

**Bills Committee on Town Planning (Amendment) Bill 2003 –
The Administration's Response to Public Submissions**

Purpose

At the first meeting of the Bills Committee on Town Planning (Amendment) Bill 2003 held on 18 July 2003, Members agreed to invite a number of organizations or individuals to submit their views on the Bill to the Committee. So far, nine organizations¹ have made submissions. The views expressed in the submissions are diverse. The purpose of this paper is to set out the Administration's response to the key issues or concerns raised in the submissions.

The Administration's Response

Expediting the Plan-making Process

2. While some organizations support the proposal to expedite the plan-making process by streamlining the administrative measures, others hold different views. The key issues or concerns raised in this respect are -

- the proposed one-month plan exhibition period for public representation is too short;
- the “one-stage” hearing process to consider representations and comments within six months would limit the opportunity for the public to prepare for hearing and to be properly heard;
- the proposal to allow submission of both representations and comments is welcomed, but the three-week time limit for submission for comments may not be adequate;
- statutory requirement should be put in place to publish planning studies for public comments before gazetting the relevant plans.

¹ These nine organizations include the Association of Architectural Practices, the Association of Planning Consultants of Hong Kong, the Hong Kong Institute of Architects, the Hong Kong Institute of Planners, the Hong Kong Institute of Surveyors, the Law Society of Hong Kong, the Real Estate Developers Association of Hong Kong, Urban Watch, and World Wide Fund for Nature Hong Kong.

The Administration's response

3. One of the primary objectives of the Bill is to speed up the planning and development process for both public and private projects. The proposed one-month plan exhibition period is to strike a reasonable balance between public participation and efficiency in the plan-making process. To allow sufficient time for the public to prepare for the submissions, the Bill provides four additional weeks for further written submissions by “representers” upon expiry of the plan exhibition period. In effect, the time allowed is two months, same as at present.

4. The consideration of representations and comments under a condensed process within a shorter timeframe aims to streamline the plan-making process without compromising the rights of the public to raise representation or comment or to prepare for the hearing. Both “representers” and commenters” shall be invited to attend the same hearing and be heard collectively. Such arrangement is an improvement over the current three-stage process, in that the Town Planning Board (TPB) would be able to hear and balance the views of all parties before making a decision on the representations. It also enhances transparency.

5. The three-week time limit for submission of comments to representations is considered reasonable, in view of the objective to expedite the plan-making process on the one hand, and the need to enable all concerned parties to have sufficient time to study others’ comments before the hearing on the other hand.

6. It is already existing practice to carry out extensive consultation on major planning studies. At different stages of formulating major planning proposals, public forums are held and consultation documents are published to invite public comments. Legislative amendment to mandate the public consultation on planning studies is therefore considered not necessary.

Streamlining the Planning Approval Process

7. Most organizations support the objective to streamline the planning approval process. Some related concerns expressed are -

- while the proposal to exempt certain minor amendments to planning permission from further application is supported, there should be clear descriptions of what constitute minor amendments; and
- the review of TPB's decisions under s.17 of the Town Planning Ordinance should not be delegated to committees under TPB.

The Administration's response

8. It is the Administration's intention to further streamline the planning approval process by exempting from further application certain minor amendments to permission previously granted (i.e. Class A amendments). Applications for other minor amendments (i.e. Class B amendments) would continue to be processed by a public officer under the delegated authority of TPB. TPB will draw up the lists of Class A and Class B amendments based on the existing TPB Guidelines No. 19B (at Annex) and will promulgate the lists by way of Gazette notice.

9. The review mechanism provided under s.17 of the Ordinance is to allow TPB or its committee(s) to review its decision after hearing the representation made by the applicant. It is not a procedure for appeal. If the applicant is aggrieved by the decision of the review committee, he/she can then appeal to the independent Town Planning Appeal Board. The proposal to delegate TPB's authority to its committee(s) to consider reviews under s.17 of the Ordinance will help improve the efficiency of TPB's operation and allow TPB to focus on strategic planning issues and major applications.

Enhancing the Transparency of the Planning System

10. The publication of all planning applications for public comments is generally supported. There are some related concerns expressed by some organizations as follows -

- the publication of all planning applications may delay the application process. This is also a suggestion to publish only applications involving contentious uses;
- some views were expressed that the requirement to obtain the consent of the concerned land owner or notify the owner before making a planning application or application for amendment of plans

is unnecessary or impracticable in some cases;

- new plans or amendments of plans initiated by TPB should be subject to the same requirements as those imposed on applications submitted by the public, such as the requirement to obtain owner's consent or notify the owners.

