

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

房屋及規劃地政局

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29 April 2005

Clerk to the SubCommittee
on Town Planning (Amendment) Ordinance 2004 (Commencement) Notice
Legislative Council Secretariat
3/F, Citibank Tower
3 Garden Road, Central
(Attn.: Miss Odelia LEUNG)
Fax : 2869 6794

Dear Miss LEUNG,

**Subcommittee on
Town Planning (Amendment) Ordinance 2004 (Commencement) Notice**

Meeting on 29 April 2005

I refer to the decision of the Legislative Council House Committee on 22 April 2005 to form a Subcommittee to study the captioned Commencement Notice. On 21 April 2005, we received from the Personal Assistant to the Hon Abraham Shek the concerns he has over the Town Planning Board Guidelines for the implementation of the Town Planning (Amendment) Ordinance 2004. The Administration's response to the concerns is set out in the table attached. Grateful if you would bring it to the attention of Members of the Subcommittee.

Yours sincerely,

(Ivan CHEUNG)
for Secretary for Housing, Planning & Lands

c.c. Director of Planning (Attn: Miss Ophelia Wong)

Internal

AA/SHPL

Response to Hon Abraham Shek's Submission in relation to the TPB Guidelines

<u>Comment</u>	<u>Response</u>
<p data-bbox="185 357 1055 440"><i>(1) Unnecessary Restriction on Submission of Additional Information (Guidelines No. 29 & 32)</i></p> <p data-bbox="185 504 1055 679">The Guidelines restrict submissions to the Town Planning Board (TPB) to an extent which is contrary to the Town Planning Ordinance (as amended by the Town Planning (Amendment) Ordinance 2004) and the legislative intent.</p> <p data-bbox="185 743 1055 919">Currently, there are a two-month period for providing the letter of objection and a further period of one to two months for preparing additional information which can be submitted after the preliminary consideration stage right up to the date of the hearing.</p> <p data-bbox="185 983 1055 1350">The revised system which requires submission of representations within two months of the plan exhibition period does not provide sufficient time for people to understand the zoning change, appoint consultants and prepare submissions, especially if they are complex. It would not provide time for the submission of various impact assessments. The TPB would not have adequate information and would likely over-rule the submission because of lack of information.</p>	<p data-bbox="1081 504 1984 823">In response to public comments received on the Amendment Bill, the Administration had moved a Committee Stage Amendment (CSA) to extend the publication period of all draft plans from one month to two months in order to allow sufficient time for the preparation of representations, and in tandem with this amendment, the provision for submission of further information to supplement representations has also been deleted.</p> <p data-bbox="1081 887 1984 1398">Comparing with the processing of planning applications where there are express provisions for the submission and processing of further information, there is no provision for the submission of additional information before the hearing of representation. The purpose of the two-stage plan-making process is to streamline the plan-making process whilst enhancing public participation at the same time. The legislative intent is to enhance the transparency of the process by publishing all representations and making them available for public inspection and comments within the statutory time limit to ensure that the representations are available for public inspection at the time public comments are invited.</p>

<u>Comment</u>	<u>Response</u>
<p>Submitting additional information at the hearing would lead to the crazy situation where the TPB would not have time to consider large volumes of information presented at the hearing. There would be no departmental comments and no time for the public to make comments.</p> <p>Proposal : the intention is to provide the public with access to the TPB on a reasonable basis. While the Ordinance may be silent on this point, the TPB should adopt Guidelines which allow for the submission of additional information up until four weeks before the hearing.</p>	<p>The acceptance of any further information beyond the statutory deadline would therefore defeat the above objectives of the Amendment Ordinance of enhancing the transparency of the process by allowing public comments to be made on the representations. However, whilst there is no provision for submission of further information in law, the Amendment Ordinance provides that all the concerned parties may attend the meeting and be heard by the TPB. It therefore does not preclude the concerned parties from presenting further information at the hearing. Upon implementation of the Amendment Ordinance, the Guidelines could be reviewed if there are practical difficulties in handling the submission of further information at the hearing.</p>
<p><i>(2) Deferment of Decision Making (Guidelines No. 33)</i></p> <p>Paragraph 2.1 of the Guidelines give the Planning Department (PlanD) the right to request the TPB to defer making a decision. This effectively provides PlanD an opportunity to deny the applicant a right to a timely decision and access to the following rights of appeal, etc.</p> <p>Paragraph 3.1(c) specifies that the TPB may defer a decision on planning applications whilst awaiting recommendations of major</p>	<p>Guidelines have been amended to specify that the TPB would take into account all relevant factors and the right and interest of the concerned parties and specify a maximum deferment period as it deems appropriate in the circumstances of each case. Normally, the applicant or concerned party will be given two months for submission of further information (if required), and the application will be re-submitted to the TPB for consideration within two months from the receipt of further information.</p>

<u>Comment</u>	<u>Response</u>
<p>Government planning-related study or infrastructure proposal. This should not be allowed as any decision should be made under the provisions of the current Outline Zoning Plan (OZP). There is no certainty as to when a Government Study will be completed or decision made, thus severely and adversely affecting the applicant's rights under the current OZP and the rights of appeal.</p> <p>Proposal : to delete PlanD from paragraph 2.1 and delete paragraph 3.1(c).</p>	<p>Whilst the applicant or any Government department may request for a deferment, the decision rests entirely with the TPB. It is reasonable to allow the TPB, upon consideration of such a request or of its own volition to defer a decision on a planning application pending the availability of the recommendations of a major Government planning-related study or infrastructure proposal affecting the application, which are due to be released shortly, as such recommendations may have significant implications on the site and may affect the TPB's decision on the application. Nonetheless, the deferment would not be indefinite and as mentioned above, the Guidelines have been amended to specify that the TPB would take into account all relevant factors and the right and interest of the concerned parties in considering requests for deferment.</p> <p>The applicant's right of review and appeal is subject to a decision being delivered by the TPB hence the applicant's right of review and appeal would not be affected by the deferment of the decision.</p>
<p>(3) Class A and Class B Amendments (Guidelines No. 36)</p> <p>Section 16A is supposed to streamline the process by exempting s.16A(2) applications from the need for public notification and</p>	<p>Exempting Class A amendments from application to TPB is a big step forward in streamlining the approval process for minor</p>

<u>Comment</u>	<u>Response</u>
<p>consultation. Paragraph 3 requires such applications which are considered unacceptable to Government departments to be submitted to the TPB for consideration. The Guidelines have not been amended as suggested by the industry, i.e. to clearly state that the Government would not adopt administrative procedures which go beyond the provisions of s.16A and that the District Office (DO) should not be subject to any circulation of such applications and such applications will not be notified to any person or organization, including the District Council; and any adverse comment by DO relating to 'public views' must not be a reason for the application to be referred to the TPB.</p> <p>Maintaining the same DO consultation process under the amended Ordinance will defeat the intention of streamlining the development process.</p> <p>Proposal : The Guidelines should contain specific reference that no local views should be sought by DO on s.16A applications.</p>	<p>amendments to approved development proposals. Although the Amendment Ordinance does not provide for publication of applications for Class B amendments, it is essential for the TPB or its delegated authority to take into account all relevant planning considerations in assessing such applications in the circumstances of each application.</p> <p>Accordingly, TPB should be allowed to take into account any comments as it sees fit and any relevant considerations before making a decision on the application. The proposal would unduly restrict TPB's exercise of its discretionary power in considering the applications.</p>

Housing, Planning and Lands Bureau
Planning Department
April 2005