2. (1) If, for any period, the Chairman of the Board is precluded by illness, absence from Hong Kong or any other cause from exercising and performing his functions, a Deputy Chairman of the Board designated for the purpose by the Chairman of the Board

shall act as Chairman and as such shall exercise and perform all the functions of the Chairman of the Board during that period.

(2) If the Deputy Chairman of the Board designated under subsection (1) is precluded by illness, absence from Hong Kong or any other cause from exercising and performing his functions, the Chairman of the Board may designate another Deputy Chairman of the Board or another member of the Board to act as Chairman and as such to exercise and perform all the functions of the Chairman of the Board during that period.

3. (1) A member of the Board who is in any way directly or indirectly interested in any business transacted or proposed to be transacted by the Board or in any business transacted or proposed to be transacted by a servant or an agent of the Board which is brought up for consideration by the Board, shall disclose the nature of his interest at a meeting of the Board; and the disclosure shall be recorded in the minutes of the meeting of the Board, and the member shall not without the permission of the person exercising and performing the functions of the Chairman of the Board at that meeting take any part in any deliberation of the Board with respect to that business and shall not in any event vote on any question concerning it.

(2) For the purposes of subsection (1), a notice given at a meeting of the Board by a member thereof to the effect that he is a member of a specified company or firm and is to be regarded as interested in any business which may, after the date of the notice, be made with the company or firm shall be regarded as a sufficient disclosure of his interest in relation to any business so transacted or proposed to be so transacted.

(3) A member of the Board need not attend in person at a meeting of the Board in order to make a disclosure which he is required to make under this section if he takes reasonable steps to secure that the disclosure is made by a notice which is brought up and read at the meeting.

(4) A member of the Board who, on appointment or at any time during his tenure of office, has a pecuniary interest, whether direct or indirect, in any business of the description mentioned in subsection (1) shall provide a record of any such pecuniary interest to the Board and the Board shall cause that record to be made available for public inspection upon request.

4. The Board may transact any of its business by circulation of papers amongst members whether any such member is in or outside Hong Kong, and a resolution in writing which is approved in writing by a majority of the members shall be as valid and effectual as if it had been passed at a meeting of the Board.

5. A certificate signed by the secretary of the Board and certifying that an instrument of the Board purporting to be made or issued by or on behalf of the Board was so made or issued shall be conclusive evidence of that fact.

6. Every document purporting to be an instrument made or issued by or on behalf of the Board and to be duly executed under the seal of the Board or to be signed or executed by the Chairman of the Board or a person authorized by the Board to act in that behalf, shall be received in evidence and deemed, without further proof, to be so made or issued unless the contrary is shown.

7. The provisions of this Schedule shall have effect as respects a member of the Board when acting as a member of a committee appointed under section 3(3) or 5 of this Ordinance and shall have effect as respects any such committee.

#### Explanatory Memorandum

The purpose of this Bill is to repeal and replace the Town Planning Ordinance (Cap. 131) (“the repealed Ordinance”) which was first enacted in 1939 and has remained largely in its original form. The aims and objectives of the Bill are to be implemented by a Town Planning Board (“the Board”), an Appeal Board and the Director of Planning in the capacity of the Authority. The Bill will provide authority for preparing statutory plans and exercising planning control and enforcement powers. The Bill comprises 97 clauses divided in 9 Parts.

2. Part I is preliminary and comprises clauses 1 and 2.

3. Clause 1 contains the short title and commencement.

4. Clause 2 contains definitions.

5. Part II provides for the appointment of the Town Planning Board and comprises clauses 3 to 6. Under clause 3, the members of the Board will comprise such public officers and persons not being public officers as the Chief Executive may appoint. Clauses 4 and 5 provide for the appointment of committees and delegation.

6. Under clause 6 the Board may -

- (a) prepare draft plans including outline zoning plans and development permission area plans for such areas of Hong Kong as the Chief Executive may, in writing, direct;

- (b) in the case of a new or replacement outline zoning plan or, if it thinks fit, an amendment to an outline zoning plan, prepare a planning study before preparation of the outline zoning plan or of the amendment to an outline zoning plan;
- (c) determine whether a draft plan or a planning study is suitable for publication;
- (d) consider representations and related comments on a draft plan and shall conduct inquiries into the representations;
- (e) submit draft plans together with unwithdrawn representations to the Chief Executive in Council; (f) receive planning applications and decide on and review its decisions on planning applications;
- (g) review the Building Authority's determinations under clause 45;
- (h) recommend to the Chief Executive in Council the resumption of land which interferes with the layout of an area shown on a draft or an approved plan or on an approved master layout plan; and (i) give advice to the Government relating to overall planning for Hong Kong and any other planning matter as it thinks fit.

