

LEGISLATIVE COUNCIL BRIEF

Town Planning Ordinance (Chapter 131) TOWN PLANNING (AMENDMENT) BILL 2003

INTRODUCTION

A At the meeting of the Executive Council on 6 May 2003, the Council ADVISED and the Chief Executive ORDERED that the Town Planning (Amendment) Bill 2003, at Annex A, should be introduced into the Legislative Council (LegCo) to streamline the planning procedures, enhance public involvement in the planning process, and strengthen enforcement control against unauthorized developments not permitted under the Town Planning Ordinance.

JUSTIFICATIONS

2. In February 2000, we introduced the comprehensive Town Planning Bill into the LegCo. Due to the complexity of the issues involved, the Bills Committee was not able to complete consideration of the Bill before the term ended in July 2000. The Committee was dissolved after nine meetings.

3. There was a general consensus on the need for a new piece of town planning legislation, particularly to streamline the planning procedures and to promote public participation. However, the Bills Committee and the stakeholders raised a number of fundamental issues outside the scope of the Bill such as the chairmanship, openness and public accountability of the Town Planning Board (the Board), compensation for planning blight and the Board's role in strategic planning especially road and railway planning. There were also divergent views on specific issues such as designation of Special Design Area and Environmentally Sensitive Area, planning control on building development and interim development control. These issues are unlikely to be resolved without going through a protracted process of further consultation with the stakeholders. To get the amendment exercise back on the right track, we intend to amend the Town Planning Ordinance in stages, giving priority to amendments which have general consensus and would produce immediate benefits to the

community. The proposals put forward in the first stage of amendments will focus on -

- (a) expediting the plan-making process by, among others, standardizing the plan exhibition period to become one month, and by shortening the period for considering representations from nine months to six months;
- (b) streamlining the planning approval process by exempting certain minor amendments to planning permission from further application, and by further delegation of powers from the Board to its committees and public officer;
- (c) enhancing the transparency of the planning system by, among others, requiring an applicant for amendment of plan and for planning permission to obtain consent of or notify the land owner of the application site, and by requiring the Board to publish all applications for amendment of plan and for planning permission for public comments; and
- (d) strengthening enforcement control against unauthorized developments not permitted under the Ordinance by addressing the current technical deficiencies in the existing Ordinance.

THE BILL

4. The main provisions are -

Expediting the plan-making process

- (a) The Amendment Bill aims at streamlining the procedures whilst promoting a more open plan-making process. A flow chart showing the existing and the proposed processes is at Annex B. The new proposals are as follow -

B

- (i) to standardize the plan exhibition period for submitting representations, by changing the period for amendment to draft plans from three weeks to one month, and by changing the period for new plans or amendment to approved plans from two months

to one month [**Cl. 6 and 9(b)(i)**];

- (ii) to provide additional time for representers to make submissions to the Board by allowing them to furnish the Board with further information within four weeks upon expiry of the plan exhibition period [**Cl. 8**];
- (iii) to enhance public involvement in the plan-making process, by providing that both supportive and adverse representations, instead of objections, could be lodged [**Cl.7**];
- (iv) to adopt a single hearing process to consider representations received by the Board in order to shorten the period for considering representations from nine months to six months [**Cl.8 and 10(b)(iv)**];
- (v) to reduce the extension period for considering representations that may be granted by the Chief Executive (CE) from six months to three months [**Cl.10(b)(vi)**]; and
- (vi) to vest the authority to refer an approved plan to the Board for replacement or amendment with the CE, instead of the CE in Council under the existing Ordinance [**Cl.12(a)**].

Streamlining the planning approval process

- (b) The Amendment Bill allows certain minor amendments to planning permission to be exempted from the requirement of submitting further application [**Cl.17**].
- (c) It also enhances the efficiency of the Board by enabling -
 - (i) the existing committees of the Board to consider applications for amendment of plan and amendment to planning permission, etc. [**Cl.3**];
 - (ii) the Board to set up committees to consider applications for review of decisions concerning planning permission and amendment to planning permission under section 17 [**Cl.4**]; and

- (iii) the Board to delegate its power to a public officer to determine acceptance of further information in relation to applications for amendment of plan, planning permission, amendment to planning permission and in relation to review applications under section 17 [Cl.3].

Enhancing the transparency of the planning system

- (d) To facilitate public involvement in the plan-making process, it is proposed to add express provisions in the Amendment Bill to formalize the existing administrative arrangement for applications for amendment of plan. In line with the current administrative pledge, the Board shall consider such applications within three months. Provisions are also included to allow the applicant to attend the Board meeting and be heard at the meeting [Cl.13].
- (e) To ensure that the land owners will be aware of any development proposal on his land, an applicant for amendment of plan and for planning permission, if not the land owner of the application site, shall be required to obtain consent of or notify the land owner concerned [Cl.13 and 16(a)].
- (f) It is also proposed to require the Board to make public all applications for amendment of plan and for planning permission for three weeks for public comments. Notices will be posted on site or published in newspapers and all applications will be made available for public inspection. Under this new requirement, the Board shall continue to consider applications within the existing timeframe (two months for planning permission; three months for review applications under section 17 and applications for amendment of plan) [Cl.13, 16(b) and 18(b)].

Recovering Costs for Processing Planning Applications

- (g) To recover the Administration's costs for processing applications for amendment of plan, planning permission and amendment to planning permission, it is proposed to enable the Secretary for Housing, Planning and Lands to prescribe fees by regulation [Cl.14(c)].

Strengthening Enforcement Control Against Unauthorized Developments Not Permitted Under the Ordinance

- (h) The following amendments are proposed to address the current technical deficiencies in the existing Ordinance –
- (i) to confine the terms requiring compliance under an enforcement notice to those requiring discontinuance of an unauthorized development, in order to stop possible abuse of the existing provisions by submission of a planning application under the Ordinance and instituting the associated review and appeal process to delay the prosecution proceedings [**Cl.20(a)(iii)**];
 - (ii) to facilitate investigation of suspected unauthorized development by allowing the Planning Authority to enter private land other than domestic premises to ascertain whether there are matters constituting unauthorized developments, and to serve notice to obtain information, with failure to comply with the notice constituting an offence [**Cl.19**]; and
 - (iii) to expressly provide that managers of a clan, family or t'ong shall be regarded as land owners under the Ordinance, so that they are, among others, liable to offences in relation to unauthorized developments, in order to clarify the existing legal position [**Cl.2(a)**].

 C The existing provisions being amended are at Annex C. Detailed comparison of
 D the main provisions of the Ordinance and the Amendment Bill is at Annex D.

LEGISLATIVE TIMETABLE

5. The legislative timetable will be -

Publication in the Gazette	9 May 2003
First Reading and commencement Of Second Reading debate	21 May 2003

Resumption of Second Reading
Debate, committee stage and
Third Reading

to be notified

IMPLICATIONS OF THE PROPOSAL

E 6. The proposal has economic, financial and civil service, and sustainability implications as set out at Annex E. The Amendment Bill does not alter the current binding effect of the existing Ordinance. It is in conformity with the Basic Law, including the provisions concerning human rights. It has no adverse productivity or environmental implications.

PUBLIC CONSULTATION

7. From August to December 2002, we consulted the LegCo Panel on Planning, Lands and Works, major political parties, the Town Planning Board, the Land and Building Advisory Committee, the Real Estate Developers Association and concerned professional institutes on the amendment proposals. Most of them generally supported the main thrust of the Amendment Bill. However, some expressed concern that the shortened periods for raising representations might be inadequate and the streamlined process for considering representations might affect the quality of decisions. There were also divergent views on the level of details of the information in a planning application to be released for public comment, and whether managers of a clan, family or t'ong should be held responsible for unauthorized developments. Some were also concerned that the charging of application fee based on full cost recovery could be very expensive and not timely in view of current economic conditions.

8. Most of the above concerns are a matter of balance between efficiency and fairness or openness of the system, or one between private interest or sectoral interest and public interest. We have evaluated their views and carefully struck a reasonable balance in formulating the content of the Amendment Bill. To address the concern on the shortened plan exhibition period, we have proposed to expressly allow an additional four weeks further to the expiration of such period for further written submissions by the representers. In other words, anybody who needs more time to prepare a substantial representation can lodge a short

representation within the first four weeks, with the additional four weeks to beef up the representation. In the meantime, the Board can start processing the other representations received before the deadline of the period for lodging representations.

9. Also, the administrative practice of carrying out extensive consultation on major planning proposals before translating them into statutory plans would keep the public well-informed to enable them to respond quickly once the plan is gazetted. On charging of application fees, we are mindful of the need to work out a fee scale based on efficient and streamlined procedures.

PUBLICITY

10. A press release will be issued on 9 May 2003 and a spokesman will be available to handle media and public enquiries.

ENQUIRY

11. Enquiries on this Legislative Council brief may be directed to Mr Daniel Cheng, Principal Assistant Secretary for Housing, Planning and Lands at telephone no. 2848-2119.

Housing, Planning and Lands Bureau

7 May 2003

HPLB(CR)(PL)184/02(2003) Pt. 63

Town Planning Ordinance (Chapter 131)

TOWN PLANNING (AMENDMENT) BILL 2003

- Annex A - Town Planning (Amendment) Bill 2003
- Annex B - Flow Chart Showing the Existing and Proposed Plan-Making Processes
- Annex C - Existing Provisions of Legislation Being Amended
- Annex D - Detailed Comparison of the Main Provisions of the Town Planning Ordinance and the Town Planning (Amendment) Bill
- Annex E - Implications of the Proposal

TOWN PLANNING (AMENDMENT) BILL 2003

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A BILL

To

Amend the Town Planning Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Town Planning (Amendment) Ordinance 2003.

2. Interpretation

Section 1A of the Town Planning Ordinance (Cap. 131) is amended -

(a) by repealing the definition of "land owner" and substituting -

"land owner" (土地擁有人) -

- (a) has the same meaning as "owner" in section 2(1) of the Buildings Ordinance (Cap. 123); and
- (b) in the case of any land which is held from the Government under lease or other grant, agreement or licence in the name of a clan, family or t'ong, also includes a manager appointed to represent it and registered under section 15 of

the New Territories Ordinance
(Cap. 97);";

(b) by adding -

"prescribed fee" (訂明費用), in relation to any
matter, means the fee prescribed in relation
to that matter by a regulation made under
section 14(2);".

3. Appointment of Town Planning Board

Section 2 is amended -

(a) in subsection (5), by repealing everything before
"permission for" and substituting -

"(5) The Board may -

(a) delegate to a committee appointed under
subsection (3) any of its powers and
functions under sections 3, 4(1), 4A,
5, 7(1), (2) and (3), 8, 12A, 16, 16A
and 20(1); and

(b) delegate to a public officer or class
of public officers any of its powers and
functions under sections 12A(12),
16(2I), 16A(5) and 17(2G) and any of its
powers and functions in respect of -

(i) an application made under
section 16A(2); and

(ii) an application for";

(b) by adding -

"(6) Subject to the provisions of this Ordinance, the Board may determine its practice and procedure at its meetings.".

4. Appointment of committees by the Board

Section 2A(1) is amended by repealing everything after "to exercise" and substituting "any of the Board's powers and functions under sections 6D and 17.".

5. Section added

The following is added -

"2B. Transaction of business by circulation of papers

(1) The Board or any committee appointed under section 2(3) or 2A may transact any of its business by the circulation of papers among its members, whether any such member is in or outside Hong Kong.

(2) A resolution in writing which is approved in writing by a majority of the members of the Board or of a committee appointed under section 2(3) or 2A shall be as valid and effectual as if it had been a resolution passed at a meeting of the Board or the committee, as the case may be, by the votes of the members by whom the resolution is so approved.".

6. Exhibition of draft plans

Section 5 is amended by repealing "2 months" and substituting "1 month".

7. Section substituted

Section 6 is repealed and the following substituted -

**"6. Representations relating to
draft plans**

(1) Within the period of 1 month during which a draft plan is exhibited under section 5, any person may make representation to the Board in respect of the draft plan.

(2) A representation referred to in subsection (1) shall -

(a) indicate -

- (i) the particular matter in the draft plan to which the representation relates;
- (ii) the reasons for the representation; and
- (iii) the amendments (if any) proposed by the person to the draft plan; and

(b) be made in such manner as the Board requires.

(3) Where a representation referred to in subsection

(1) -

- (a) is made to the Board after the expiration of the period of 1 month referred to in subsection (1);
or
- (b) does not comply with any of the requirements specified in or made under subsection (2),

it shall be treated as not having been made.

(4) The Board shall, as soon as reasonably practicable after the expiration of the period of 1 month referred to in subsection (1), make all representations made to it under that subsection available for public inspection at reasonable hours, and shall continue to do so until the representations have been considered at a meeting under section 6D(1).

(5) During the first 3 weeks of the period during which any representations are available for public inspection under subsection (4), the Board shall, in respect of the representations, cause to be published once a week in a local newspaper a notice that complies with subsection (6).

(6) A notice referred to in subsection (5) shall -

- (a) specify the place and hours at which the representations to which the notice relates are available for public inspection under subsection (4);
- (b) indicate that comments may be made to the Board in respect of the representations under section 6A(1) and specify the place and hours at which any comments so made will be available for public inspection under section 6A(4); and
- (c) indicate that further information may be given to the Board to supplement the representations under section 6B(1) and specify the place and hours at

which any further information so given will be available for public inspection under section 6B(3).".

