17 December 2004 By hand

Clerk to the LegCo Panel on
Planning, Lands & Works
Legislative Council Secretariat
3/F Citibank Tower
3 Garden Road
Central
Hong Kong

Attention: Miss Odelia Leung

Dear Miss Leung

Town Planning (Amendment) Ordinance

Please find attached for the interest of the Honourable Members a copy of our comments recently made in response to the consultation undertaken by the Planning Department on their proposed Guidelines for implementation of the Town Planning (Amendment) Ordinance.

Yours sincerely

Louis Loong
Secretary General

17 December 2004 By hand

The Secretary
Town Planning Board
15/F North Point Government Offices
333 Java Road
North Point
Hong Kong

Dear Sir

Submission on the New/Revised Town Planning Board Guidelines

We refer to the Consultation Paper relating the to TPG Guidelines which are to come into effect when the amended Town Planning Ordinance is authorised, and also to the clarification provided by Town Planning Board Secretariat staff at a meeting held with them on 11 November 2004.

We see these Guidelines as being very important in clarifying the new procedures and practices that will facilitate the effective and efficient implementation of the Ordinance. We are mindful that one of the stated objectives of the amendments was to streamline the operation of the statutory town planning process and this has been given particular attention when we have considered the content of the Guidelines. In this respect the Board is requested to consider the Guidelines in a practical way rather than being too legalistic in their interpretation. However, at the same time we are concerned that some of the provisions of the Guidelines appear to impinge and limit the legal rights that the Ordinance provides to the public as Applicants, Commentors and Representors.

Attached to this letter is a detailed submission on each of the Guidelines. However, there are several points which we would like to highlight.

1. Openness of Meetings :

There is no Guideline issued relating to how Section 2C(a)&(b) of the Ordinance will be implemented. As this is a major change to the operation of the Board it would be helpful if the public could be informed as to when and how this process will be implemented and what they could expect.

In particular, it is considered necessary to clarify the basis on which it will be decided to exclude the public from those parts of meetings that do not relate to

the decision making process following hearings, ie. those parts covered by Section 2C(b). It is understood that the intention of the Ordinance is to make the conduct of the Board normally open to the public and it would only be closed in exceptional circumstances. In this respect a Guideline should be provided which indicates that matters of general public interest, such as the briefing of the Board on Government Studies, preparation of new statutory plans and Government proposals for amendments to Outline Zoning Plans, would all be matters presented and discussed in public.

2. Guideline D : Submission of Further Information

The submission of additional information in relation to an application to clarify questions from Government Departments and Commentors could potentially result in significant delays to the processing of applications if it is considered in a narrow way as the Guideline indicates. The definition of "material change" is important and where possible should try to avoid the unnecessary recounting of the 2-month statutory period for consideration by the Board.

In relation to the Plan Making process, the Guideline prevents the submission of supplementary information after the initial representation or comment is made. This limitation does not exist in the Ordinance and we consider that this is a likely obstacle to enabling the Board to properly consider and decide on the matters before it. We have been advised that additional information could be presented at the hearing. However, the Board and the public would be better served if that information was provided prior to the hearing so that considered advice could be provided to the Board at the hearing.

3. Guideline E : Deferment of Decisions

This Guideline is considered to introduce procedures which seriously impinge on the rights that the Ordinance gives to applicants. The applicant has a right to proceed to a Review Hearing or Appeal once the Board has made a decision. Should the Board defer making a decision, then the right to appear before the Board is also deferred. This is clearly not the intention of the Ordinance, and the Guideline is unacceptable in this respect.

The Guideline also allows the Planning Department to request a deferment of consideration, and this is unacceptable as it indefinitely deprives the applicant of the right to have the application decided, and the subsequent right to be heard. Only the "relevant parties" should have a right to request deferment of consideration.

It is also proposed that the Board could defer a decision awaiting a Government study or decision. This introduces uncertainty, especially as the

results of a Government Study only have statutory effect if the Board includes them as part of the Outline Zoning Plan. This is totally unacceptable and the applicants would be better served if the application was rejected at the Section 16 stage and the right to a Review Hearing therefore provided.

This Guideline needs to be significantly revised.

4. Guideline G : Extension of Time for Commencement of Development

This Guideline completely changes the existing system by arbitrarily limiting the number of extensions to an approved application to a further period equal to that of the original approval. There appears to be no good reason why the length of extensions needs to be limited as long as it meets the other stated criteria for consideration. This proposal seems unnecessarily restrictive, especially for complex projects.