7. Under clause 6, the Chief Executive may give directions to the Board.

8. Part III deals with the preparation of draft plans and comprises clauses 7 to 30.

Provision is made for outline zoning plans and draft development permission area plans, contents of draft plans, planning studies, publication and availability for

inspection of such planning studies and draft plans and for submissions, adverse representations and comments to be made to the Board in respect of them.

9. Clause 9 deals with the general contents of draft plans. The Board may, by note on a draft plan or by any other means, provide for -

- (a) the control of height, number of storeys, plot ratio, gross floor area, site coverage, number of flats, disposition and use of buildings, which may vary from building to building in the same land use zone;
- (b) the provision of services, facilities and amenities including open space and other recreational facilities;
- (c) landscaping and urban design requirements including the provision of landscaped space, tree planting or other requirements for the conservation, protection or enhancement of the environment;
- (d) the control of traffic impact and the provision of transport, parking, loading or unloading facilities;
- (e) the control of drainage impact and provision of the means for flood prevention, control and mitigation;
- (f) the conservation and protection of the environment including control of environmental impact and provision of the means for prevention, control and mitigation of pollution to the environment;
- (g) the designation of any area which, in the opinion of the Board, is environmentally sensitive to development or adjoins existing or potential

pollution sources as an environmentally sensitive area;

- (h) the designation of any area which, in the opinion of the Board, is of architectural, archaeological, cultural or historical interest, as a special design area;
- (i) within an environmentally sensitive area, a special design area or a comprehensive development area, the control of flat size, design, character and external appearance of buildings, which may vary from building to building in the same area;
- (j) any matter or thing required of an applicant for the grant of planning permission;
- (k) such other matters relating to the planning for the development or use of land as the Board thinks fit.

10. To enhance the environment, the Board may also designate on a draft plan any development which in the opinion of the Board may -

- (a) constitute a hazard to the health or safety of the public; or
- (b) permit, cause or result in, significantly, an adverse environmental impact,

as designated development (clause 9(2)). This will enable the Board to control the sort of development for which planning permission can be granted whether or not any particular development is located in land included in a draft or an approved plan.

11. Clauses 12 to 16 provide for the publication and inspection of planning studies and draft plans. Provision is made for submissions and representations to be made by the public in

respect of them.

12. Representations made on draft plans are also to be published so as to enable the public to make comment on the representations and provision is made for inquiry into unwithdrawn adverse representations (clauses 17 to 24).

13. The procedure on submission of a draft plan to the Chief Executive in Council is dealt with in clauses 25 to 28. Under clause 26 the Chief Executive in Council may -

- (a) refuse to approve the draft plan;
- (b) approve the draft plan -
  - (i) in part only and order that the remaining part of the draft plan not so approved be dealt with in the manner provided in subparagraph (d);
  - (ii) subject to such amendment in respect of any unwithdrawn adverse representation as the Chief Executive in Council shall specify;
- (c) approve the whole of the draft plan; or
- (d) order that the draft plan or any part thereof be referred back to the Board together with such directions relating to the amendment or the further consideration of the draft plan or any part thereof by the Board as the Chief Executive in Council thinks fit.

14. Part IV comprises clauses 31 to 44 and deals with planning control. Clause 31 provides that no development or use shall be carried out in respect of any land being the subject of a draft or an approved plan unless -

- (a) planning permission has been granted by the Board in respect of that development or use; or
- (b) the development or use is permitted under the draft or approved plan.

15. Provision is made for publication of notice of and inspection of applications for planning permission and for comments to be made by the public. The Board may review its own determination on an application and an aggrieved applicant may appeal to the Appeal Board.

16. Part V comprises clauses 45 to 48 and deals with approval of plans of building works. Clause 45 has the effect, with exceptions, that no building works shall be carried out on any land included in a draft or an approved plan unless the Building Authority has given his approval of the plans of those building works. The Board may review the Building Authority's determinations under clause 45.