8. Sections added

The following are added -

"6A. Comments on representations

(1) Within the first 3 weeks of the period during which any representation is available for public inspection under section 6(4), any person may make comment to the Board in respect of the representation.

(2) Any comment referred to in subsection (1) shall be made in such manner as the Board requires.

(3) Where any comment referred to in subsection (1) -

(a) is made to the Board after the expiration of the period of 3 weeks referred to in subsection (1);
or

(b) does not comply with any of the requirements made under subsection (2),

it shall be treated as not having been made.

(4) The Board shall, as soon as reasonably practicable after the expiration of the period of 3 weeks referred to in subsection (1), make all comments made to it under that subsection available for public inspection at reasonable hours, and shall continue to

do so until the comments have been considered at a meeting under section 6D(1).

6B. Further information to supplement representations

(1) Notwithstanding section 6(3), where any representation is made under section 6(1), the person by whom it is so made may, at any time within 4 weeks after the expiration of the period of 1 month referred to in section 6(1), give the Board such further information to supplement the representation as he considers necessary.

(2) Where any further information is given to the Board to supplement any representation under subsection (1) -

(a) subject to paragraph (b), the further information shall be regarded as forming part of the representation; and

(b) subject to subsection (3), sections 6(4), (5) and (6) and 6A do not apply to the further information.

(3) The Board shall, as soon as reasonably practicable after any further information is given to it to supplement any representation under subsection (1), make the further information available for public inspection at reasonable hours, and shall continue to do so until the further information has been considered as part of the representation at a meeting under section 6D(1).

6C. Withdrawal of representations, etc.

(1) Any person who makes -

(a) any representation under section 6(1); or

(b) any comment in respect of any such representation
under section 6A(1),

may, at any time before the representation or comment, as the case may be, has been considered at a meeting under section 6D(1), withdraw the representation or comment, as the case may be.

(2) Where any representation or comment is withdrawn under subsection (1), it shall be treated as not having been made.

6D. Consideration of representations, etc.

(1) Where any representation is made under section 6(1), the Board shall hold a meeting to consider the representation, as well as any comment made in respect of the representation under section 6A(1), as soon as reasonably practicable after -

(a) the expiration of the period of 3 weeks referred
to in section 6A(1); or

(b) the expiration of the period of 4 weeks referred
to in section 6B(1),

whichever is the later.

(2) The Board shall, in respect of any meeting to be held under subsection (1), give reasonable notice of particulars of the meeting (including the date, time and place of the meeting) to -

(a) the person who made the representation to which the meeting relates under section 6(1); and

(b) the persons (if any) who made any comment in respect of the representation under section 6A(1).

(3) At a meeting held under subsection (1) -

(a) the person who made the representation to which the meeting relates under section 6(1); and

(b) the persons (if any) who made any comment in respect of the representation under section 6A(1),

are entitled to attend and to be heard, either in person or by an authorized representative.

(4) If, at a meeting held under subsection (1), any of the persons entitled to attend and to be heard at the meeting under subsection (3) fails to attend, either in person or by an authorized representative, the Board may -

(a) proceed with the meeting in his absence; or

(b) adjourn the meeting to such date as it considers appropriate.

(5) Without prejudice to subsection (4), where the Board is satisfied that there are reasonable grounds to do so, it may adjourn any meeting held or to be held under subsection (1) to such date as it considers appropriate.

(6) The Board may direct that any representation made in respect of the same draft plan under section 6(1), as well as any comment made in respect of any such representation under section

6A(1), shall be considered at the same meeting, whereupon any such representation and comment -

- (a) shall be considered at the same meeting; and
- (b) may be considered by the Board either individually or collectively as it may determine.

(7) Where -

- (a) any meeting is adjourned under subsection (4) or (5); or

(b) the Board makes a direction under subsection (6), the provisions of this section also apply, with necessary modifications, to the meeting so adjourned or the meeting held in accordance with the direction, as the case may be, save to the extent that the Board otherwise directs.

(8) Upon consideration of any representation, as well as any comment, at a meeting under subsection (1), the Board shall consider and take a view as to whether it will propose amendments to the draft plan to which the representation and the comment (if any) relate in the manner proposed in the representation or otherwise in the manner that, in the opinion of the Board, will meet the representation."

9. Amendment of draft plans by Board

Section 7 is amended -

- (a) in subsection (1), by repealing "In addition to the power of amendment contained in section 6" and

substituting "Without prejudice to sections 6, 6A, 6B, 6C and 6D";

(b) in subsection (2) -

(i) by repealing "3 weeks" and substituting "1 month";

(ii) by repealing "twice" and substituting "once";

(iii) by adding "place and" before "hours at";

(c) by repealing subsection (4) and substituting -

"(4) Within the period of 1 month during which an amendment to a draft plan made under this section is exhibited under subsection (2), any person may make representation to the Board in respect of the amendment, whereupon -

(a) subject to paragraph (b), sections 6(2), (3), (4), (5) and (6), 6A, 6B, 6C and 6D shall apply, with necessary modifications, to and in relation to the representation as they apply to and in relation to a representation referred to in section 6(1); and

(b) sections 6(2), (3), (4), (5) and (6), 6A, 6B, 6C and 6D shall so apply as if -

- (i) each of the references to "draft plan" in section 6(2)(a) were a reference to the amendment in question;
- (ii) the reference to "any representation made in respect of the same draft plan under section 6(1)" in section 6D(6) were a reference to any representation made in respect of any amendment to the draft plan under this subsection; and
- (iii) the reference to "the draft plan to which the representation and the comment (if any) relate" in section 6D(8) were a reference to the part or parts of the draft plan that

concerns or concern any
area covered by the
amendment in question.

(5) For the avoidance of doubt, where
sections 6(2), (3), (4), (5) and (6), 6A, 6B, 6C
and 6D have application in the manner described
in subsection (4), any reference to any of those
provisions in this or any other Ordinance shall,
with necessary modifications, be construed
accordingly.";

(d) by adding -

"(6) Where the Board makes any amendments to
a draft plan under this section, the draft plan
shall thereafter be read as including those
amendments, and, for the avoidance of doubt, any
reference to the draft plan (however described)
in this or any other Ordinance shall, unless the
context otherwise requires, be construed
accordingly.".

**10. Submission of considered draft plan to
Chief Executive in Council**

Section 8 is amended -

(a) by repealing subsection (1) and substituting -

"(1) Before the expiration of the period
specified in subsection (2) in relation to a draft

plan, the Board shall submit the draft plan to the Chief Executive in Council for approval.

(1A) The Board shall submit a draft plan to the Chief Executive in Council under subsection (1) together with -

(a) where there have been no amendments under section 7 -

(i) a schedule of any representation made in respect of the draft plan under section 6(1), and any comment made in respect of any such representation under section 6A(1); and

(ii) a schedule of the amendments (if any) proposed by the Board to the draft plan under section 6D(8); or

(b) where there have been amendments under section 7 -

(i) a schedule of -

(A) any representation made in respect of the pre-amended draft plan under section 6(1), and

any comment made in
respect of any such
representation under
section 6A(1); and

- (B) any representation
made in respect of any
of the amendments under
section 7(4), and any
comment made in respect
of any such
representation under
section 6A(1); and

(ii) a schedule of -

- (A) the amendments (if any)
proposed by the Board to
the pre-amended draft
plan under section
6D(8); and

- (B) the amendments (if any)
proposed by the Board to
any part or parts of the
draft plan under
section 6D(8).";

(b) in subsection (2) -

- (i) by adding "of a draft plan" after "A submission";
- (ii) in paragraph (a), by repealing "in the case where the Board does not make amendments to the draft plan" and substituting "where there have been no amendments";
- (iii) in paragraph (b) -
 - (A) by repealing "in the case where the Board does make amendments to the draft plan" and substituting "where there have been amendments";
 - (B) by repealing "3 weeks" and substituting "1 month";
- (iv) by repealing "9 months" wherever it appears and substituting "6 months";
- (v) by repealing "2 months" where it twice appears and substituting "1 month";
- (vi) by repealing "6 months" and substituting "3 months".

11. Powers of Chief Executive in Council upon submission

Section 9 is amended by adding -

"(1A) Where the Board has under section 8(1A)(a)(ii) or (b)(ii) submitted with a draft plan a schedule of amendments, the Chief Executive in Council may under subsection (1)(a) also

approve the draft plan subject to any of the amendments, whereupon the amendments subject to which the draft plan is so approved shall be regarded as having been made to the draft plan when it is so approved."

12. Revocation, replacement and amendment of approved plans

Section 12 is amended -

(a) by repealing subsection (1) and substituting -

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

(1A) The Chief Executive may, of his own volition or at the request of the Board, refer any approved plan to the Board for -

(a) replacement by a new plan; or

(b) amendment.";

(b) in subsection (2), by adding "or (1A), as the case may be," after "(1)";

(c) in subsection (3) -

(i) by repealing "(1)(b)," and substituting "(1A),";

(ii) by repealing "any amendment" and substituting "a plan showing any amendments";

- (iii) by repealing "it replaces or amends" and substituting "the new plan replaces or the amendments amend, as the case may be,";
- (iv) by repealing everything after "is under subsection" and substituting -

"(1A)(b) -

- (a) subject to paragraph (b), sections 3, 4, 4A, 5, 6, 6A, 6B, 6C, 6D, 7, 8, 9, 10 and 11 shall apply, with necessary modifications, to and in relation to the plan showing the amendments as they apply to and in relation to a plan otherwise required to be prepared under section 3(1); and
- (b) sections 3, 4, 4A, 5, 6, 6A, 6B, 6C, 6D, 7, 8, 9, 10 and 11 shall so apply as if -
 - (i) each of the references to

"draft plan" in
section 6(1) and
(2)(a) were a
reference to any
of the
amendments;

(ii) the reference to
"any
representation
made in respect of
the same draft
plan under
section 6(1)" in
section 6D(6)
were a reference
to any
representation
made in respect of
any of the
amendments; and

(iii) the reference to
"the draft plan to
which the
representation
and the comment

(if any) relate"
in section 6D(8)
were a reference
to the part or
parts of the plan
showing the
amendments that
concerns or
concern any area
covered by the
amendments to
which the
representation
and the comment
(if any)
relate.";

(d) by adding -

"(3A) For the avoidance of doubt, where
sections 3, 4, 4A, 5, 6, 6A, 6B, 6C, 6D, 7, 8, 9,
10 and 11 have application in the manner described
in subsection (3), any reference to any of those
provisions in this or any other Ordinance shall,
with necessary modifications, be construed
accordingly.";

- (e) in subsection (4), by repealing "by the new approved plan or read as one with any approved amendment" and substituting "by the new plan or the plan showing the amendments as approved under section 9";
- (f) in subsection (5), by repealing "Any draft amendment prepared under subsection (3)" and substituting "Any draft plan showing the amendments as prepared under sections 3 and 4".

13. Section added

The following is added -

"12A. Amendment of plans on application to the Board

(1) Subject to subsection (2), any person who wishes the Board to consider any proposal in relation to an original approved plan for the purposes of this section may apply to the Board for that purpose.

(2) Where at the time when an application is made under subsection (1) -

- (a) the original approved plan to which the application relates is a referred approved plan;
and
- (b) there is a relevant draft plan in relation to the original approved plan,

no proposal under the application shall relate to any matter relevant to any area covered by any amendment introduced to the original approved plan by the relevant draft plan.

(3) An application made under subsection (1) shall -

(a) where the applicant is not the current land owner, set out whether the applicant considers he has obtained the consent of, or otherwise given notification to, the current land owner in respect of the application before the application is made, and -

(i) if so, particulars of the consent or notification, as the case may be; and

(ii) if not, the reasons (if any) for the failure, and particulars of all steps (if any) taken in order to so obtain the consent of, or give notification to, the current land owner;

(b) subject to paragraph (a), be in such form and include such particulars as the Board requires; and

(c) be accompanied by the prescribed fee (if any).

(4) At any time after an application is made under subsection (1), the Board may require the applicant to verify any matter or particulars set out or included in the application, whether by statutory declaration or otherwise.

(5) Notwithstanding subsection (14), the Board may refuse to consider an application made under subsection (1) where -

(a) the application does not comply with any of the requirements specified in or made under subsection (3); or

(b) the Board is not satisfied that the applicant has -

(i) obtained the consent of, or otherwise given notification to, the current land owner in respect of the application before the application is made; or

(ii) taken all reasonable steps in the circumstances in order to so obtain the consent of, or give notification to, the current land owner.

(6) The Board shall, as soon as reasonably practicable after any application is made to it under subsection (1), make the application available for public inspection at reasonable hours, and shall continue to do so until the application has been considered at a meeting under subsection (14).

(7) During the first 3 weeks of the period during which any application is available for public inspection under subsection (6), the Board shall, in respect of the application, cause a notice that complies with subsection (8) to be -

- (a) posted in a prominent position on or near the land to which the application relates, or on any premises or structure on the land; or
 - (b) published once a week in a local newspaper.
- (8) A notice referred to in subsection (7) shall -
 - (a) specify the place and hours at which the application to which the notice relates is available for public inspection under subsection (6); and
 - (b) indicate that comments may be made to the Board in respect of the application under subsection (9).