The Administration's response

11. The proposal to publish planning applications and applications for amendment of plans is an important step to enhance the transparency of the planning application system. The new requirement will not delay the application process. The applications will be considered within the existing time limit, i.e. three month for applications for amendment of plans and two months for planning applications.

12. Public consultation at the plan-making stage and planning application stage serves different purposes. The former allows the public to express views on the planning intention and broad contents of the plan whilst the latter allows them to comment on site-specific proposals that would have direct impact on their neighborhood. Publishing the planning applications for public comments enables TPB to take into account public and local views when considering the compatibility and suitability of a planning application at a particular locality. We see the need to publish all applications, instead of just contentious uses, because there are practical difficulties in determining such uses.

13. The proposal to obtain owner's consent or notify the owner aims to enhance the openness and fairness of the planning process. In view of the possible difficulties in notifying owners in some cases due to multiple ownership or absentee owners, TPB would accept that the requirement is met if the applicant can prove that he/she has taken all reasonable steps to notify the concerned owners.

14. For amendments of plans or new plans initiated by TPB, they are usually preceded by planning studies and associated public consultation. It is also current practice to consult the relevant District Council prior to the publication of a draft plan or before major amendments to a plan are proposed. Under the Town Planning Ordinance, TPB has a statutory duty to prepare plans

to promote health, safety, convenience and general welfare of the community. Our proposal to make an express provision for application for amendment of statutory plan in the Bill is to facilitate amendment of plan initiated by members of the public other than that by TPB. It is considered necessary to inform the affected land owners and the public of such amendment so that TPB can take into account the public's views in considering whether to amend the plan.

Strengthening Enforcement Control against Unauthorized Developments

15. The proposed amendment is to address a technical deficiency of the existing ordinance by preventing the abuse that some recipients of enforcement notices may use submission of planning application to delay prosecution action, hence causing prolonged environmental concerns. We note that the proposal is generally supported.

Others

16. Apart from the above, some organizations have raised other issues which are not covered in the Bill. These include -

- changes to the chairmanship, secretariat, powers and operation of TPB; designation of “Special Design Area” and “Environmentally Sensitive Area”; and
- compensation for planning blight and planning restrictions.

The Administration's response

17. There was much discussion on issues relating to the composition, powers and operation of TPB and the designation of “Special Design Area” and “Environmentally Sensitive Area” in the context of the Town Planning Bill 2000. Since there were divergent views on these issues, further deliberation within the Administration and consultation with the stakeholders is required. Our plan is to examine these issues in the second stage of amendment.

18. As regards issues relating to planning blight and planning restrictions, the existing Ordinance and the Bill has allowed affected land owners to raise representations or comments to development restrictions on statutory plans in

the plan-making process. These representations or comments would be thoroughly considered by TPB in accordance with the provisions of the Ordinance. Under the Bill, we have also expressly allowed for application for amendment of plans which will provide an opportunity for the land owner to submit their case to TPB for consideration to address possible planning blight problem.

Housing, Planning and Lands Bureau
September 2003

Guidelines

TPB PG-NO. 19B (Revised June 2002)

TOWN PLANNING BOARD GUIDELINES FOR MINOR AMENDMENTS TO APPROVED DEVELOPMENT PROPOSALS

(Important Note :

The Guidelines are intended for general reference only and are liable to revision without prior notice. The Town Planning Board will only make reference to the guidelines current at the date on which it considers an application. Any enquiry on this set of guidelines should be directed to the Planning Information and Technical Administration Unit of the Planning Department, 17th floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong - Tel. No. 2231 5000.)