17. Part VI comprises clauses 49 to 52 and deals with enforcement against unauthorized development. Clause 50 prohibits development, other than development -

- (a) which is an existing use;
- (b) which was permitted under an interim development permission area plan prepared under section 26 of the repealed Ordinance and was undertaken, carried on or continued in the same area during the period when such interim development permission area plan had effect;
- (c) which is permitted under a draft or an approved development permission area plan;
- (d) which is permitted under a draft or an approved outline zoning plan;

(e) which, despite not being permitted by reason of the circumstances mentioned in either subparagraph (b), (c) or (d), was permitted on that land under a draft or an approved development permission area plan or under a draft or an approved outline zoning plan which has ceased to have effect, and was undertaken, carried on or continued in the same area during the period when such draft or approved development permission area plan or draft or approved outline zoning plan, as the case may be, had effect; or

(f) where -

(i) planning permission has been granted by the Board under clause 36 or 40 or is deemed to have been granted by the Board by virtue of clause 59;

(ii) permission has been granted by the Town Planning Board under section 16 or 17 of the repealed Ordinance;

(iii) permission has been granted by virtue of a decision of the Appeal Board under section 17B of the repealed Ordinance; or

(iv) permission in relation to the undertaking, carrying on or continuance of development in an interim development permission area has been granted by the Director of Planning under section 26(1) of the repealed Ordinance,

and continues to have effect, which is being

carried out in accordance with any such planning permission or permission, as the case may be, and in compliance with the requirement of any condition of any such grant.

18. Clause 50(2) makes it an offence to carry out unauthorized development. Clause 51 enables the Authority to carry out enforcement action against any unauthorized development by the service of notices requiring discontinuance, cessation and reinstatement and the taking of particular steps to discontinue or prevent that unauthorized development. Failure to comply with the requirements of these notices is an offence. Clause 52 provides for appeals to the Appeal Board against the requirements of a reinstatement notice.

19. Part VII comprises clauses 53 to 64 and deals with the Appeal Board.

20. Part VIII comprises clauses 65 to 84 and contains miscellaneous provisions including provisions relating to powers of entry, service of notices, registers, immunity and time limit for prosecutions for offences under the Ordinance.

21. Clause 78 provides that enforcement, stop and reinstatement notices served under clause 51, if and for so long as they remain registered, are to have perpetual validity and run with the land and be enforceable against successors.

22. Clause 84 is a transitional clause.

23. Part IX comprises clauses 85 to 97 and repeals or makes consequential amendments to a number of Ordinances.

24. The Schedule contains provisions affecting the Board and its members.

**Comparison between Main Provisions Under the Existing Town Planning Ordinance,  
the White Bill and the Town Planning Bill**

<b><u>Existing TPO</u></b>	<b><u>The White Bill</u></b>	<b><u>The Town Planning Bill</u></b>
<b><u>1. Planning Structure</u></b>		
1.1 <u>Chief Executive in Council (CE in C)</u> CE in C approves draft plans.	Basically same as the current system. CE in C is also empowered to make final decision on unwithdrawn adverse representations, <i>to amend draft plans to meet such representations and approve draft plans in part.</i>	Same as the White Bill.
1.2 <u>Chief Executive (CE)</u> CE in C may revoke or refer approved plans to the Town Planning Board for replacement or amendment.	Same as the existing Ordinance.	CE may <i>refer approved plans to the Town Planning Board for replacement or amendment.</i> CE in C retains the power to revoke approved plans.
1.3 <u>Town Planning Board (TPB)</u> (a) Comprises both official and non-official members. 5 members form the quorum of any meeting of TPB and its committees.	(a) Same as the current system. <i>Non-official members would form the majority of TPB. CE may appoint one or more than one Deputy Chairman as well as secretary to TPB</i>	(a) In addition to the White Bill proposals, <i>the quorums at meetings of TPB and its committees are increased to 9 and 7 members respectively.</i>

Note: major proposals highlighted in italics.

**Existing TPO**

- (b) No provision for declaration of interest by TPB members.
- (c) To prepare, amend and publish statutory plans; consider and hear objections to statutory plans; submit draft plans to CE in C for approval; consider and review applications for planning permission; and recommend to CE in C for land resumption.
- (d) No express provision for TPB to conduct its business by circulation of papers amongst members.