(9) Within the first 3 weeks of the period during which any application is available for public inspection under subsection (6), any person may make comment to the Board in respect of the application.

(10) Any comment referred to in subsection (9) shall be made in such manner as the Board requires.

- (11) Where any comment referred to in subsection (9) -
 - (a) is made to the Board after the expiration of the period of 3 weeks referred to in subsection (9); or
 - (b) does not comply with any of the requirements made under subsection (10),it shall be treated as not having been made.

(12) Where -

- (a) at any time after an application is made under subsection (1) but before consideration by the Board of the application at a meeting under subsection (14), any further information is given to the Board by the applicant to supplement the information included in the application; and
- (b) inclusion of the further information in the application does not, in the opinion of the Board, result in a material change of the nature of the application,

the Board may accept the further information for the purposes of the application.

(13) Where the Board accepts any further information for the purposes of an application under subsection (12) -

- (a) subject to paragraphs (b) and (c), the further information shall be regarded as having been included in the application;
- (b) subsections (6), (7), (8), (9), (10) and (11) shall further apply, with necessary modifications, to and in relation to the further information as they apply to and in relation to the application; and
- (c) for the purposes of subsection (14), the application shall be regarded as received when the further information is received.

(14) The Board shall within 3 months after the receipt of the application hold a meeting to consider an application made under subsection (1).

(15) The Board shall, in respect of any meeting to be held to consider an application under subsection (14), give reasonable notice of particulars of the meeting (including the date, time and place of the meeting) to the applicant.

(16) At a meeting held to consider an application under subsection (14), the applicant is entitled to attend and to be heard, either in person or by an authorized representative.

(17) If, at a meeting held to consider an application under subsection (14), the applicant fails to attend, either in person or by an authorized representative, the Board may -

- (a) proceed with the meeting in his absence; or
- (b) adjourn the meeting to such date as it considers appropriate.

(18) Without prejudice to subsection (17), where the Board is satisfied that there are reasonable grounds to do so, it may adjourn any meeting held or to be held under subsection (14) to such date as it considers appropriate.

(19) Where any meeting is adjourned under subsection (17) or (18), the provisions of this section also apply, with necessary modifications, to the meeting so adjourned, save to the extent that the Board otherwise directs.

(20) In considering an application at a meeting held under subsection (14), the Board shall also take into account any comment made in respect of the application under subsection (9).

(21) Upon consideration of an application at a meeting under subsection (14), the Board may -

- (a) accept, in whole or in part, the application; or
- (b) refuse the application.

(22) Where the Board accepts, in whole or in part, an application under subsection (21)(a), the Board shall -

- (a) subject to paragraphs (b) and (c), request the Chief Executive to refer the original approved plan to the Board for amendment under section 12(1A)(b);
- (b) where, at the time when the Board so accepts the application, the original approved plan has been referred to the Board for amendment under section 12(1A)(b) but there is no relevant draft plan in relation to the original approved plan -
 - (i) prepare the draft plan showing amendments to the original approved plan under sections 3 and 4 with reference to the application as so accepted;
 - (ii) make amendments to the relevant draft plan, when it is available, under

section 7 with reference to the application as so accepted; or

- (iii) request the Chief Executive to refer the relevant approved plan, when it is available, to the Board for amendment under section 12(1A)(b); or

- (c) where, at the time when the Board so accepts the application, the original approved plan has been referred to the Board for amendment under section 12(1A)(b) and there is a relevant draft plan in relation to the original approved plan -

- (i) make amendments to the relevant draft plan under section 7 with reference to the application as so accepted; or

- (ii) request the Chief Executive to refer the relevant approved plan, when it is available, to the Board for amendment under section 12(1A)(b).

(23) In this section -

"current land owner" (現行土地擁有人), in relation to an application made under subsection (1), means the person who immediately before the application is made is the land owner of the land to which the application relates;

"original approved plan" (原核准圖) means a plan which at the time when the application in question is made is -

- (a) an approved plan; or
- (b) a referred approved plan;

"referred approved plan" (被發還核准圖) means any plan referred to the Board for amendment under section 12(1A)(b), except where a draft plan has further to the reference been approved under section 9;

"relevant approved plan" (有關核准圖), in relation to an original approved plan within the description of subsection (22)(c), means the approved plan which has further to the reference of the plan to the Board for amendment under section 12(1A)(b) been approved as such by the Chief Executive in Council under section 9;

"relevant draft plan" (有關草圖), in relation to an original approved plan within the description of subsection (2)(a) or (22)(b) or (c), means the draft plan which has further to the reference of the plan to the Board for amendment under section 12(1A)(b) been exhibited under section 5."

14. Power to make regulations

Section 14 is amended -

- (a) by renumbering it as section 14(1);
- (b) in subsection (1)(a), by adding ", and matters relating to the issue and registration of notices associated with the taking possession, removal, detention or disposal of such property" after "23(7A)";

(c) by adding -

"(2) The Secretary for Housing, Planning and Lands may by regulation prescribe fees for the purposes of sections 12A(3)(c), 16(2)(c) and 16A(3)(b).

(3) Any fees prescribed under subsection (2) -

- (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 and by the Government in relation generally to the carrying into effect of the provisions and purposes of this Ordinance; and
- (b) shall not be limited by reference to the amount of administrative or other costs incurred, or likely to be incurred, in relation to providing the matter, service or facility to which such fees relate.

(4) Any regulation made under subsection (2) may -

(a) provide that the amount of any fees may be fixed by reference to a scale prescribed in the regulation; and

(b) provide for the payment of different fees by or in relation to persons or cases of different classes or descriptions.

(5) No fees prescribed under subsection (2) 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).".

15. Expenses of the Board

Section 15 is amended by repealing "or the regulations made thereunder".

16. Applications for permission in respect of plans

Section 16 is amended -

(a) in subsection (2), by repealing everything after "and shall" and substituting -

" -

(a) where the applicant is not the current land owner, set out

whether the applicant considers he has obtained the consent of, or otherwise given notification to, the current land owner in respect of the application before the application is made, and -

(i) if so, particulars of the consent or notification, as the case may be; and

(ii) if not, the reasons (if any) for the failure, and particulars of all steps (if any) taken in order to so obtain the consent of, or give notification to, the current land owner;

(b) subject to paragraph (a), be in such form and include such particulars as the Board requires; and

(c) be accompanied by the prescribed fee (if any).";

(b) by adding -

"(2A) At any time after an application is made under subsection (1), the Board may require the applicant to verify any matter or particulars set out or included in the application, whether by statutory declaration or otherwise.

(2B) Notwithstanding subsection (3), the Board may refuse to consider an application made under subsection (1) where -

(a) the application does not comply with any of the requirements specified in or made under subsection (2); or

(b) the Board is not satisfied that the applicant has -

(i) obtained the consent of, or otherwise given notification to, the current land owner in respect of the application before the application is made; or

(ii) taken all reasonable steps in the circumstances in order to so obtain the consent

of, or give
notification to, the
current land owner.

(2C) The Board shall, as soon as reasonably practicable after any application is made to it under subsection (1), make the application available for public inspection at reasonable hours, and shall continue to do so until the application has been considered under subsection (3).

(2D) During the first 3 weeks of the period during which any application is available for public inspection under subsection (2C), the Board shall, in respect of the application, cause a notice that complies with subsection (2E) to be -

- (a) posted in a prominent position on or near the land to which the application relates, or on any premises or structure on the land;
or
- (b) published once a week in a local newspaper.

(2E) A notice referred to in subsection (2D) shall -

- (a) specify the place and hours at which the application to which the notice relates is available for public inspection under subsection (2C); and
- (b) indicate that comments may be made to the Board in respect of the application under subsection (2F).

(2F) Within the first 3 weeks of the period during which any application is available for public inspection under subsection (2C), any person may make comment to the Board in respect of the application.

(2G) Any comment referred to in subsection (2F) shall be made in such manner as the Board requires.

(2H) Where any comment referred to in subsection (2F) -

- (a) is made to the Board after the expiration of the period of 3 weeks referred to in subsection (2F); or
- (b) does not comply with any of the requirements made under subsection (2G),

it shall be treated as not having been made.

(2I) Where -

(a) at any time after an application is made under subsection (1) but before consideration by the Board of the application under subsection (3), any further information is given to the Board by the applicant to supplement the information included in the application; and

(b) inclusion of the further information in the application does not, in the opinion of the Board, result in a material change of the nature of the application,

the Board may accept the further information for the purposes of the application.

(2J) Where the Board accepts any further information for the purposes of an application under subsection (2I) -

(a) subject to paragraphs (b) and (c), the further information shall be regarded as having been included in the application;

(b) subsections (2C), (2D), (2E), (2F), (2G) and (2H) shall further apply, with necessary modifications, to and in relation to the further information as they apply to and in relation to the application; and

(c) for the purposes of subsection (3), the application shall be regarded as received when the further information is received.";

(c) by adding -

"(3A) In considering an application under subsection (3), the Board shall also take into account any comment made in respect of the application under subsection (2F).";

(d) in subsection (7), by adding "under a permission granted" after "permitted";

(e) by adding -

"(8) In this section, "current land owner" (現行土地擁有人), in relation to an application made under subsection (1), means the person who immediately before the application is made is the

land owner of the land to which the application relates.".

17. Section added

The following is added -

"16A. Amendments to permissions in respect of plans

(1) Where any permission is granted under section 16, anything not permitted under the permission but would have been permitted if the permission were to have effect subject to certain amendments which are Class A amendments shall be regarded as also permitted under the permission.

(2) Where any permission is granted under section 16, the person to whom the permission is granted may, if he wishes the permission to have effect subject to certain amendments which are Class B amendments, apply to the Board for that purpose.

(3) An application made under subsection (2) shall -

(a) be in such form and include such particulars as the Board requires; and

(b) be accompanied by the prescribed fee (if any).

(4) Notwithstanding subsection (7), the Board may refuse to consider an application made under subsection (2) where the application does not comply with any of the requirements specified in or made under subsection (3).

(5) Where -

- (a) at any time after an application is made under subsection (2) but before consideration by the Board of the application under subsection (7), any further information is given to the Board by the applicant to supplement the information included in the application; and
- (b) inclusion of the further information in the application does not, in the opinion of the Board, result in a material change of the nature of the application,

the Board may accept the further information for the purposes of the application.

(6) Where the Board accepts any further information for the purposes of an application under subsection (5) -

- (a) subject to paragraph (b), the further information shall be regarded as having been included in the application; and
- (b) for the purposes of subsection (7), the application shall be regarded as received when the further information is received.

(7) The Board shall within 2 months after the receipt of an application made under subsection (2) consider the application in the absence of the applicant and may accept or refuse the application.

(8) An application may be accepted under subsection (7) subject to such conditions as the Board requires.

(9) Where the Board accepts an application under subsection (7), any amendments subject to which the permission has effect by the previous operation of this section shall be regarded as superseded.

(10) The Board shall notify the applicant in writing of its decision under subsection (7), and where it refused the application shall also notify the applicant of his right to a review under section 17.

(11) Notwithstanding anything in this section, in determining for the purposes of this section -

(a) whether anything is permitted under a permission granted under section 16 or would have been permitted if the permission were to have effect subject to certain amendments; or

(b) the scope and effect of a permission granted under section 16,

anything regarded as permitted under the permission, or any amendments subject to which the permission has effect, by the previous operation of this section shall be disregarded.

(12) The Board may by notice published in the Gazette -

(a) specify any class or description of relevant amendments for the purposes of the definition of "Class A amendments" in subsection (14); and

(b) specify any class or description of relevant amendments for the purposes of the definition of "Class B amendments" in subsection (14).

(13) A notice published under subsection (12) is not subsidiary legislation.

(14) In this section -

"Class A amendments" (A類修訂) means relevant amendments of a class or description specified by the Board under subsection (12)(a);

"Class B amendments" (B類修訂) means relevant amendments of a class or description specified by the Board under subsection (12)(b);

"relevant amendments" (有關修訂) means amendments to any permission granted under section 16."

18. Right of review

Section 17 is amended -

(a) in subsection (1), by adding "or 16A" after "16";

(b) by adding -

"(2A) The Board shall, as soon as reasonably practicable after any application is made to it under subsection (1) for a review of its decision under section 16, make the application available for public inspection at reasonable hours, and

shall continue to do so until the decision in question has been reviewed under this section.

(2B) During the first 3 weeks of the period during which any application is available for public inspection under subsection (2A), the Board shall, in respect of the application, cause a notice that complies with subsection (2C) to be -

- (a) posted in a prominent position on or near the land to which the application relates, or on any premises or structure on the land; or
- (b) published once a week in a local newspaper.

(2C) A notice referred to in subsection (2B) shall -

- (a) specify the place and hours at which the application to which the notice relates is available for public inspection under subsection (2A); and
- (b) indicate that comments may be made to the Board in respect of the application under subsection (2D).

(2D) Within the first 3 weeks of the period during which any application is available for public inspection under subsection (2A), any person may make comment to the Board in respect of the application.

(2E) Any comment referred to in subsection (2D) shall be made in such manner as the Board requires.

(2F) Where any comment referred to in subsection (2D) -

- (a) is made to the Board after the expiration of the period of 3 weeks referred to in subsection (2D); or
- (b) does not comply with any of the requirements made under subsection (2E),

it shall be treated as not having been made.