We hope that the draft Guidelines can be reconsidered as indicated in this submission and would welcome the opportunity to present our concerns to the Board.

We stress that the need for efficiency and streamlining was a major reason for the proposed amendments and this is largely dependent on defining a clear process and procedures in the Guidelines.

Yours sincerely

Louis Loong
Secretary General

REDA : Comments on Town Planning Board Guidelines

(Numbers refer to paragraphs within the relevant Guideline)

1. There is no Guideline relating to Sc. 2C of the Town Planning Ordinance relating to the openness of meetings. The public should be made aware of the situations when the meetings will not be open to the public.

2. **Proposed Fees :**

Sc 12 A Applications to amend Plans.

There should be no fee for these applications as they should be seen as part of the Plan Making process rather than an application for approval. There are no fees for submission of representations and comments when amendments to plans are proposed by Government. Imposition of fees for Sc 12A applications will discourage public from participating in the Planning Process.

If a fee is to be charged, then it should not relate to land area as a proposal to change a zoning may cover a substantial area, much of which may not be owned by the applicant but should be changed for reasons of planning consistency. A fixed amount should be charge, possibly $25,000 as the amount of work involved will vary little.

The fee should not be charged for public interest changes in any case.

3. Guideline A : Submission Requirements

3.1 Form is not included for comment - could be important

3.2 The restriction on the submission of supplementary information is not in the Ordinance, therefore why should it be introduced in the Guidelines. Submission of additional information should be permitted as the time for preparation of representations and comments is much less than that in the present process. We do not consider it appropriate for supplementary information to be submitted only during the hearing, as the principle should be to ensure that adequate time should be allowed for the Board to give proper consideration to all information submitted. Under the proposal, the Board may need to defer making a decision because it would not have the benefit of prior advice from the relevant Government Department.

4.1 The name of the representer / commenter is to be made public but the address and contact information is to be excluded. Why not exclude all private information and give each submission a number as a present?

4.2 The Rural Committee need not be included as a place of notification.

4. Guideline B : Publication of Applications

2.8 The proposed administrative measures for notification go beyond the requirements of the Ordinance. While putting them on the Town Planning Board website and having a notice at the Town Planning Board secretariat may be reasonable why should they be put in the RC office DO and sent to the OC committees of neighbouring buildings?

3 Submission of further information should not be notified unless it is sufficient to require the application to be renotified as if it was a new application. All other information should be exempted from notification.

4. Submission of Comments. This whole section is considered inadequate as it does not try to guide the comments towards those which are relevant to the planning context of the application. For instance, the opportunity to comment should not become a reason to object to the zoning. The comment, should be made in the context of the planning intention for the site, and the comments should not be vexatious. There should also be a reference to encourage the submission of comments which may be in support of an application and not only in objection,.

5. Guideline C : Owners Consent

This Guideline seems to have a few practical problems which may not have been fully thought through.

2.1 "Current owner" is the owner 4 weeks before application is made. This is relatively close to the application time and does not allow for delays in submission which often arise. A longer period, say a 6-week period would provide flexibility and any sale or purchase within a 6-week period is unlikely to have been completed.

3. "Full set of relevant LR records" is not clearly defined. The relevant application form and Appendix is not provided for comment.

4. Copies of 'statement of consent' form should be provided for review. A standard form to be sent to owners should be provided by Town Planning Board so that every applicant knows they have sought the right information.

5. Owners notification ; need to see full copy of form.

6.2 The Rural Committee is treated as an owner and should be excluded.

The Board should not be allowed to require the applicant to take other reasonable steps after the application has been submitted, as that leaves it open to abuse.

6.3 This confuses the question as to whether the "reasonable steps" approach can be used instead of actual "notification'. "Reasonable steps" relate to the whole process.

7. Validity Period of Owners Consent : This states that the owners consent will be valid for 1 year whereas the owners who give consent must be those who owned the land 4 weeks before the application is made. The applicants consent should be valid for as long as the application is under processing by the Town Planning Board or the Town Planning Appeal Board, unless there is a significant, material change to the nature of the application. If a new application is required then the 4 week period would apply.

6. Guideline D : Submission of Further Information

3.1 Additional information should be submitted 7 days before the meeting. Currently if we submit anything that close to the Town Planning Board meeting the DPO request as to ask for a deferment so that they can process it properly. Is 7 days realistic, especially as the STPB has authority to accept it or not. On what basis would they not accept it??