1.4 **Appeal Board (AB)**

- (a) To consider appeals against TPB's decisions on applications for planning permission.
- (b) No time limit on when AB should consider appeals.
- (c) No provision for determining appeals on the basis of written submissions.
- (d) An AB member should not take part in decision unless present at all hearing.
- (e) No statutory time limit for notification of AB's decision.

**The White Bill**

- (b) *Express provision for declaration of interest.*
- (c) In addition to the existing functions, to prepare and publish *planning studies* and review the Authority's decisions on *planning certificates*.
- (d) TPB may conduct its business by *circulation of papers amongst members*.
- (a) In addition to the existing functions, *to determine appeals against the Authority's decisions on reinstatement notices*.
- (b) AB shall consider an appeal *within 3 months*.
- (c) Express provision for AB to *determine appeals on the basis of written submissions* subject to the *consent of concerned parties*.
- (d) The hearing of an appeal may continue despite a change in membership.
- (e) *Appellant to be notified of AB's decision within 1 month after determination*.

**The Town Planning Bill**

- (b) Same as the White Bill.
- (c) Same as the draft Bill considered by ExCo in Jan 1998.
- (d) Same as the White Bill.
- (a) Same as the White Bill.
- (b) Same as the draft Bill considered by ExCo in Jan 1998.
- (c) Same as the White Bill.
- (d) Same as the draft Bill considered by ExCo in Jan 1998.
- (e) Same as the White Bill.

**Existing TPO**

**The White Bill**

**The Town Planning Bill**

1.5 **The Authority**

(a) Director of Planning as the Authority to undertake enforcement action against unauthorized development.

(a) Same as the current system.

(a) Same as the current system.

(b) TPB may delegate its power to the Authority in respect of temporary development within a development permission area and minor amendments to planning permission.

(b) Further delegation of power to the Authority to determine *applications for the extension of the validity period of planning permission for not exceeding one-quarter of the length of the previously granted period, and whether a condition of approval has been fulfilled.*

(b) Same as the White Bill.

2. **Plan-Making Process**

2.1 **Publication of planning studies**

No requirement under the existing Ordinance.

*A planning study to be prepared for a new, replacement or, if necessary, amendment plan. To be published for 3 months for public comments.*

*A planning study to be published for 1 month for public comments.*

2.2 **Publication of draft plans**

(a) 2 months exhibition period for new or replacement plans.

(a) Same as the current system.

(a) *1 month publication period* for new or replacement plans.

(b) 3 weeks exhibition period for amendments to draft plan.

(b) 6 weeks publication period for amendments to draft plan.

(b) *1 month publication period* for amendments to draft plan.

**Existing TPO**

**The White Bill**

**The Town Planning Bill**

2.3 Procedures for consideration of objections/representations

- (a) Only person affected by a draft plan can submit objection.
- (b) No provision for publication of objections.
- (c) TPB to give preliminary consideration to objections in the absence of the objectors.
- (d) TPB to hear unwithdrawn objections and the objectors may attend. TPB may also set up a committee to conduct the hearing and deal with the objections either individually or collectively.

- (a) Any person can submit supportive or adverse representation.
- (b) To *publish representations for 1 month* for public comments.
- (c) TPB to give *preliminary consideration* to representations and comments on the representations *in the absence of the representers and commenters*.
- (d) TPB to hold a *one-stage inquiry* into unwithdrawn adverse representations and comments. *The representers and commenters are entitled to attend*. TPB may also set up a *special committee* to conduct the inquiry.

- (a) *Only person affected by a draft plan can submit representation*. Same as the current system.
- (b) To publish representations *for 2 weeks* for public comments.
- (c) Same as the White Bill
- (d) Same as the White Bill.

2.4 Submission of draft plan to CE in C

- (a) Within 9 months after expiration of the plan exhibition period, TPB to submit the draft plan and a schedule of unwithdrawn objections to CE in C for approval.
- (b) CE may grant extension to the 9-month time limit for a period of not more than 6 months.

- (a) Same as the existing Ordinance.
- (b) CE may grant extension to the 9-month time limit for a period of not more than 6 months *for a draft plan being the subject of an inquiry*.

- (a) Same as the existing Ordinance.
- (b) Same as the White Bill.

**Existing TPO**

**The White Bill**

**The Town Planning Bill**

2.5 Amendments of statutory plans

- (a) TPB may consider amendments of draft plans after plan exhibition.
- (b) No provision for applications for amendments of draft or approved plans.