(2G) Where -

- (a) at any time after an application is made under subsection (1) but before review of the decision in question under this section, any further information is given to the Board by the applicant to

supplement the information included in the application; and

(b) inclusion of the further information in the application does not, in the opinion of the Board, result in a material change of the nature of the application, the Board may accept the further information for the purposes of the application.

(2H) Where the Board accepts any further information for the purposes of an application under subsection (2G) -

- (a) subject to paragraphs (b) and (c), the further information shall be regarded as having been included in the application;
- (b) where the application is an application for a review of the Board's decision under section 16, subsections (2A), (2B), (2C), (2D), (2E) and (2F) shall further apply, with necessary modifications, to and in relation to the further information as they

apply to and in relation to the
application; and

(c) for the purposes of subsection

(2) -

(i) the application shall
be regarded as received
when the further
information is
received; and

(ii) anything done under
that subsection before
receipt of the further
information shall have
effect subject to
anything done under
that subsection upon
application of this
subsection.";

(c) by adding -

"(4A) Without prejudice to subsection (4),
where the Board is satisfied that there are
reasonable grounds to do so, it may adjourn the
review to such date as it considers appropriate.

(4B) Where any review is adjourned under
subsection (4) or (4A), the provisions of this

section also apply, with necessary modifications, to the review so adjourned, save to the extent that the Board otherwise directs.";

- (d) in subsection (5), by repealing everything after "shall" and substituting "take into account any written representation submitted by the applicant and, in the case of an application for a review of its decision under section 16, any comment made in respect of the application under subsection (2D).";
- (e) in subsection (6), by repealing everything after "the Board may" and substituting "confirm or reverse the decision in question, or substitute for the decision in question any decision it could have made under section 16 or 16A, as the case may be."

19. Power to inspect and require provision of information

Section 22 is amended -

- (a) in subsection (1) -
 - (i) by adding before paragraph (a) -
 - "(aa) ascertaining whether there is or has been unauthorized development or any matters that in the opinion of the Authority constitute or constituted an unauthorized development;"

- (ii) in paragraph (a), by repealing "and" at the end;
 - (iii) in paragraph (b), by repealing "has been discontinued" and substituting "or any matters that in the opinion of the Authority constitute or constituted an unauthorized development have been discontinued";
- (b) in subsection (3), by repealing "ascertain whether there is or has been" and substituting "enable the Authority to ascertain whether there is or has been unauthorized development or any matters that in the opinion of the Authority constitute or constituted an";
- (c) by adding -

"(7) The Authority or any person authorized in writing by the Authority may by notice in writing served on any person require him to provide to the Authority, within the period specified in the notice, any information, being information which the Authority may reasonably require for the exercise of any power or the performance of any duty under or for the purposes of section 20, 21 or 23, that is specified in the notice.

(8) A person who -

- (a) fails without reasonable excuse to comply with the requirements of a

notice served on him under
subsection (7); or

(b) in compliance or purported
compliance with such a notice -

(i) provides to the
Authority any
information which he
knows to be false in a
material particular;

(ii) recklessly provides to
the Authority any
information which is
false in a material
particular; or

(iii) knowingly omits any
material particular,

commits an offence and is liable to a fine at level
6."

**20. Enforcement on land within a development
permission area**

Section 23 is amended -

(a) in subsection (1) -

(i) by adding ", in the opinion of the Authority,"
after "Where";

- (ii) by repealing "for the unauthorized development" and substituting "for the relevant matters";
- (iii) by repealing paragraphs (a) and (b) and substituting -
 - "(a) specify the relevant matters; and
 - (b) specify a date by which the Authority requires the relevant matters to be discontinued, if they have not by then been discontinued.";
- (b) in subsection (2) -
 - (i) by repealing "the Authority considers that continuance of unauthorized development" and substituting ", apart from being of the opinion that there is or was unauthorized development, the Authority considers that continuance of the relevant matters";
 - (ii) by repealing everything after paragraph (c) and substituting -
 - "then -
 - (d) where a notice has not been served under subsection (1) in relation to the relevant matters, the Authority may in a notice served under that subsection -

- (i) specify the date for discontinuance of the relevant matters under subsection (1)(b), after taking into account the effects referred to in paragraph (a), (b) or (c); and
 - (ii) further specify any steps required to be taken, by a date specified in that regard, to prevent anything related to the relevant matters from causing such effects; or
- (e) where a notice has been served under subsection (1) in relation to the relevant matters, the Authority may in a further notice served on the same person on whom the notice has been served -

(i) substitute the date specified for discontinuance of the relevant matters under subsection (1)(b) in the notice that has been served by an earlier date, after taking into account such effects; and

(ii) further specify any steps required to be taken, by a date specified in that regard, to prevent anything related to the relevant matters from causing such effects.";

(c) by adding -

"(2A) A notice served on a person under subsection (1) in relation to the relevant matters shall be read as having effect subject to any further notice served on the same person under

subsection (2)(e) in relation to the relevant matters.";

- (d) in subsection (3), by repealing everything from "unauthorized development" to "have expired," and substituting "relevant matters,";
- (e) in subsection (4), by repealing "unauthorized development" and substituting "development which in the opinion of the Authority is or was constituted by the relevant matters";
- (f) by repealing subsections (4A) and (4B) and substituting -

"(4A) Where the Authority is satisfied -

- (a) in the case of a notice served under subsection (1) (read as having effect subject to any further notice under subsection (2A)) -

- (i) that the relevant matters required by the notice to be discontinued have been discontinued as so required; and

- (ii) that the steps (if any) required by the notice

to be taken have been

taken as so required; or

- (b) in the case of a notice served under subsection (3), that the land required by the notice to be reinstated has been reinstated as so required,

he shall serve on the person on whom the notice has been served a further notice specifying the matters in respect of which he is so satisfied.

(4B) The Authority shall, as soon as reasonably practicable after service of a notice under subsection (1), (2), (3) or (4A), register the notice in the Land Registry.";

- (g) in subsection (5), by repealing "and subsection (1)(b)(ii)";

- (h) in subsection (6) -

- (i) by repealing paragraph (a) and substituting -
"(a) the relevant matters have not been discontinued as required by the notice";

- (ii) in paragraph (b), by repealing "under subsection (2)" and substituting "by the notice";

- (iii) in paragraph (c), by repealing "subsection (3) or (4)" and substituting "the notice";
- (i) in subsection (7) -
 - (i) by repealing paragraph (a) and substituting -
 - "(a) the relevant matters have not been discontinued as required by the notice;"
 - (ii) in paragraph (b), by repealing "under subsection (2)" and substituting "by the notice";
 - (iii) in paragraph (c), by repealing "subsection (3) or (4)" and substituting "the notice";
 - (iv) by repealing "the unauthorized development" and substituting "the relevant matters";
- (j) in subsection (7B), by adding "(1)" after "14";
- (k) by adding -
 - "(8A) Where the Authority is satisfied -
 - (a) that -
 - (i) the relevant matters that have not been discontinued by the date specified in that regard in a notice under this section have been

discontinued at any

time after that date;

(ii) steps that have not been

taken by the date

specified in that

regard in a notice under

this section have been

taken at any time after

that date; or

(iii) land that has not been

reinstated by the date

specified in that

regard in a notice under

this section has been

reinstated at any time

after that date; and

(b) where the Authority has incurred

any expenses for such purpose

under subsection (7), that the

expenses have been paid to or

recovered by the Authority,

he shall serve on the person on whom the notice

has been served a further notice specifying the

matters in respect of which he is so satisfied,

and shall as soon as reasonably practicable after

service of the further notice register such further notice in the Land Registry.

(8B) A notice served under this section shall be deemed to be an instrument affecting land or premises and shall be registrable in the Land Registry, but a failure to register such a notice in the Land Registry shall not affect its validity against the person on whom the notice has been served." ;

(l) in subsection (9)(b), by adding "which in the opinion of the Authority was or had been constituted by the relevant matters to which the notice relates" after "the development" ;

(m) by adding -

"(9A) In the prosecution of an offence alleged to have been committed under subsection (6), it shall not be necessary for the prosecution to prove that -

(a) any of the relevant matters specified in the notice to which the alleged offence relates in fact constitute or constituted an unauthorized development; or

(b) any unauthorized development which in the opinion of the

Authority is or was constituted by
the relevant matters in fact
exists or existed.";

(n) by adding -

"(11) In forming any opinion as to whether
there is or was any unauthorized development, or
whether any matters constitute or constituted an
unauthorized development, for the purpose of
exercising any power or performing any duty under
this section, the Authority may have regard to -

- (a) any photograph of land, or any copy
of a photograph of land, to which
section 24A applies;
- (b) any draft or approved plan
exhibited under this Ordinance;
and
- (c) any other information or thing
which appears to the Authority to
be relevant to the exercise of the
power or the performance of the
duty, as the case may be.

(12) In this section, "relevant matters"
(有關事項), in relation to any unauthorized
development which in the opinion of the Authority
exists or existed, means any matters which in the

opinion of the Authority constitute or constituted the unauthorized development."

21. Section added

The following is added -

"24A. Evidence

In any proceedings under this Ordinance, any photograph of land, or any copy of a photograph of land, purporting to be issued by the Lands Department and purporting to be signed or initialled by any person employed in the Lands Department shall on its production be admissible, without further proof, as prima facie evidence of the matters shown therein."

22. Section added

The following is added -

"27. Transitional and saving provisions relating to Town Planning (Amendment) Ordinance 2003

(1) The amendments effected by sections 7, 8, 9(a), (b) and (c), 10 and 11 of the amending Ordinance do not apply in respect of any case in which the draft plan in question has been exhibited under section 5 of the pre-amended Ordinance or its corresponding provision before the commencement of the amending Ordinance (whether or not there have been amendments to it under section 7 of the pre-amended Ordinance or its corresponding provision), and, for the avoidance of doubt, the provisions of this Ordinance

shall, with necessary modifications, be construed and have application accordingly.

(2) The amendments effected by section 12(b), (c), (d), (e) and (f) of the amending Ordinance do not apply in respect of any case in which the approved plan in question has been referred by the Chief Executive in Council to the Board under section 12(1)(b) of the pre-amended Ordinance or its corresponding provision before the commencement of the amending Ordinance, and, for the avoidance of doubt, the provisions of this Ordinance shall, with necessary modifications, be construed and have application accordingly.

(3) The amendments effected by section 16 of the amending Ordinance do not apply in respect of any case in which the application for the grant of permission in question has been made to the Board under section 16(1) of the pre-amended Ordinance or its corresponding provision before the commencement of the amending Ordinance, and, for the avoidance of doubt, the provisions of this Ordinance shall, with necessary modifications, be construed and have application accordingly.

(4) The amendments effected by section 18 of the amending Ordinance, in relation to a decision made under section 16, do not apply in respect of any case in which the application for the grant of permission in question has been made to the Board under section 16(1) of the pre-amended Ordinance or its corresponding provision before the commencement of the amending Ordinance, and, for the avoidance of doubt, the provisions of this Ordinance shall,

with necessary modifications, be construed and have application accordingly.

(5) The amendments effected by section 20 of the amending Ordinance do not apply in respect of any case in relation to which a notice has been served under section 23(1) of the pre-amended Ordinance or its corresponding provision before the commencement of the amending Ordinance, and, for the avoidance of doubt, the provisions of this Ordinance shall, with necessary modifications, be construed and have application accordingly.

(6) Notwithstanding anything in the amending Ordinance but subject to subsections (1), (2), (3), (4) and (5) -

- (a) any plan which has been exhibited, or any plan a notice of which has been published, under section 5 of the pre-amended Ordinance or its corresponding provision shall be regarded as a plan which has been exhibited, or a plan a notice of which has been published, under section 5, as the case may be;
- (b) any amendments made to a draft plan under section 7 of the pre-amended Ordinance or its corresponding provision shall be regarded as amendments made to the draft plan under section 7;
- (c) any plan approved or exhibited under section 9 of the pre-amended Ordinance or its corresponding

provision shall be regarded as having been approved or exhibited under section 9, as the case may be;

(d) any reference of an approved plan to the Board under section 12(1)(b)(i) or (ii) of the pre-amended Ordinance or its corresponding provision shall be regarded as a reference of the approved plan to the Board under section 12(1A)(a) or (b) respectively; and

(e) any permission granted under section 16 of the pre-amended Ordinance or its corresponding provision shall be regarded as having been granted under section 16,

and, for the avoidance of doubt, the provisions of this Ordinance shall, with necessary modifications, be construed and have application accordingly.

(7) This section is in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(8) In this section -

"amending Ordinance" (修訂條例) means the Town Planning (Amendment) Ordinance 2003 (of 2003);

"corresponding provision" (相應條文), in relation to a provision of the pre-amended Ordinance, means any provision of this Ordinance as in force at any time before the commencement

of the amending Ordinance, other than the pre-amended Ordinance, that substantially corresponds to that provision of the pre-amended Ordinance;

"pre-amended Ordinance" (未修訂條例) means this Ordinance as in force immediately before the commencement of the amending Ordinance."