3.2 If information is accepted which does not result in a material change then it should not result in a delay to the processing of an application and should not result in the need to publicly notify the application again.

3.3 No right to appeal to the Board if STPB unreasonably rejects information or requests delay.

4. Material Change being greater than 10% may not be applicable to small applications as a very small physical change can soon get to 10%

5(c) technical submissions in response to Departmental comments on such matters as Noise Impact often involve "the submission of a new or revised technical assessment". To delay the consideration by a further 2 months because of this is unreasonable.

6. There should be a means for quickly appealing the STPB's decision – to the Vice chairman of the Board?

7. The Guidelines should not prevent the submission of additional information for representation, comment or further representation as the Ordinance does

not prevent it. 3 weeks is too short to be able to prepare complete information. The original representation may need to be supplemented to respond to the comments made, etc.

7. Guideline E : Deferment of Decisions

2.1 This allows for the Planning Dept to request a deferment of consideration. This is completely different to the current situation where only the relevant party (other than Planning Dept) can request a deferment. To allow this would enable the Govt to delay consideration for reasons which may be prejudicial to the relevant parties position. We consider that only the applicant can enjoy the right of requesting a deferment of decisions. The Planning dept should be deleted from this.

3.1 **Not "decide to defer a decision on an application" but should be "defer consideration of an application"**. This whole section seems confused between considering a request for deferment and the board deciding to defer making a decision. They are two different matters. The Board should never be allowed to defer making a decision on an application at the request of a Govt Department as that prejudices the applicants' rights to proper process.

3.1(b) allows the Board to defer making a decision because of waiting for information from Govt Depts and "refinement (possibly meant to be "reference to the applicant") to the applications to address public comments". By doing so at the Sc 16 stage the Board is denying applicant the opportunity of attending a Sc 17 review and a Sc 17B appeal. If sufficient information is not available, the application should be rejected and then the applicant is provided with the right to a review or to make a new application. Deferment is a waste of an applicant's time and denial of his rights, especially if it is to wait for a Govt departments provision of information. If adequate information is not available from the Govt, the application should be approved.

3.1(c) allows the Board to defer a consideration pending recommendations of a major government study. This should not be permitted. This is irrelevant as the decision on an application should be made on the basis of the Outline Zoning Plan. There is never any certainty as to when a Govt study will be completed and whether a decision has been made as to its implications. This is not a matter for the Board to consider, and the Board should reject an application if it considers this a valid reason so that the applicant has a right to a Review and Appeal..

3.7 **S16A applications.** It should be stated that "Any request for deferment of consideration of the application could only be made by the applicant."

8. Guideline F : Temporary Use Extension

3.1 - 3.2 While here is reference to a "streamlined approach" it would appear that the full consent of owners and public notification process is required. It would probably be useful to mention this in para 3.1

9. Guideline G : Extension of Time for Commencement of Development

3. Application Procedures

3.1 The proposal is different to the existing administrative procedures in that an extension(s) can only be granted for an aggregate period equivalent to the length of the original period (which is normally 4 years). If it is not implemented within 8 years, a new s16 application is required with all of the new consent and notification procedures required to be followed. There is no justification given as to why this change in approach has been introduced.

The process is now proposed to become a s16(A) Class B amendment which would be considered by the Director of Planning, which has some advantage in that it is a streamlined process and public notification is not required. It also gives a right of a S 17 review and 17B appeal. Paragraph 4 sets out the Assessment Criteria which are used to decide whether the Director should grant an extension and (c) is particularly relevant relating to land administration delays, land assembly, etc.

There appears to be no reason why an unlimited number of extensions could not be considered under this process. If the Director considers that the justifications are insufficient, or that the planning circumstances have changed, then the requested extension could be rejected. That would give the applicant the right of a review hearing or the alternative of making a new application. The current proposals seem unnecessarily restrictive for complex projects that will take some time to implement.

4.1 (a) "A change in the planning policy" is proposed as a reason for not granting an extension. This should be deleted, as unless that change is a policy adopted by the Board by way of an amendment to an Outline Zoning Plan it is not a relevant consideration. There would be no certainty for development, if whatever change in the planning policy without going through proper statutory process is used for rejecting applications.

4.1(d) and (e). Reference is made to taking "all" reasonable action. This may be setting the barrier too high and taking "reasonable action" should be adequate.