- (a) Same as the current system.
- (b) Provision included to allow *applications for amendments of draft or approved plans*.

- (a) Same as the current system.
- (b) Provision included for TPB to consider applications for amendments of draft or approved plans *within 3 months*.

3. **Application for Planning Permission**

3.1 Consent of or notification to owner

No requirement under the existing Ordinance.

The applicant to obtain *consent of or notify the owner* of the application site.

Same as the White Bill.

3.2 Publication of applications

No requirement under the existing Ordinance.

TPB to publish all applications for planning permission for public comments for 1 month.

TPB to *publish applications for selected uses for public comments*. The *list of applications requiring publication* is to be notified by TPB *in the Gazette*.

3.3 Consideration of applications

- (a) TPB to consider applications within 2 months upon its receipt.

- (a) The period to be extended to 3 months.

- (a) For applications which require publication, TPB to consider applications *within 3 months*. For applications which do not require publication, TPB to consider applications

**Existing TPO**

**The White Bill**

**The Town Planning Bill**

(b) No statutory time limit for notification of TPB's decision.

(b) Applicant and any person who has commented on the application to be *notified of TPB's decision within 1 month after determination.*

*within 2 months.*  
(b) Same as the White Bill.

(c) TPB may consider planning applications in respect of an objection site even when the objection is yet to be decided.

(c) *Consideration of planning applications to be withheld until expiration of plan publication period; where the application site is subject to a third party adverse representation, consideration to be withheld until CE in C's decision on the representation is made.*

(c) Same as the draft Bill considered by ExCo in Jan 1998.

(d) No special arrangement for processing applications for temporary development and minor amendments to planning permission.

(d) *Fast-track approach for processing such applications within 45 days.*

(d) Same as the White Bill.

3.4 **Enforcement on Planning Conditions**

No express provision under the existing Ordinance.

Building Authority to refuse issuing occupation permits if the relevant planning conditions have not been complied with.

Same as the draft Bill considered by ExCo in Jan 1998.

4 **Planning Control on Building Development**

(a) No such provision under the existing TPO. (Under the Buildings Ordinance, the Building Authority (BA) has discretion to approve building plans which contravene the provisions of the TPO.)

(a) Obtaining a planning certificate is a pre-requisite for approval of building plans.

(a) Same as the draft Bill considered by ExCo in Jan 1998.

**Existing TPO**

- (b) No such provision under the existing TPO. (BA may approve building plans in respect of an objection site even if the objection is yet to be decided.)
- (c) No such provision under the existing TPO. (The Appeal Tribunal under the Buildings Ordinance shall consider all appeals against BA's rejection of building plans.)

**The White Bill**

- (b) Issue of planning certificate by the Authority to be withheld during plan publication period; and if the site is subject to an adverse representation, until CE in C has made a final decision on the representation.
- (c) TPB to review the Authority's decision on issuance of planning certificate.

**The Town Planning Bill**

- (b) Same as the draft Bill considered by ExCo in Jan 1998.
- (c) Same as the draft Bill considered by ExCo in Jan 1998.

**5. Planning Enforcement : Unauthorized Development**

- (a) Enforcement action against undertaking of unauthorized development.
- (b) SPL to review Authority's decision in respect of a reinstatement notice.

- (a) Same as the current system. Enforcement power to be enhanced through:-
  - notices served run with the land and *binding on successors*;
  - making landowners, *managers* registered under s.15 of the New Territories Ordinance, *directors* of companies and *partners* of partnerships *liable*;
  - *aerial photographs admissible* as evidence in court; and
  - imprisonment sentence introduced.
- (b) *AB to review Authority's decision in respect of a reinstatement notice.*

- (a) Same as the White Bill, except that *no imprisonment sentence will be introduced and the maximum fines will be doubled. In addition, contractors will be made liable.*
- (b) Same as the White Bill.

**6. Other Major New Provisions**

- (a) No such provision under the existing

- (a) (i) Designation of "designated

- (a) (i) Same as the White Bill except that the

**Existing TPO**

Ordinance.

(b) No such provision under the existing Ordinance.

**The White Bill**

development”(“DD”), “environmentally sensitive area”(“ESA”) and “special design area”(“SDA”). The carrying out of “DD” and developments within “ESA” and “SDA” would require permission from TPB. An *Environmental report* should be submitted for applications for “DD” and developments within “ESA”. An *urban design plan, a master layout plan and a landscape plan* should be submitted for applications for developments within “SDA”.