Consequential Amendments

Town Planning (Taking Possession and Disposal of Property) Regulation

23. Removal notice

Section 2 of the Town Planning (Taking Possession and Disposal of Property) Regulation (Cap. 131 sub. leg. C) is amended by adding -

"(4) Where the Authority is satisfied that the property required by the removal notice to be removed has been removed as so required, he shall serve on the person on whom the removal notice has been served a further notice specifying the matters in respect of which he is so satisfied."

24. Sections added

The following are added -

"6A. Notices showing removal of property and payment of expenses incurred by Authority

Where the Authority is satisfied -

- (a) that the property that has not been removed by the date specified in that regard in a removal notice served under section 2 has been removed at any time after that date; and
- (b) where the Authority has incurred any expenses for such purpose under section 23(7) of the Ordinance, that the expenses have been paid to or recovered by the Authority,

he shall serve on the person on whom the removal notice has been served a further notice specifying the matters in respect of which he is so satisfied.

6B. Registration of notices

(1) The Authority shall, as soon as reasonably practicable after service of a notice under section 2(1) or (4) or 6A, register the notice in the Land Registry.

(2) A notice served under section 2(1) or (4) or 6A shall be deemed to be an instrument affecting land or premises and shall be registrable in the Land Registry, but a failure to register such a notice in the Land Registry shall not affect its validity against the person on whom the notice has been served."

25. Service of notices

Section 7(1) is amended by repealing "under this Regulation" and substituting "required to be served under section 2(1) or 3(2)".

Roads (Works, Use and Compensation) Ordinance

26. Procedure after publication of plan and scheme

Section 11(3) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370) is amended -

- (a) in paragraph (a), by adding ", and the provisions of that Ordinance shall apply accordingly; and" after "draft plan";
- (b) by repealing paragraphs (b) and (c) and substituting -
 - "(b) without prejudice to the generality of paragraph (a), the objections lodged under section 10 shall be regarded as representations made to the Board in respect of the plan and scheme under section 6 of that Ordinance."

Urban Renewal Authority Ordinance

27. Publication of project

Section 23(4) of the Urban Renewal Authority Ordinance (Cap. 563) is amended by adding "(7A) or" after "25".

28. Development schemes

Section 25 is amended -

(a) by adding -

"(7A) Subject to subsection (8), where under section 6D(8) of the Town Planning Ordinance (Cap. 131), the Town Planning Board considers and takes a view that it will propose amendments to a draft plan of a development scheme deemed to be a draft plan prepared by the Town Planning Board under subsection (7), and such amendments to be proposed include an expansion in the boundaries of the plan, the Town Planning Board shall notify the Authority of the proposal, whereupon the Authority may publish in the Gazette a notice of the proposal, and -

- (a) where the Authority so publishes a notice of the proposal, the commencement date of the implementation of the part of the development scheme concerning the additional land within the expanded boundaries under the proposal shall be the date on which the Authority so publishes the notice of the proposal; or
- (b) where the Authority does not so publish a notice of the proposal -

(i) where the Chief Executive in Council approves the draft plan under section 9 of that Ordinance subject to the inclusion of all of the additional land within the expanded boundaries under the proposal, the commencement date of the implementation of the part of the development scheme concerning the additional land shall be the date when the approval is first notified in the Gazette under section 9(5) of that Ordinance;

(ii) where the Chief Executive in Council approves the draft plan under section 9 of that

Ordinance subject to the inclusion of certain part or parts of the additional land within the expanded boundaries under the proposal, the commencement date of the implementation of the part of the development scheme concerning such part or parts of the additional land shall be the date when the approval is first notified in the Gazette under section 9(5) of that Ordinance, and the commencement date of the implementation of the part of the development scheme concerning the land included in the original development scheme published by the Town Planning Board under subsection (6) shall remain as provided under section 23(2).";

(b) in subsection (8) -

- (i) by repealing "6 or";
- (ii) by repealing "the date when a notice is first given under section 6(7) of that Ordinance or";
- (iii) by repealing ", as the case may be".

Explanatory Memorandum

The main purpose of this Bill is to amend the Town Planning Ordinance (Cap. 131) (the "principal Ordinance"), so as to streamline the town planning procedures while enhancing public involvement in the town planning process, and to strengthen enforcement powers in respect of unauthorized developments not permitted under the principal Ordinance.

2. Clause 2 amends section 1A to amend the definition of "land owner" in that section to make it clear that a manager appointed to represent a clan, family or t'ong is covered under the definition. It also adds to that section a definition of "prescribed fee" to tally with the new section 14(2) added under clause 14 (see paragraph 7 below).

3. Clauses 3 and 4 amend sections 2(5) and 2A(1) to expand the power of delegation of the Town Planning Board (the "Board"), and add a new section 2(6) to enable the Board to determine its own practice and procedure at its meetings.

4. Clause 5 adds a new section 2B to expressly enable the Board or its committee to transact its business by circulation of papers.

5. Clauses 6 to 11 provide for a set of new procedures for approval of draft plans. In particular -

- (a) clause 6 amends section 5 to shorten the period of exhibition of the draft plan from 2 months to 1 month;
- (b) clauses 7 and 8 replace section 6 with new sections 6 to 6D to set out procedures under which representations may be made in respect of a draft plan, comments may be made in respect of the representations, representations may be supplemented by further information, representations and comments may be withdrawn, and representations and comments are finally considered;
- (c) clause 9 amends section 7, which deals with amendment of a draft plan by the Board, to extend the period of exhibition of the amendment from 3 weeks to 1 month, to provide that the new provisions applicable to representations in respect of a draft plan also apply to representations in respect of the amendment, and to clarify the effect of the amendment on the draft plan to which it relates;
- (d) clause 10 amends section 8 to shorten the time limit for submission of a draft plan to the Chief Executive in Council, and to provide for certain consequential changes; and

- (e) clause 11 amends section 9 to clarify the power of the Chief Executive in Council in approving a draft plan.

6. Clauses 12 and 13 introduce amendments to the procedures for amendment of approved plans. In particular -

- (a) clause 12 amends section 12, which deals with revocation, replacement and amendment of approved plans, to enable the Chief Executive to refer an approved plan to the Board for replacement or amendment, and to provide that the new provisions providing for exhibition and other procedures for a draft plan also apply to the plan showing amendments to an approved plan; and
- (b) clause 13 adds a new section 12A to provide for applications for making proposals in respect of approved plans, whether or not the approved plans have been referred by the Chief Executive to the Board for amendment, in order that amendments to the approved plans, or to any plans prepared or approved further to any such reference by the Chief Executive to the Board, may be considered or made in accordance with the provisions of the principal Ordinance.

7. Clause 14 amends section 14 to add in new subsections to enable the Secretary for Housing, Planning and Lands to prescribe fees for making an application under the new section 12A as introduced under clause 13 (see paragraph 6(b) above), under section 16 as amended under

clause 16 (see paragraph 9(a) below) or under the new section 16A as introduced under clause 17 (see paragraph 9(b) below), and to make it clear that the power of the Chief Executive in Council to make regulations includes the power to provide for the issue and registration of notices associated with the taking possession, removal, detention or disposal of property.

8. Clause 15 amends section 15 to introduce a miscellaneous amendment to rationalize the references to "Ordinance" throughout the principal Ordinance, in the light of the definition for the expression in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1).

9. Clauses 16, 17 and 18 introduce changes to the provisions relating to applications for permissions in respect of draft plans or approved plans. In particular -

- (a) clause 16 amends section 16 to introduce changes in line with the new application provisions under the new section 12A as introduced under clause 13 (see paragraph 6(b) above);
- (b) clause 17 adds a new section 16A to enable permissions granted under section 16 to have an expanded scope in specified circumstances without the need for any application, or to have effect subject to certain amendments in specified circumstances upon the grant of an application; and
- (c) clause 18 also amends section 17 to introduce changes similar to those introduced to section 16, and to permit

review also of decisions on applications made under the new section 16A as introduced under clause 17 (see subparagraph (b) above).

10. Clauses 19 and 20 introduce changes to the enforcement provisions.

In particular -

- (a) clause 19 amends section 22 to strengthen the enforcement powers, by, among others, empowering the Director of Planning to require provision of information, and imposing criminal liability for failure to comply with the requirement; and
- (b) clause 20 amends section 23 to streamline the provisions relating to issue of notices regarding unauthorized developments, to require that upon compliance with such notices further notices confirming such compliance should be issued, and to strengthen registration requirements in respect of such notices.

11. Clause 21 adds a new section 24A to provide for admissibility in evidence of photographs of land issued by the Lands Department.

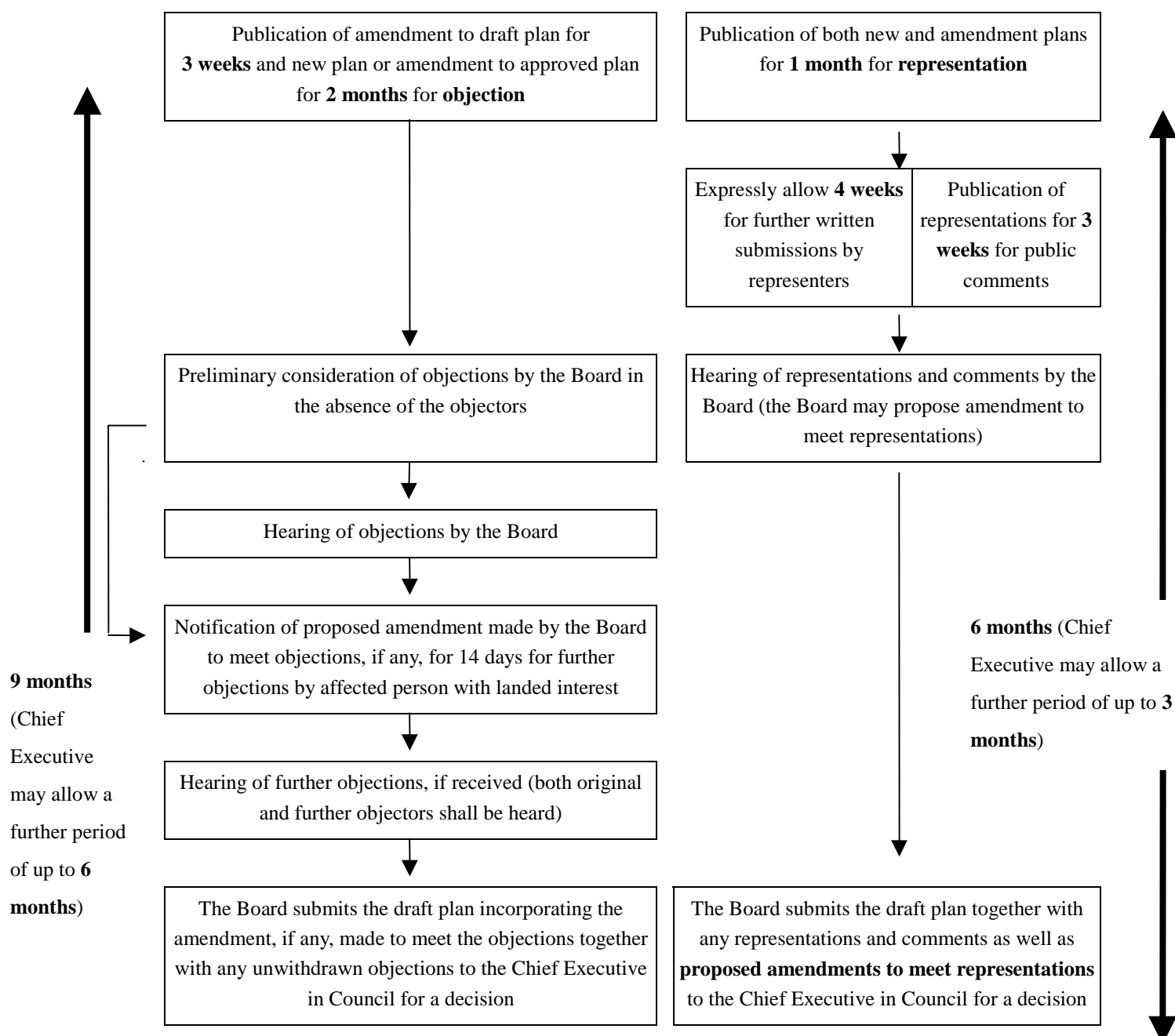
12. Clause 22 adds a new section 27 to provide for transitional and saving arrangements upon enactment of the Bill.

13. Clauses 23 to 28 introduce consequential amendments to the Town Planning (Taking Possession and Disposal of Property) Regulation (Cap. 131 sub. leg. C), the Roads (Works, Use and Compensation) Ordinance (Cap. 370) and the Urban Renewal Authority Ordinance (Cap. 563).