Broad Guidelines

1. Under section 2(5)(b) of the Town Planning Ordinance (the Ordinance), the Town Planning Board (TPB) has delegated its authority to the District Planning Officer (DPO), Chief Town Planner/Urban Renewal (CTP/UR) (for Land Development Corporation/Urban Renewal Authority Schemes only) and Director of Planning (D of Plan) to consider planning applications for the minor amendments to development proposals with planning permission previously granted by the TPB under section 16 of the Ordinance (including submission of Master Layout Plan), as listed under the following table.
2. No separate planning application would be required for amendments made to the approved development proposal as a result of fulfilling the approval conditions provided that such amendments will not materially affect the originally approved scheme and are acceptable to all Government departments concerned. Amendments which are considered unacceptable by any concerned Government department will be submitted to the TPB for determination.
3. For consideration of minor amendments to the approved development proposals, reference should be made to the scheme last approved by the TPB excluding any amendments subsequently made which are approved by DPO, CTP/UR and/or by D of Plan under TPB's delegated authority, unless the amendments involved do not relate to the amendments previously approved under delegated authority. If the amendments approved by DPO, CTP/UR and/or D of Plan under TPB's delegated authority in aggregate amount to amendments that should be considered by the TPB, an application would have to be submitted to the TPB for consideration.
4. For all minor amendments to be approved by DPO and CTP/UR under TPB's delegated authority (including those stated as 'Always Permitted'), the changes should not involve any changes in the total gross floor area (GFA) or plot ratio of the approved scheme (except for item 1 below).
5. For applications submitted direct to DPO, CTP/UR and/or D of Plan under TPB's delegated authority, the applicant does not need to complete the application form for submission of planning applications for permission under section 16 of the Ordinance. However, for ease of reference and to enable a quick response from the DPO or CTP/UR concerned, the applicant should submit 20 copies of the relevant plans and supporting documents (if any) highlighting the difference(s) between the current submission and the approved scheme. For applications to be approved by DPO or CTP/UR, the applicants will be informed of the decision within 4 weeks from the date of receipt of the application. All applications to be processed by the D of Plan will be circulated to relevant Government departments for comments. The applicants will be informed of the decision within 6 weeks from the date of receipt of an application. Applications which are considered unacceptable by Government departments concerned will be submitted to the TPB for determination. For applications to be considered by the TPB, the applicant should follow the normal procedures for submission of planning applications for permission under section 16 of the Ordinance and submit 65 copies of the relevant plans and supporting documents (if any)

showing the difference(s) between the current submission and the approved scheme. These applications would be determined by the TPB within the two-month statutory time limit.

6. Application for an extension of not more than 18 months to the usual time condition on commencement of development and/or not more than 9 months to the time condition for compliance of an approval condition attached to a previously granted planning permission provided that the application for extension of time limit has not, since its last approval by the TPB, exceeded the 18-month or 9-month limit, where appropriate, will also be considered by the D of Plan under the delegated authority of the TPB. An application for such an amendment should be submitted to the Secretary, TPB. The applicant will be informed of the decision within 6 weeks from the date of receipt of an application. However, any application for further extension which would result in a total extension period exceeding the 18 month or 9-month, where appropriate, or applications which are considered unacceptable by Government departments concerned will be submitted to the TPB for determination within the two-month statutory time limit. Please refer to TPB Guidelines for Renewal of Planning Permission and Extension of Time for Compliance with Planning Conditions for further details.
7. For development with a temporary planning approval (up to a maximum of 3 years), all changes to the approved scheme will be approved by DPO under TPB's delegated authority provided that such amendments would neither involve any increase in development intensity nor result in adverse visual, traffic and environmental impacts on the area. Otherwise, the application should be submitted to the TPB for consideration.
8. For those proposed minor amendments to the approved scheme which are 'Always Permitted', there is no need to circulate such amendments for departmental comments. The DPO or CTP/UR will inform the applicant of the approval within 7 working days from the date of receipt of the application.

Categories of Minor Amendments	Approved by DPO or CTP/UR under TPB's Delegated Authority	Processed by D of Plan under TPB's Delegated Authority	Considered by the TPB	Remarks
1. Changes in total GFA*				*Excluding changes in GFA for Government, institution or community (GIC) facilities which are dealt with under item 8 ; and transference of plot ratio between different sites
Reduction in GFA	Always Permitted	NA	NA	
Increase in GFA (due to increase in site area and/or additional PR permitted by the Buildings Authority under Building (Planning) Regulation (B(P) R) during detailed planning)	- Not exceeding max. PR/GFA permissible under the statutory plan; or - Not exceeding 2,000m ² or 5% of the approved total GFA whichever is the less*	Exceeding 2,000m ² or 5% of the approved total GFA but not exceeding 4,000m ² or 10% of the approved total GFA whichever is the less*	Exceeding 4,000m ² or 10% of the approved total GFA whichever is the less*	*Without PR or GFA restrictions on the statutory plan
2. Changes in site area/boundary	Changes due to the setting out of site boundary at the	Other changes not exceeding 10% of the	Other changes exceeding 10% of the	