(ii) *Environmental statements* to be submitted with all planning applications.

(iii) *No transfer of unexpended gross floor area* from one zone to another within the same site except with planning permission from TPB.

(b) To set up *planning registers* for public inspection.

**The Town Planning Bill**

report was *renamed as “Report on Key Environmental and Planning Issues”*.

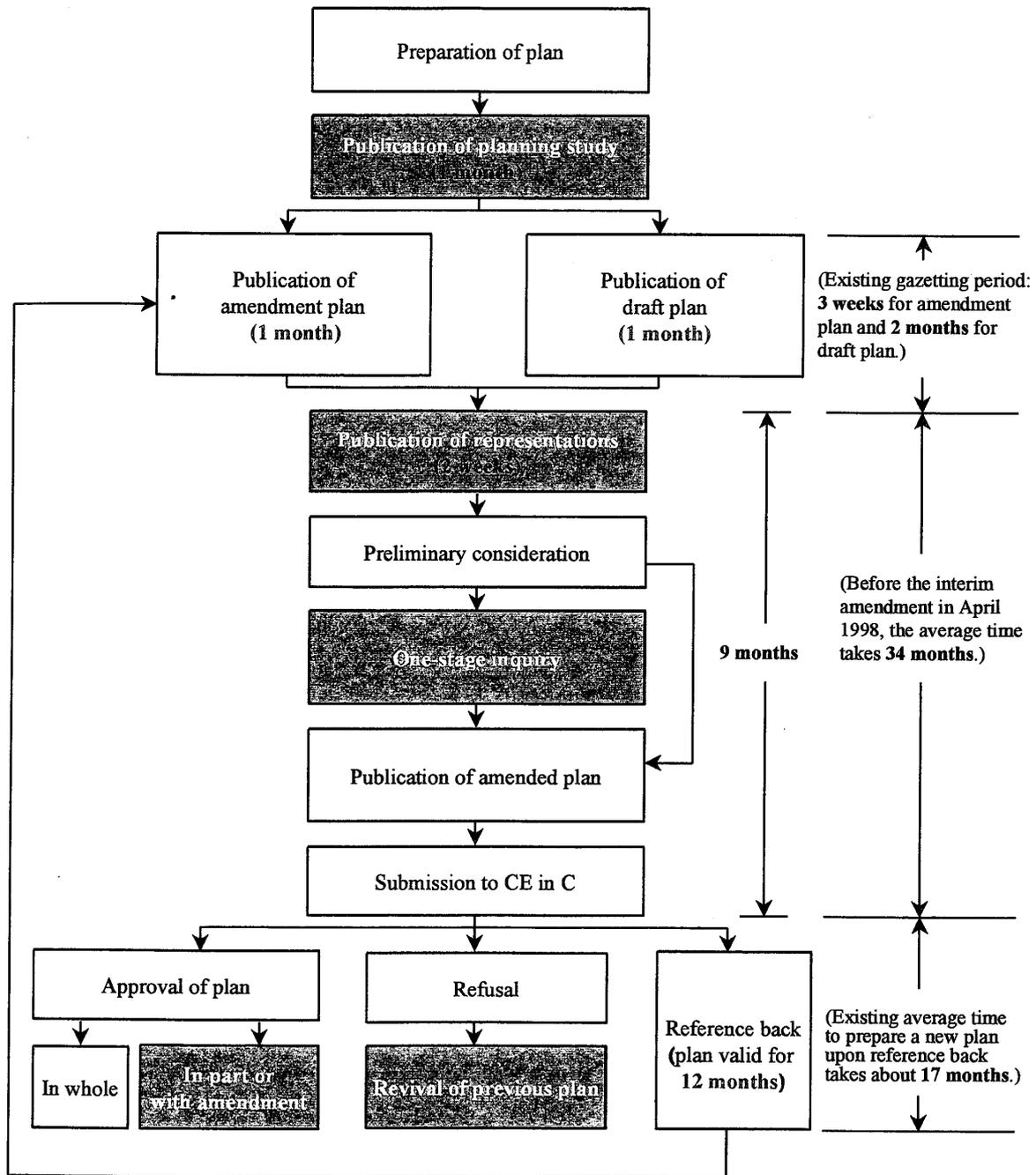
(ii) Environmental statements required to be submitted *only for applications which require publication*.