Flow Chart Showing the Existing and Proposed Plan-Making Processes

Existing Process

Proposed Process



Existing Provisions of Legislation Being Amended

(Date of this copy: 17/04/2003)

Chapter:	131	TOWN PLANNING ORDINANCE
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Section:	1A	Interpretation
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In this Ordinance, unless the context otherwise requires-

"Appeal Board" (上訴委員會) means an Appeal Board constituted under section 17A; (Added 101 of 1991 s. 2)

"Authority" (監督) means the Director of Planning;

"building" (建築物) includes a structure or part of a structure;

"container" (貨櫃) includes a container converted for use as an accommodation or as storage or for any other use; (Added 22 of 1994 s. 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 sections 3(1)(b) and 20 but does not include land included in a plan of an interim development permission area;

"existing use" (現有用途) in relation to a development permission area means a use of a building or land that was in existence immediately before the publication in the Gazette of notice of the draft plan of the development permission area;

"interim development permission area" (中期發展審批地區) means an area so designated in a plan prepared under section 26;

"land owner" (土地擁有人) has the same meaning as "owner" in section 2(1) of the Buildings Ordinance (Cap. 123);

"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, notwithstanding that 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 a land owner whether or not he pays rent, a person who resides in a building and a person who carries on a full-time occupation in a building;

"property" (財產) includes anything contained in a vehicle or a container, but does not include immovable property; (Added 22 of 1994 s. 2)

"unauthorized development" (違例發展) means-

- (a) in relation to land included in a plan of a development permission area or described in section 20(7), development in contravention of this Ordinance; and
- (b) in sections 22 and 23, in relation to land referred to in section 23(4), development other than development permitted under a plan of an interim development permission area, undertaken on or after the date on which notice of that plan is gazetted.

(Added 4 of 1991 s. 3)

Section:	2	Appointment of Town Planning Board
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Remarks:

Adaptation amendments retroactively made - see 62 of 2000 s. 3

(1) The Chief Executive may appoint a Town Planning Board consisting of such official and unofficial members as he may nominate, and may appoint any member of the Board, either ex officio or personally, as chairman or vice-chairman and any public officer as secretary thereof. (Amended 62 of 2000 s. 3)

(2) 5 members of the Board, one of whom must be the chairman or vice-chairman, shall form a quorum at any meeting of the Board.

(3) For the better discharge of the functions of the Board under this Ordinance the Chief Executive may, by notice in the Gazette, from among the members of the Board, appoint committees of the Board and a chairman and vice-chairman of each committee. (Added 4 of 1991 s. 4. Amended 62 of 2000 s. 3)

(4) 5 members of a committee appointed under subsection (3), one of whom must be the chairman or a vice-chairman and 3 of whom must be persons who are not official members, shall form a quorum at any meeting of the committee. (Added 4 of 1991 s. 4)

(5) The Board may delegate any of its powers and functions-

(a) under sections 3, 4(1), 4A, 5, 7(1) to (3), 16 and 20(1) to a committee appointed under subsection (3); and

(b) to a public officer or class of public officer in respect of an application for-

(i) a minor amendment to a permission previously granted under section 16; and

(ii) permission for development within a development permission area on condition that the development is discontinued and the land reinstated, as directed by the public officer, within 6 months after the permission is granted. (Added 4 of 1991 s. 4)

Section:	2A	*Appointment of committees by the Board
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(1) Notwithstanding section 2(3), the Board may appoint committees from among its members to exercise the Board's powers under section 6(6), (6A), (6B), (7), (8) and (9).

(2) A committee appointed under this section shall consist of not less than 5 members at least 3 of whom are not public officers.

(3) The Board shall, from the members of a committee appointed under this section, appoint one member to be Chairman of the committee and one member to be Deputy Chairman of the committee.

(4) The quorum for a committee is the Chairman or Deputy Chairman and 2 members.

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

(Added 16 of 1998 s. 2)

*** Please see the transitional provisions contained in s. 5 of 16 of 1998, which section is reproduced immediately after section 26 of this Ordinance.**

Section:	5	Exhibition of draft plans
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Any draft plan, prepared under sections 3 and 4 under the direction of the Board, which the

Board deems suitable for publication, shall be exhibited by the Board for public inspection at reasonable hours for a period of 2 months. During such period the Board shall advertise once a week in a local newspaper and shall notify in each issue of the Gazette the place and hours at which such plan may be inspected. The Board shall supply a copy of such plan to any person on payment of such fee as the Board may determine.

(Amended 26 of 1956 s. 2; 59 of 1969 s. 3; 2 of 1988 s. 4)

Section:	6	*Consideration of objections
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Remarks:

Adaptation amendments retroactively made - see 29 of 1998 s. 45

(1) Any person affected by the draft plan so exhibited may within the said period of 2 months send to the Board a written statement of his objections to anything appearing in the draft plan.

(2) Such written statement shall set out-

- (a) the nature of and reasons for the objection;
- (b) if the objection would be removed by an alteration of the draft plan, any alteration proposed.

(3) Upon receipt of a written statement of objection under subsection (1), the Board may give preliminary consideration to an objection in the absence of the objector and may propose amendments to the draft plan to meet the objection.

(4) If the Board proposes an amendment to the draft plan pursuant to subsection (3), it shall give notice in writing of the amendment proposed to the objector by registered post and may invite the objector to withdraw his objection on the condition that the amendment is made as proposed.

(5) An objector may notify the Board in writing within 14 days after service of notice under subsection (4) that his objection is withdrawn on the condition that the amendment is made as proposed but if no such notification is received the objection shall continue in force.

(6) Where-

- (a) the Board does not propose amendments under subsection (3); or
- (b) an objector does not notify the Board under subsection (5) that his objection is withdrawn; or
- (c) an objector was conditionally withdrawn under subsection (5) and the Board does not proceed with the amendment proposed,

the Board shall consider the written statement of objection at a meeting of which the objector is given reasonable notice, and the objector or his authorized representative may attend such meeting and if he desires shall be heard.

(6A) The Board may direct that any objection made under subsection (1) in respect of the same draft plan or, as the case may be, received under subsection (8) shall be dealt with at the same meeting and such objection may be dealt with by the Board either individually or collectively as it may determine. (Added 16 of 1998 s. 3)

(6B) If the objector or his authorized representative does not attend any meeting held for the purposes of subsection (6) or, as the case may be, for the purposes of subsection (8) the Board may proceed with the meeting and deal with the objection or adjourn it and such meeting may not be adjourned more than once. (Added 16 of 1998 s. 3)

(7) In any case where an amendment made by the Board to meet an objection appears to the Board to affect any land, other than that of the objector, held under lease, tenancy or permit from the Government for a term exceeding 5 years, the Board shall give such notice by service, advertisement or otherwise as it deems desirable and practicable to the owner of the land in question. (Amended 29 of 1998 s. 45)

(8) Any written objection received within 14 days after the giving of notice under

subsection (7) shall be considered at a meeting of the Board of which the original objector and the objector to the amendment are given reasonable notice, and the objectors or their authorized representatives may attend such meeting and if he or they so desire shall be heard.

(9) Upon consideration of an objection in accordance with subsection (6) or (8) the Board may reject the objection in whole or in part or may make amendments to the draft plan to meet such objection.

(Amended 59 of 1969 s. 4)

*** Please see the transitional provisions contained in s. 5 of 16 of 1998, which section is reproduced immediately after section 26 of this Ordinance.**

Section:	7	Amendment of draft plan by Board otherwise than consequent upon an objection
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Remarks:

Adaptation amendments retroactively made - see 62 of 2000 s. 3

(1) In addition to the power of amendment contained in section 6, the Board may, at any time after exhibition of a draft plan under section 5 and before approval by the Chief Executive in Council under section 9, make amendments to a draft plan. (Amended 62 of 2000 s. 3)

(2) Every amendment to a draft plan made under this section shall be exhibited by the Board for public inspection at reasonable hours for a period of 3 weeks and during such period the Board shall advertise twice a week in a local newspaper and shall notify in each issue of the Gazette the amendment to the draft plan and the hours at which such amendment may be inspected.

(3) The Board shall supply a copy of an amendment to a draft plan made under this section to any person on payment of such fee as the Board may determine.

(4) Any person affected by an amendment to a draft plan made under this section may object within the said period of 3 weeks in manner provided by section 6(1) and (2) and the provisions of section 6(3) to (9) shall thereupon apply.

(Added 59 of 1969 s. 5)

Section:	8	*Submission of considered draft plan to Chief Executive in Council
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Remarks:

Adaptation amendments retroactively made - see 62 of 2000 s. 3

(1) After consideration of all objections, the Board shall submit the draft plan, with or without amendments, to the Chief Executive in Council for approval, and shall submit therewith- (Amended 62 of 2000 s. 3)

- (a) a schedule of the objections (if any) made under section 6 and not withdrawn;
- (b) a schedule of the amendments (if any) made by the Board with a view to meeting such objections. (Amended 59 of 1969 s. 6; 16 of 1998 s. 4)

(2) A submission to the Chief Executive in Council under subsection (1) shall-

- (a) in the case where the Board does not make amendments to the draft plan under section 7, be made before the expiration of a period of 9 months after the expiration of the period of 2 months mentioned in section 5; and
- (b) in the case where the Board does make amendments to the draft plan under section 7, be made before the expiration of a period of 9 months after the expiration both, of the period of 2 months mentioned in section 5 and of the period of 3 weeks mentioned in section 7,

or in either case, such further period, being not more than 6 months, after the expiration of either period of 9 months as the Chief Executive may, on application by the Board, allow in any particular case. (Added 16 of 1998 s. 4)

*** Please see the transitional provisions contained in s. 5 of 16 of 1998, which section is reproduced immediately after section 26 of this Ordinance.**

Section:	9	Powers of Chief Executive in Council upon submission
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Remarks:

Adaptation amendments retroactively made - see 62 of 2000 s. 3

(1) Upon submission of a draft plan the Chief Executive in Council may- (Amended 62 of 2000 s. 3)

- (a) approve it;
- (b) refuse to approve it;
- (c) refer it to the Board for further consideration and amendment.

(2) The Chief Executive in Council may approve a draft plan notwithstanding that any requirements of this Ordinance applicable thereto have not been complied with. (Amended 62 of 2000 s. 3)

(3) A draft plan approved as aforesaid is hereinafter referred to as an "approved plan".

(4) The Chief Executive in Council may by notification in the Gazette correct any omission from or error in any approved plan. (Amended 62 of 2000 s. 3)

(5) On such approval being given the approved plan shall be printed and exhibited for public inspection at such place as the Board may consider suitable and the fact of such approval and exhibition shall be notified in the Gazette.

(6) The Board shall supply a copy of any approved plan to any person on payment of such fee as the Board may determine.

Section:	12	Revocation, replacement and amendment of approved plans
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Expanded Cross Reference:

5,6,7,8,9,10,11

Remarks:

Adaptation amendments retroactively made - see 62 of 2000 s. 3

(1) The Chief Executive in Council may- (Amended 62 of 2000 s. 3)

- (a) revoke in whole or in part any approved plan; or

- (b) refer any approved plan to the Board for-
 - (i) replacement by a new plan, or
 - (ii) amendment.

(2) Notification of any revocation or reference under subsection (1) shall be published in the Gazette and noted by the Land Registrar on the copy of the plan deposited under section 11.

(3) Upon any reference under subsection (1)(b), a new plan in replacement of the plan referred or any amendment to the plan referred, as the case may be, shall be prepared, exhibited, considered, submitted, approved and deposited in accordance with the foregoing provisions of this Ordinance in like manner as the plan it replaces or amends and to this intent where the reference is under subsection (1)(b)(ii), the word "plan" in section 4, except as regards the master lay-out plan, and in sections 5 to 11, shall be construed as referring to the plan showing the amendment. < * Note - Exp. X-Ref.: Sections 5, 6, 7, 8, 9, 10, 11 * > (Amended 2 of 1988 s. 5)

(4) A plan referred to the Board shall be replaced by the new approved plan or read as one with any approved amendment, as the case may be. The Land Registrar shall endorse accordingly the copy of the plan deposited under section 11 which has been replaced or amended.

(5) Any draft amendment prepared under subsection (3) shall be deemed to be a draft plan for the purposes of section 16(1)(d) of the Buildings Ordinance (Cap 123).

(Replaced 3 of 1958 s. 2. Amended 8 of 1993 s. 3)

Section:	14	Power to make regulations
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Remarks:

Adaptation amendments retroactively made - see 62 of 2000 s. 3

The Chief Executive in Council may make regulations- (Amended 62 of 2000 s. 3)

- (a) providing for the procedures and matters relating to the taking possession of, removal, detention and disposal of property by the Authority under section 23(7A);
- (b) to facilitate the work of the Board; and
- (c) for the better carrying into effect of the provisions and purposes of this Ordinance.

(Replaced 22 of 1994 s. 3)

Section:	15	Expenses of the Board
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Remarks:

Adaptation amendments retroactively made - see 62 of 2000 s. 3

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.

(Amended 62 of 2000 s. 3)

Section:	16	Applications for permission in respect of plans
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(1) Where a draft plan or approved plan, whether prepared or approved before or after the commencement of the Town Planning (Amendment and Validation) Ordinance 1974 (59 of 1974), provides for the grant of permission for any purpose, an application for the grant of such permission shall be made to the Board.

(2) Any such application shall be addressed in writing to the secretary to the Board and shall be in such form and include such particulars as the Board thinks fit.

(3) The Board shall within 2 months of the receipt of the application, consider the same in the absence of the applicant and, subject to subsection (4), may grant or refuse to grant the permission applied for.

(4) The Board may grant permission under subsection (3) only to the extent shown or provided for or specified in the plan.

(5) Any permission granted under subsection (3) may be subject to such conditions as the Board thinks fit.

(6) The secretary to the Board shall notify the applicant in writing of the Board's decision on an application under this section, and where the Board refused to grant permission shall also notify the applicant of his right to a review under section 17.