10. Guideline H – Class A and Class B amendments

This provision was introduced to provide for the streamlining of applications for minor amendments to approved applications. This process and the way it is to be implemented is considered to be of utmost importance to REDA as it is considered essential to minimise unnecessary submissions in the development process. The opportunity is also provided to re-assess the provisions of the existing Guideline 19B to see if some of the provisions can be deleted and not carried forward to the new guideline. The existing Guideline 19B was issued without consultation and therefore a review of the whole process at this time is appropriate.

Having been through this process REDA is firmly of the view that the provisions of Guideline H are more restrictive than the existing provision of Guideline 19B and additional and unnecessary controls have been introduced on the provision of private facilities within developments. The process should be to eliminate unnecessary work for Planning Department and the applicant, and concentrate on the significant stages of the development process. The proposed provisions of Guideline H therefore need to be significantly revised.

Specific comments on Guideline H are as follows:-

2.1 There are too many categories included in this guideline. There should be a differentiation between those matters which are "planning criteria" and need to be approved and those which are just descriptive "development parameters".

2.2 There is no clear statement in the Guideline as to how Class A amendments will be approved and who will approve them. Also it does not clarify how such amendment would be rejected and the implications of such rejection. This would assist in clarifying what is required.

3. Where an application is considered unacceptable by a Govt Dept the application will be submitted to the Town Planning Board for consideration, so there is no streamlining. Could the Director of Planning not consider the comment and if appropriate over-rule it if it is unreasonable? The delegation procedure as structured only allows for the Director to approve, not to reject. This section should be reconsidered.

4. Application Procedures

4.1 The application can only be submitted by the person to whom the approval was originally granted which effectively means the approval does not go with the land. Sc 16A is unusual in this respect. Clarification is required as

to how a development approval sold on to a new owner can get a right to apply for and amendment to an approved scheme.

4.2 This paragraph states that the process for consent and notification does not apply to Sc 16A applications. This should be expanded to clearly state that such applications are only between the Board and the applicant and will not be made public. The Guideline should state that the Govt would not adopt administrative procedures which are beyond the provisions of Sc 16A in this respect, and the DO should not be subject to any circulation of such applications and such applications shall not be notified to any person or organization including the District Councils.

REDA consider this to be extremely important as the Ordinance provides for public comment on the important stages of first approval and excludes them from stages of minor amendment.

4.3 Any adverse comment by the DO relating to "public views" must not be a reason for the application to be referred to the Town Planning Board.

6. Time Limit. Under the existing process any application approved under delegated authority runs for a full 4 year period, and the approval is issued in a letter with a full set of approval conditions. Under the new proposal the approval of a Class B amendment will only run for the same period as the original application, unless an extension of time is also requested. Class A amendments have no impact on time limit.

This process seems unnecessarily complex. A Type B application is an application to the Board and there is no restriction in the Ordinance which says that the validity of such approval should not run for a full period as with a Section 16 application. Often amendments are made at an early stage of the 4 year period and it is still reasonable for a full 4 year validity to apply so as to allow for implementation. An application for an extension of time is a completely separate matter, usually made at the end of the 4 year period.

Schedule of Class A and B amendments

There are significant changes to the way the types of amendments are classified in the Schedule when compared with the existing Guideline 19B. New categories have been introduced such as "Private Open Space" and "Private Indoor Recreational" facilities. The criteria for various categories have been changed significantly and could be considered to be more restrictive and in some cases more uncertain. The general trend is to move those cases which are currently delegated to the DPO up to the Director as Class B amendments, while moving

those which are currently delegated to the Director up to the Board to approve. This does not facilitate flexibility and efficiency.

The general principle to be applied should be to move as many categories as possible into Class A and Class B and minimise the cases which go to the Board, which should focus on first approvals and matters of planning importance. In this context, where a percentage and a figure are quoted, the greater of the two, not the lesser should be applied so as to minimise unnecessary applications.

Detailed comments on the Schedule are included in the following table.