(iii) Same as the White Bill with modifications to better reflect the intention.

(b) Same as the draft Bill considered by ExCo in Jan 1998.

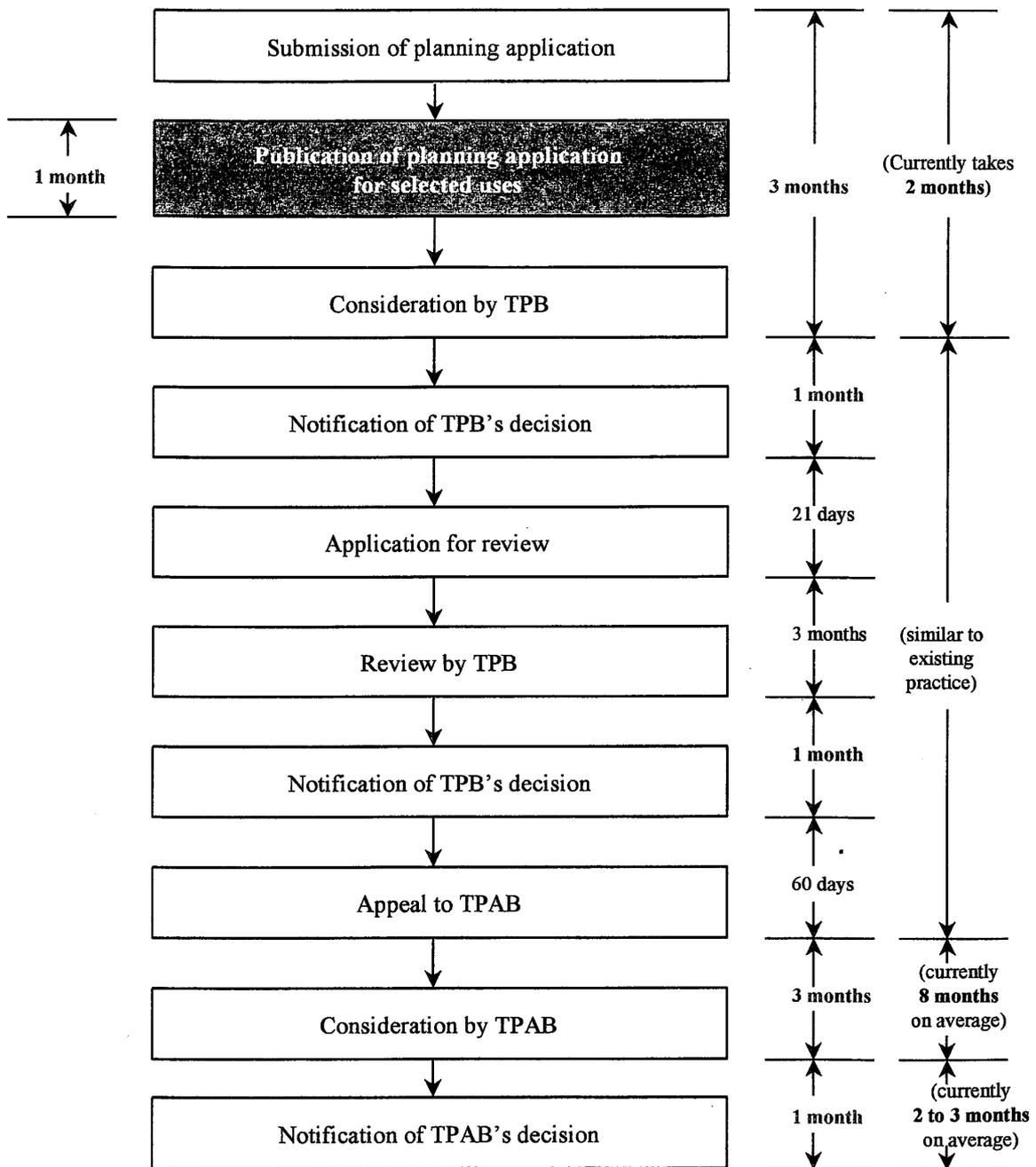
# The Proposed Plan-making Process

Annex C



- Notes: 1.   New provisions  
 2.. New statutory time limits shown in blue.

## The Proposed Planning Application Process



- Notes: 1.  New provision  
 2. New statutory time limits shown in blue.