(7) For the purposes of section 16(1)(d) and (da) of the Buildings Ordinance (Cap 123), anything permitted by the Board under this section shall not be a contravention of any approved plan or draft plan prepared under this Ordinance. (Amended 2 of 1988 s. 6)

(Added 59 of 1974 s. 3)

Section:	17	Right of review
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(1) Where an applicant is aggrieved by a decision of the Board under section 16, the applicant may, within 21 days of being notified of the decision of the Board, apply in writing to the secretary to the Board for a review of the Board's decision. (Amended 101 of 1991 s. 3)

(2) On receipt of an application under subsection (1), the secretary to the Board shall fix a time and place for the review, which shall be a day not more than 3 months of the receipt of the application, and shall give 14 days' notice thereof to the applicant.

(3) On a review under this section the applicant or his authorized representative may attend before the Board and shall be given an opportunity to make representations.

(4) If the applicant or an authorized representative does not attend at the time and place fixed for the review, the Board may proceed with the review or adjourn it.

(5) On a review under this section the Board shall consider any written representations submitted by the applicant.

(6) On a review under this section, the Board may, subject to section 16(4), grant or refuse to grant the permission applied for and may exercise the powers conferred by section 16(5).

(7) (Repealed 101 of 1991 s. 3)

(Added 59 of 1974 s. 3)

Section:	22	Power to inspect
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(1) The Authority may, without warrant or notice but at a reasonable time, enter land and any premises on it for the purposes of-

(a) posting a notice under section 23; and

- (b) verifying that an unauthorized development has been discontinued or any steps taken or land has been reinstated as required under section 23.
- (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 from information on oath that there are reasonable grounds to believe that there is or has been unauthorized development and it is necessary to enter the land or premises in order to ascertain whether there is or has been unauthorized development, the magistrate may issue a warrant authorizing the Authority or any person authorized in writing by the Authority to enter the land or premises.
- (4) Where the Authority or any person authorized by the Authority enters any place under a warrant issued under subsection (3) he shall produce his warrant.
- (5) Where the Authority or any person authorized by him enters any place under this section he may require any person present at that place-
 - (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 by him; or
 - (b) who appears at the time to be reasonably responsible for or in charge of that place to give such information or render such assistance as may be necessary to enable him to carry out his functions under 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.

(Added 4 of 1991 s. 8)

Section:	23	Enforcement on land within a development permission area
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- (1) Where there is or was unauthorized development, the Authority may, in a notice served on one or more of a land owner, an occupier or a person who is responsible for the unauthorized development- (Amended 101 of 1991 s. 5)
 - (a) specify the matters that constitute or constituted the unauthorized development; and
 - (b) specify a date by which if the unauthorized development has not been discontinued, the Authority requires-
 - (i) it to be discontinued; or
 - (ii) permission for the development to be obtained under section 16.
- (2) Where the Authority considers that continuance of unauthorized development could-
 - (a) constitute a health or safety hazard;
 - (b) adversely affect the environment; or
 - (c) make it impracticable or uneconomic to reinstate the land within a reasonable period,
 the Authority may, in a notice under subsection (1) or in case such a notice has already been served, in a further notice served, instead of specifying the same date under subsection (1)(b) for discontinuance and for obtaining permission, specify- (Amended 101 of 1991 s. 5)
 - (i) an earlier date for discontinuance of the unauthorized development; and
 - (ii) the steps, if any, required to be taken by a date specified in that regard to prevent anything related to the unauthorized development from causing any effect referred to in paragraph (a), (b) or (c).
- (3) Where a notice under subsection (1) has been served in relation to any unauthorized development and permission under section 16-
 - (a) has not been obtained in respect of that development by the date specified in that regard; or

(b) has been refused and all rights of review or appeal under section 17 have been exhausted, abandoned or have expired,
the Authority may, subject to subsection (4), in a notice served on any person on whom a notice may be served under subsection (1), require such person to reinstate the land, by a date not earlier than 30 days after service of the notice, to the condition it was in immediately before the development permission area became effective or to such other condition, more favourable to the person served, as the Authority considers satisfactory.

(4) Where the unauthorized development referred to in subsection (3) is or was on land included-

- (a) in a plan of an interim development permission area; and
- (b) within 6 months of the commencement of the Town Planning (Amendment) Ordinance 1991 (4 of 1991) in a plan of a development permission area,

the Authority may, in the notice under subsection (3), require the person served to reinstate the land to the condition it was in immediately before notice of the plan of the interim development permission area was published in the Gazette or to such other condition, more favourable to the person served, as the Authority considers satisfactory.

(4A) Where the Authority is satisfied-

- (a) in the case of a notice served under subsection (1) that-
 - (i) the unauthorized development has been discontinued; or
 - (ii) permission for the development has been obtained under section 16;
- (b) in the case of a further notice served under subsection (2) that-
 - (i) the unauthorized development has been discontinued;
 - (ii) the steps have been taken as required by the notice;
- (c) in the case of a notice served under subsection (3) that the land has been reinstated as required by the notice,

he shall serve a further notice stating that-

- (i) the unauthorized development has been discontinued;
- (ii) permission for the development has been obtained under section 16; or
- (iii) the steps have been taken as required by the notice,

as the case may be, and shall as soon as reasonably practicable register such further notice in the Land Registry. (Added 101 of 1991 s. 5. Amended 8 of 1993 s. 2)

(4B) A notice served under subsection (1), (2), (3) or (4A) shall be deemed to be an instrument affecting land or premises and shall be registrable in the manner required by or under the Land Registration Ordinance (Cap 128). (Added 101 of 1991 s. 5)

(5) Where permission to undertake or continue development on land referred to in subsection (4)(a) was granted under section 26 before the land was included within the plan of the development permission area, the permission shall, for the purposes of sections 20(7)(c) and 21(1)(c) and subsection (1)(b)(ii), be deemed to be permission granted by the Board under section 16.

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

- (a) the development has not been discontinued;
- (b) steps have not been taken as required under subsection (2); or
- (c) land has not been reinstated as required by subsection (3) or (4),

a person who is served with the notice commits an offence and is liable-

- (i) in the case of a first conviction, to a fine of \$500000; and in addition, to a fine of \$50000 for each day, after the date in the notice, during which the person continues to fail to so comply; and
- (ii) in the case of a second or subsequent conviction, to a fine of \$1000000; and in addition, to a fine of \$100000 for each day, after the date in the notice, during which the person continues to fail to so comply. (Amended L.N. 300 of 1995; 14 of 1996 s. 4)

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

- (a) an unauthorized development has not been discontinued;
- (b) steps have not been taken as required under subsection (2); or
- (c) land has not been reinstated as required by subsection (3) or (4),

the Authority may enter the land and take whatever steps he considers necessary to ensure the discontinuance of the unauthorized development, to prevent the effects referred to in subsection (2)(a), (b) or (c) or to reinstate the land.

(7A) The Authority may under subsection (7) take possession of, remove, detain and dispose of property that is on the land to which a notice served under this section relates. (Added 22 of 1994 s. 5)

(7B) Subject to any regulation that may be made under section 14, the Government is not liable for the loss of or for damage to any property in the course of taking possession of, removal, detention or disposal of property by the Authority under subsection (7A), nor is any public officer or person so authorized by the Authority to take possession of, remove, detain or dispose of the property under subsection (7A) liable for the loss or damage, unless he has caused it wilfully, fraudulently or by gross negligence. (Added 22 of 1994 s. 5)

(8) Expenses incurred by the Authority under subsection (7) are recoverable as a civil debt from any person served with a notice under this section.

(9) It is a defence to a prosecution under subsection (6) and in a proceeding to recover expenses under subsection (8) if the defendant proves that-

- (a) he took all reasonable steps in the circumstances to comply with the notice;
- (b) the development was an existing use or, in the case of land within an interim development permission area, that the use of a building or land was in existence immediately before publication in the Gazette of the notice of the relevant plan of the interim development permission area;
- (c) the development is permitted under the plan of the development permission area or under a relevant plan of an interim development permission area; or
- (d) permission for the development was granted under section 16.

(10) A notice under this section may be served on a person in person or by sending it by post to his address or depositing it in his post box or posting it in a prominent position-

- (a) on or near the land; or
- (b) on any premises or structure on the land,

affected by the notice. (Amended 101 of 1991 s. 5)

(Added 4 of 1991 s. 8)

Chapter:	131C	TOWN PLANNING (TAKING POSSESSION AND DISPOSAL OF PROPERTY) REGULATION
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Section:	2	Removal notice
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(1) Before exercising his power pursuant to section 23(7A) of the Ordinance to take possession of, remove, detain and dispose of property that is on the land to which a notice under section 23(1), (2) or (3) of the Ordinance relates ("initial notice"), the Authority shall serve a further notice ("removal notice") on the person served with the initial notice requiring him to remove, or cause to be removed, the property from that land.

(2) Subject to subsection (3), the removal notice shall-

- (a) contain a description of the property;
- (b) specify the land on which the property is located;
- (c) specify the date, which shall be not less than 14 days from the date of service of the removal notice, by which the property shall be removed from that land; and
- (d) state that if the property is not removed by the specified date, the Authority may take possession of, remove, detain and dispose of the property.

(3) Where any part of the property is perishable, or is a live animal, bird or fish, or in the opinion of the Authority constitutes or is likely to constitute a health or safety hazard ("perishable

- or hazardous property"), the removal notice shall, as regards the perishable or hazardous property-
- (a) instead of specifying the date under subsection (2)(c), specify an earlier date by which the perishable or hazardous property shall be removed from that land; and
 - (b) state that if the perishable or hazardous property is not removed by the specified date, the Authority may cause immediate disposal of the perishable or hazardous property by sale or otherwise as the Authority thinks fit.

(Enacted 1994)

Section:	7	Service of notices
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- (1) A notice under this Regulation may be served-
 - (a) on a person in person or by sending it by post to his last known address or depositing it in his post box; and
 - (b) by posting it in a prominent position-
 - (i) on or near the land on which the property is situated; or
 - (ii) on any premises or structure on the land on which the property is situated.
- (2) A copy of the notice referred to in subsection (1) shall be published at least once in 1 daily English language newspaper and 2 daily Chinese language newspapers.

(Enacted 1994)

Chapter:	370	ROADS (WORKS, USE AND COMPENSATION) ORDINANCE
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Section:	11	Procedure after publication of plan and scheme
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(1) When the time for the lodging of objections has expired and where no objections have been lodged under section 10, the Secretary may execute the works; and the works and the use shall be authorized under this Ordinance.

(1A) Subject to subsection (1), the Secretary shall not later than-

- (a) subject to paragraphs (b) and (c), 9 months after the expiration of the period for lodging objections under section 10(1);
- (b) subject to paragraph (c), where there is any amendment to the plan or scheme under section 7, 3 months after the expiration of the period for lodging objections under section 10(1) in respect of any such amendment or, where there is more than one amendment, the last of any such amendment;
- (c) such further period of not more than 6 months after the expiration of the period referred to in paragraph (a) or (b) (as the case may be) as the Chief Executive may, upon the application of the Secretary, allow having regard to the circumstances of the case,

submit to the Chief Executive in Council for consideration the plan and scheme and any objections lodged under section 10(1). (Added 14 of 1998 s. 2)

(1B) The Chief Executive in Council shall consider the plan and scheme submitted and any objections lodged under section 10(1). (Added 14 of 1998 s. 2)

(2) The Chief Executive in Council, after considering the plan and scheme submitted and any objections lodged under section 10(1), may-

- (a) decline to authorize the works and the use; or
- (b) authorize the works and the use, with or without modification and subject to such

conditions, as to the amelioration or avoidance of the effects of the works and the use or otherwise, as the Chief Executive in Council thinks fit. (Replaced 14 of 1998 s. 2)

(3) Before exercising the power under subsection (2), the Governor in Council may refer the plan, the scheme and the objections to the Town Planning Board appointed under the Town Planning Ordinance (Cap 131) and the Board shall, whether or not the works are shown on any draft plan under that Ordinance-

- (a) exhibit and advertise the plan and scheme under section 5 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 Board; as if all the objections were objections to a draft plan sent to the Board under section 6 of that Ordinance;
- (c) report to and advise the Governor in Council on the plan, the scheme and the objections as the Board thinks fit.

(4) The Governor in Council may reconsider any plan and scheme and-

- (a) authorize the works and the use which the Governor in Council has previously declined to authorize;
- (b) remove or vary any modifications or conditions previously imposed.

(5) The Governor in Council may, after the expiry of at least 28 days notice served on any person affected, amend any plan and scheme already considered and authorize the works and use in accordance with that amended plan and scheme.

(6) Where any objection has been lodged under section 10, the Secretary may execute the works only to the extent authorized, and subject to any subsisting modifications or conditions imposed, by the Governor in Council.

(7) Where any subsisting condition imposed by the Governor in Council under subsection (2)(b) requires anything to be done by the Secretary to ameliorate or avoid the effects of the works or the use-

- (a) anything done by the Secretary in compliance with that condition shall be part of the works;
- (b) the Secretary may enter any land or building, after giving at least 28 days notice to the owner and the occupier, and do what is required to be done to comply with that condition; and
- (c) the condition shall be deemed to have been met if the condition is met in respect of all the persons for whose benefit the condition was imposed other than those who waive compliance in writing.

(8) The notice mentioned in subsection (7)(b) shall-

- (a) describe the purpose of the entry; and
- (b) be served on the owner and occupier.