	processing of land grant, inclusion/exclusion of private lane and/or land for public purposes in site area calculation	gross site area of the approved scheme	gross site area of the approved scheme	
Changes due to detailed survey	Always Permitted	NA	NA	
3. Changes in the number of units				
Reduction in number of units	Always Permitted*	NA	NA	*Provided that the minimum number of units is not specified in the planning brief, if any.
Increase in number of units	Not exceeding 100 units or 5% of the approved max. or min. levels of provision whichever is the less*	Exceeding 100 units or 5% but not exceeding 200 units or 10% of the approved max. or min. levels of provision	Exceeding 200 units or 10% of the approved max. or min. levels of provision	*Provided that the Commissioner for Transport does not object to the corresponding changes in the number of car parking provision
4. Changes in unit size	Unit size not specified in the planning brief, if any*	Deviated from the unit size specified in the planning brief, if any	NA	*Provided that the Commissioner for Transport does not object to the corresponding changes in the number of car parking provision
5. Building blocks				
- Changes in form of building(s)	Where the concerned block(s) is not the subject of environmental mitigation measures*	Where the concerned block(s) is the subject of environmental mitigation measures	NA	*The concerned block(s) may be an environmental buffer or subject to environmental nuisance.
- Changes in other aspects	NA	Minor changes in disposition of building block	NA	
	NA	Changes in number of building blocks	NA	
6. Building height* and/or number of storeys				*Unless specified on the relevant OZP, all roof top installations which are of reasonable height, are excluded from building height

				restrictions.
Reduction in building height and/or number of storeys	Always permitted	NA	NA	
Increase in building height and/or number of storeys	1. Not exceeding the building height/no. of storeys restriction; or 2. Not exceeding 10% of the approved levels [excluding refuge floor(s), if any] ¹	Exceeding 10% but not exceeding 20% of the approved levels [excluding refuge floor(s), if any] ¹	Exceeding 20% of the approved levels [excluding refuge floor(s), if any] ¹	1. Provided there are no building height/number of storeys restrictions on the statutory plan; or the proposed change does not exceed the statutory height limit stipulated on the plan
Incorporation of Green Features ^{1&2}	Always permitted	NA	NA	2. The green features refer to those permitted under Joint Practice Notes promulgated by the Buildings Department, Lands Department and Planning Department, and agreed by TPB.

7. Site

Reduction in Site Coverage	Always Permitted	NA	NA	
Increase in Site Coverage ¹	Not exceeding 5% of the approved site coverage	Exceeding 5% but not exceeding 10% of the approved site coverage	Exceeding 10% of the approved site coverage	1. Provided there are no site coverage restrictions on the statutory plan; or the proposed change does not exceed the statutory site coverage limit stipulated on the plan
Incorporation of Green Features ^{1&2}	Always Permitted	NA	NA	2. The green features refer to those permitted under the Joint Practice Notes promulgated by the Buildings Department, Lands Department and Planning Department, and agreed by TPB.

8. Changes in type/mix of uses¹

1. Changes in type/mix of uses within the same category ² ; or	Changes in GFA distribution from domestic to non-domestic, or vice versa, provided that	Any other changes in type/mix of uses	1. The changes should not contravene the GFA/PR restrictions, if any, on the OZP.
2. Changes in GFA for non-domestic			2. Other than public

	<p>uses from one category to another, provided that the changes do not exceed 5% of the approved level(s), e.g. transferring the GFA from 'office' to 'retail'; or</p> <p>3. Always Permitted - Changes in location of non-domestic uses within non-domestic podium/building, e.g. relocation of 'retail shop' from G/F to 2/F of non-domestic podium;</p>	<p>the changes do not exceed 5% of the approved level(s), e.g. transferring 'office' GFA to domestic GFA</p>		<p>utilities, GIC and recreational facilities, uses to be shown within a development scheme/ MLP could be broadly divided into the following 4 categories :</p> <p>a) residential flat b) hotel c) office d) commercial, retail and service uses including bank, barber shop, beauty parlour, fast food shop, off-course betting centre, pawn shop, photographic studio, place of public entertainment, restaurant, retail shop, tutorial school, kindergarten, child care centre, service trades and showroom excluding motor-vehicle showroom (These uses are similar to those permitted as of right in the lowest 3 floors of "R(A)" zone.)</p>
9. Changes to internal layout/ disposition of premises	Always Permitted provided that the changes are not subjects of environmental mitigation measures	Changes other than those approvable by DPO or CTP/UR	NA	
10. GIC facilities	Changes in the types, locations, and/or floor area of the facilities proposed and agreed by the relevant Government departments*	<p>1. Changes in the types, locations, and/or floor area of the facilities proposed by developer*</p> <p>2. Deletion of the facilities agreed by relevant Government departments*</p>	Deletion of the facilities under other circumstances	* Provided that there is no local objection to the proposed changes