(9) Where-

- (a) the Secretary proposes to execute the works under subsection (1); or
- (b) the Governor in Council has declined to authorize the works and the use; or
- (c) the Governor in Council has authorized the works and the use; or
- (d) the Governor in Council imposes any modifications or conditions when authorizing the works and the use; or
- (e) any modification or condition previously imposed is removed or varied,

that fact shall be published in the manner mentioned in section 8(3).

Chapter:	563	URBAN RENEWAL AUTHORITY ORDINANCE
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Section:	23	Publication of project
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(1) For the purpose of the implementation of a project, the Authority shall publish in each issue of the Gazette within the space of a period of 2 months ("the publication period"), and once a week during the publication period in a Chinese language and an English language local newspaper, notice of the commencement date of the implementation of the project, together with a summary of the information of the description mentioned in subsection (3)(a) and the times and places where information on the project shall be exhibited and be available for public inspection.

(2) The commencement date of the implementation of the project shall be the date on which notice of the project is first published in the Gazette.

(3) The Authority shall exhibit for public inspection the following information related to the project-

- (a) a description of the general nature and effects of the project; and
- (b) a plan delineating the boundaries of the project.

(4) Without prejudice to the Lands Resumption Ordinance (Cap 124), the Authority may make reference to the commencement date of the implementation of the project notified in the Gazette or, the commencement date for the implementation of the part of the project determined under section 24(8) or 25(8), as the case may be, for determining, in accordance with the Authority's policies as published from time to time, the eligibility of any person to receive compensation, payments or other benefits including the provision of alternative residential accommodation where necessary as a result of the Authority's implementation of the project.

(5) For the purposes of this section, "project" (項目) means-

- (a) a development scheme of the description mentioned in section 25; or
- (b) a development project of the description mentioned in section 26,

as the case may be.

Section:	25	Development schemes
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(1) The Authority may, in accordance with this section, implement a project by way of a development scheme.

(2) No objection shall be entertained or considered in respect of a project which is to be implemented by way of a development scheme under this section and the objection procedures set out in section 24 shall not be applicable in respect of any such project or in respect of the implementation of that project by way of a development scheme.

(3) A development scheme shall contain such matters as the Authority considers relevant and shall-

- (a) comprise a plan which may contain any thing that a draft plan may contain under section 3 or 4 of the Town Planning Ordinance (Cap 131);
- (b) set out how the Authority intends that the development scheme will be implemented, including whether implementation will be by the Authority alone or the Authority in association with another person and in relation to land within the boundaries of the development scheme, what portion of the land is owned or leased by the Authority and what arrangements have been made or are contemplated by the Authority for the acquisition of any land not so owned or leased;
- (c) contain an assessment by the Authority as to the likely effect of the implementation of the development scheme including, in relation to the residential accommodation of persons who will be displaced by the implementation of the development scheme, an assessment as to whether or not, insofar as suitable residential accommodation for such persons does not already exist, arrangements can be made for the provision of such residential accommodation in advance of any such displacement which will result as the development scheme is

implemented.

(4) Without affecting the generality of subsection (3)(a), a plan prepared under that subsection may provide for the grant of permission under section 16 of the Town Planning Ordinance (Cap 131), for all purposes or for any purpose, and may prohibit any development not compatible with any development scheme prepared under that subsection.

(5) The Authority may submit any plan prepared under subsection (3)(a) to the Town Planning Board for consideration under subsection (6).

(6) Upon the submission to it of a plan prepared under subsection (3)(a), the Town Planning Board may-

- (a) deem the plan as being suitable for publication;
- (b) deem the plan as being suitable for publication subject to such amendments as the Town Planning Board shall specify; or
- (c) refuse to deem the plan as being suitable for publication.

(7) A plan which the Town Planning Board deems suitable for publication under subsection (6)(a) or (b) shall be deemed to be a draft plan prepared by the Town Planning Board for the purposes of the Town Planning Ordinance (Cap 131) and the provisions of that Ordinance shall apply accordingly.

(8) Where a draft plan of a development scheme deemed to be a draft plan prepared by the Town Planning Board under subsection (7) is amended by the Town Planning Board under section 6 or 7 of the Town Planning Ordinance (Cap 131) and such amendment includes an expansion in the boundaries of the plan, the commencement date of the implementation of the part of the development scheme concerning the additional land within the expanded boundaries shall be the date when a notice is first given under section 6(7) of that Ordinance or the date when the amendment is first exhibited for public inspection under section 7 of that Ordinance, as the case may be. The commencement date of the implementation of the part of the development scheme concerning the land included in the original development scheme published by the Town Planning Board under subsection (6) shall remain as provided under section 23(2).

(9) Where under section 5 of the Town Planning Ordinance (Cap 131) a plan which is deemed to be a draft plan by virtue of subsection (7) is exhibited, such plan shall, from the date that the exhibition of the plan is first notified in the Gazette, replace or amend according to its tenor, any draft or approved plan under that Ordinance relating to the area delineated and described therein.

(10) Where under section 9 of the Town Planning Ordinance (Cap 131) the Chief Executive in Council refuses to approve a plan which is deemed to be a draft plan by virtue of subsection (7), such refusal shall be notified in the Gazette and shall revive any draft or approved plan under that Ordinance which, under subsection (9), was replaced or amended thereby.

**Detailed Comparison of the Main Proposals of the Town Planning Ordinance
and the Town Planning (Amendment) Bill**

<u>Proposal</u>	<u>Existing Provision/Practice</u>	<u>Objective of the Proposal</u>
(I) <u>Expediting the Plan-making Process</u>		
1.1 Exhibition of plan		
<ul style="list-style-type: none"> To standardize the plan exhibition period for submitting <i>representation</i> to become <i>one month</i>. 	<p>The exhibition period for <i>objection</i> is <i>three weeks</i> for amendment to draft plan, and <i>two months</i> for new plan or amendment to approved plan.</p>	<p>To achieve a reasonable balance between public participation and efficiency, and to address concern for inadequate time for inspection of plans with substantial amendments.</p> <p>Replacing ‘objection’ with ‘representation’ would enable both supportive and opposing views to be submitted to the Town Planning Board (the Board) for consideration.</p>
<ul style="list-style-type: none"> Representers may furnish the Board with further information within <i>four</i> weeks upon expiry of the plan exhibition period. 	<p>No statutory time limit for objectors to make further written submissions, often resulting in delay of the objection resolution process.</p>	<p>To provide additional time for representers to make submissions while ensuring all relevant information and comments on the representations are available to the Board well before the hearing in order not to delay the representation consideration process.</p>

Proposal

Existing Provision/Practice

Objective of the Proposal

1.2 Consideration of representations

- To adopt a *single hearing process* whereby representations will be published for *three weeks* and both representers and commenters shall have the right to attend the hearing and be heard. The Board may propose amendment(s) to the draft plan to meet the representation(s) and such proposed amendment(s) will be submitted to the Chief Executive in Council (CE in C) together with the draft plan for a decision.

Objections are processed in *three stages* : preliminary consideration by the Board in the absence of objectors; hearing of objections and hearing of further objections, if received upon gazetting of the proposed amendments to meet the objections; after hearing the further objection, if any, making of amendment by the Board to the draft plan.

To expedite the process while reserving the right of the public to express their views in the form of representations or comment on the representations.

1.3 Submission of draft plan to CE in C and reference back of approved plan for replacement or amendment

- The Board shall submit a draft plan together with the representations and comments as well as any proposed amendments to CE in C for approval within a period of *six months* after the expiration of the plan exhibition period, or such further period, being not more than *three months*, as CE may allow.
- CE may refer approved plans to the Board for replacement or amendment.

The Board shall submit a draft plan incorporating the amendment, if any, made to meet objections, together with the objections to CE in C for approval within a period of *nine months*, or such further period, being not more than *six months*, as CE may allow.

To expedite the process.

Power vested with CE in C.

To speed up the plan-making process and avoid CE in C being unnecessarily involved

<u>Proposal</u>	<u>Existing Provision/Practice</u>	<u>Objective of the Proposal</u> in procedural matters.
(II) <u>Streamlining the Planning Approval Process</u>		
2.1 Minor amendments to planning permission		
<ul style="list-style-type: none">No further application is required for certain minor amendments to planning permission.	All minor amendments have to be submitted for approval by way of section 16 applications although some of these amendments are currently processed by the Planning Department under the delegated authority of the Board in accordance with the Board Guidelines.	To avoid delays in the development process, and to save costs incurred in the unnecessary procedures.
2.2. Delegation of authority		
<ul style="list-style-type: none">The Board may further delegate to its committees its powers and functions relating to consideration of applications for amendment of plan, amendment to planning permission and review applications under section 17.	Review of planning applications must be considered by the Board. It is an administrative practice to consider applications for amendment of plan by committees.	To enhance the efficiency of the Board and to allow the Board to deploy more time on deliberation of major planning issues.
<ul style="list-style-type: none">To provide that the Board may delegate its power to a public officer to determine acceptance of further information in relation	No such provision.	To streamline procedures.

Proposal

to applications for amendment of plan, planning permission, amendment to planning permission and in relation to review applications under section 17.

Existing Provision/Practice

Objective of the Proposal

(III) Enhancing the Transparency of the Planning System

3.1 Application for amendment of plan

- To expressly provide for application for amendment to statutory plan which shall be considered by the Board within three months; and to allow the applicant to attend the Board meeting and be heard at the meeting.

These applications are considered by the Board within three months in the absence of the applicant under an administrative arrangement.

To formalize the existing administrative arrangement and to make the system more open.

3.2 Owner's consent or notification

- If an applicant for amendment of plan or for planning permission is not the land owner of the application site, he shall be required to obtain consent of or notify the land owner.

Owner's consent or notification is not required for submission of planning application.

To enhance the fairness and openness of the planning system by ensuring that the land owner of the application site is aware of the application for amendment of plan or for planning permission which, being submitted by another party, involves his property.

3.3 Publication of planning applications for public consultation

<u>Proposal</u>	<u>Existing Provision/Practice</u>	<u>Objective of the Proposal</u>
<ul style="list-style-type: none">The Board shall publicize all applications for amendment of plan and for planning permission for three weeks by posting notices on or near the site or publishing notices in local newspapers, and shall make available the applications for public inspection.	The Board gauges public views on planning applications only by administrative means through the relevant District Offices. There is no provision enabling the Board to release information relating to planning applications for public inspection and comments.	To address the existing inadequacies in public consultation on planning applications.
<u>(IV) Recovering costs for processing planning applications</u>		
<ul style="list-style-type: none">Applications for amendment of plan, planning permission and amendment to planning permission shall be subject to a fee as the Secretary for Housing, Planning and Lands may prescribe by regulation.	Planning applications are processed free of charge.	To recover the cost of services provided by the Administration.
<u>(V) Strengthening Enforcement Control Against Unauthorized developments Not Permitted Under the Ordinance</u>		
<ul style="list-style-type: none">Terms requiring compliance under an enforcement notice shall be confined to those requiring discontinuance of an unauthorized development.	Obtaining section 16 planning permission is another means to comply with an enforcement notice.	To address a technical deficiency in the existing ordinance that has hindered the efficiency and effectiveness of enforcement control against unauthorized developments not permitted under the Ordinance.
<ul style="list-style-type: none">The Planning Authority may enter private	No such provision.	To facilitate investigation of suspected

Proposal

land other than domestic premises to ascertain whether there are matters constituting unauthorized developments, and to serve notice to obtain information, with failure to comply with the notice constituting an offence.

Existing Provision/Practice

Objective of the Proposal

unauthorized development.

- Managers of a clan, family or t'ong shall be regarded as land owners under the Ordinance, so that they are, among others, liable to offences in relation to unauthorized developments.

While the Town Planning Ordinance does not expressly state that land owner includes managers of a clan, family or t'ong, they are regarded as land owners under the New Territories Ordinance. Moreover, the Court of Appeal ruled on an enforcement case that they were land owners liable to planning enforcement action.

To clarify the existing legal position.

IMPLICATIONS OF THE PROPOSAL

ECONOMIC IMPLICATIONS

Streamlining of the planning procedures would expedite the development approval process, thereby bringing about positive economic gain and helping create employment opportunities in the development and construction sector although the actual improvement would largely depend on market forces. The proposed measures to enhance openness and fairness of the planning system will provide for better public participation without lengthening the planning approval process.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

2. Owing to the need to consider relevant representations under a condensed process within a shorter statutory time-frame, we believe that workload of the Planning Department and other bureaux/departments providing inputs will be aggravated as a result. The new requirement of publishing all planning applications for comments for three weeks within the existing time-frame will increase the workload of staff further. We aim to absorb the additional work by existing staff through reviewing the organizational set-up of the Planning Department and re-engineering its work procedures.

3. Under the Amendment Bill, fees will be charged for applications for amendment of plan, planning permission and amendment to planning permission to recover the Government's administrative costs.

SUSTAINABILITY IMPLICATIONS

4. The Amendment Bill mainly focuses on streamlining existing planning procedures and strengthening enforcement control against unauthorized development not permitted under the Ordinance. It should bring about a more efficient and effective planning system, whilst enhancing public accountability and openness in the planning process. The proposed amendments should contribute to the general long-term sustainability of Hong Kong, but their specific social, economic and environmental impact will largely depend on market forces.