11. Open space¹

Increase in total area	Always Permitted	NA	NA	1. Applicable to public and private open space within the scheme
Reduction in total area ²	Not exceeding 5% of the approved total area for open space purpose	Exceeding 5% but not exceeding 10% of the approved total area for open space purpose	Exceeding 10% of the approved total area for open space purpose	2. The resulting total area of open space should not be less than the minimum standard as stated under the Hong Kong Planning Standards and Guidelines.
Changes in location	Disposition of the open space remains on the same street/podium level (s)	Changes in the disposition of the open space from street to podium level(s), or vice versa	NA	
Changes in the ratio of active and passive open space	Not exceeding 10% of the approved provision	Exceeding 10% but not exceeding 20% of the approved provision	Exceeding 20% of the approved provision	

12. Car-parking and loading/unloading facilities

Changes in the locations of ingress/egress point(s), footbridges, public transport terminus and lay-bys, and the layout of internal roads, EVA and car park	No changes in the disposition of building blocks*	Involving changes in the disposition of building blocks	Involving deletion of footbridges	*Provided that the Commissioner for Transport and/or Director of Fire Services do not object to the changes
Changes in the total number of parking spaces	Not exceeding 50 parking spaces or 5% of the approved min. level of provision whichever is the less*	Exceeding 50 parking spaces or 5% of the approved min. level of provision but not exceeding 100 parking spaces or 10% of the approved min. level of provision whichever is the less	Exceeding 100 parking spaces or 10% of the approved min. level of provision whichever is the less	*Notwithstanding the 5% limit, changes not exceeding 10 parking spaces may be approved provided that C for T does not object to the changes
Changes in the total number of loading/unloading spaces	Not exceeding 10% of the approved min. level of provision*	Exceeding 10% but not exceeding 20% of the approved min. level of provision	Exceeding 20% of the approved min. level of provision	*Notwithstanding the 10% limit, changes not exceeding 2 loading/unloading spaces may be approved provided

				that C for T does not object to the changes
Reduction in the total number of parking spaces due to reduction in number of units	Provided that the car parking ratio remains unchanged and C for T does not object to the changes	NA	NA	
13. Non-building area	Always Permitted - Changes arising from minor site boundary adjustment	Other Changes	NA	
14. Master landscape plan	Variation of tree preservation or tree felling of up to 5% for the trees to be preserved within the site	Major changes in soft/hard landscape design, changes in implementation programming and variation of tree preservation or tree felling of up to 10% for the trees to be preserved within the site	1. Variation of tree preservation or tree felling of more than 10% for the trees to be preserved within the site 2. If the variation includes Champion Trees*	*Champion Trees refer to those trees identified in the book 'Champion Trees in Urban Hong Kong' published by the then Urban Council in 1994.
Preservation and planting of more trees	Always Permitted	NA	NA	
15. Indoor Recreational facilities				
Changes in disposition within building(s) and/or types of facilities	Changes in public indoor recreational facilities within the scheme agreed by relevant Government departments	Changes in public indoor recreational facilities within the scheme under other circumstances	NA	
	Always Permitted - Changes for private indoor recreational facilities within the scheme	NA	NA	
Increase in floor area	Always Permitted	NA	NA	
Reduction in floor area	Not exceeding 5% of the approved level of provision	Exceeding 5% but not exceeding 10% of the approved level of provision	Exceeding 10% of the approved level of provision	
16. Ancillary major utility installation*	NA	Change in location of the uses	NA	*Examples include refuse collection point, sewage treatment facilities,

electricity
substation and
liquefied petroleum
gas compound.

17. Phasing & Implementation Schedule	Any minor changes in phasing and implementation schedule with no GIC facilities or public open space involved	Minor changes in phasing and implementation schedule under other circumstances	NA
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TOWN PLANNING BOARD
June 2002

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