Comments on the Schedule of "Class A Amendments" and "Class B Amendments"

Category	Comment
1. Total GFA	• Any increase in GFA permitted by the BA under B(P)R 22(1) or (2) as 'non-accountable' or "bonus GFA" should be a Class A Amendment. "Double approval" is not needed. • Any amendment arising from setting out of site boundary at processing of land grant should also be Class A. • Class B amendments should be the same as under the existing Guideline 19B with the Director able to consider those not exceeding 4,000m^s or 10% whichever is the greater.
2. Site area / boundary	• Any reduction in site area with a corresponding reduction in GFA should be permitted under Class A and not limited to a site less than 1 ha. • Any change to site boundary at processing of land grant should be permitted as Class A amendment. • The only ones which should be Class B are those which do not fall into Class A and are not greater than 10% of the gross site area.
3. Number of Units	• Allowance should be made for those situations where a range of units is specified in the approved application. Any change within an approved range is a Class A Amendment. • The remarks should permit an increase above the upper limit of a range being a Class B Amendment. • Any increase not exceeding 10% or 200 units which ever is the greater, should b permitted as Class A • Class B should be any increase greater than 10% or 200 units with no increase in GFA.
4. Unit Size	This category should be deleted as the unit size is not a significant planning criteria.
5. Building Blocks	Minor changes in the disposition of blocks should be a Class A Amendment not Class B.
6. Building Height	Reference should only be made to the restrictions on the Outline Zoning Plan and not to any Town Planning Board Guidelines on Building Height Control as they have no statutory power.
7. Site Coverage	• The Town Planning Board has been encouraging the relaxation of Site Coverage restrictions in some zones and this should be reflected in the Guideline

	• All changes in site coverage should be permitted as Class A amendments unless they require a minor relaxation of a stated restriction on the Outline Zoning Plan. • Class B application should relate to those where the site is subject to a restriction on the Outline Zoning Plan and a relaxation has previously been granted and a further relaxation of up to 10% is requested.
8. Type/Mix of uses	This should be significantly simplified. • There should be no distinction between domestic and non-domestic, just a % change; • The changes permitted under Class A should be increased from 5% to 10% and not subject to a maximum of 2,000 s.m. as there are other controls on maximum GFA; • The Class B category appears to duplicate the Class A category. It is suggested that the Class B category be for Changes between 10% and 20%.
9. Changes in internal layout/disposition	No comment
10. Provision of GIC facilities.	• If changes in the type of facilities or deletion of facilities are approved by the relevant Government Departments then the amendments should be Class A amendments. They are usually covered by lease conditions with and lengthy Technical Schedules. • Double approval is not required.
11. Provision of public open space	No comment
12. Provision of Private Open Space.	This is a new category and is unnecessary and should be deleted. • Provision of open space whether public or private should be subjected to the same criteria. • This category should be deleted and combined with Category 11 above, as "Provision of Open Space", with the remarks amended to state that this applies to both private and public open space. • Usually subject to conditions in Sc 16 or lease.
13. Car parking, etc	REDA is currently discussing with Lands Department greater flexibility in interpretation of car parking requirements as demand for spaces has significantly dropped. • Any change to the number of parking spaces which conforms to the car parking and L/UL bay ratio should be a Class A amendment, irrespective of the number of

	spaces involved. • Any change which involves a change to the car parking or L/UL ratio should be Class B. • Changes to the location of ingress/egress points, footbridge connections should be Class A amendments, not Class B, as they are usually covered by lease conditions.
14. Non-Building Area	This should be deleted as it relates to lease matters.
15. Landscape Master Plan	• Changes in soft/hard landscape design, programme etc should be Class A amendments as these normally happen during implementation. • Any amendments should be approved by way of submission of an amended LMP under the Town Planning Board's landscape condition, or approved under the lease conditions. • Increase in trees to be felled should be Class B as stated.
16. Provision of Public Recreational Facilities	This is covered by Item 10 and is an unnecessary duplication. • Changes in public recreational facilities agreed by relevant departments should be Class A amendments. • Class B should relate to those for which agreement of the Government Department may not have been obtained at time application is made.
17. Provision of private Indoor recreational facilities	This is a new category and is considered unnecessary and should be deleted. • If retained, provision of private recreational facilities is not usually a requirement but a voluntary provision and should be Class A. • There is no provision for increase in provision of GFA which should be a Class A amendment. The Remark does not appear to relate to the description of the two classes. Any excluded GFA does not count and therefore should not require an application.
18. Location of ancillary major utility installations	No comment.
19. Phasing and Implementation	This category should be deleted as it is unnecessary. • If it is retained the only amendments for Class B should be changes relating specifically to GIC or public open space facilities which are subject to provision by a certain time under a condition of approval by the Board. • Usually covered by lease conditions.

20. Extension of Time for commencement of Development	Class B Amendments should be without limitation in terms of the period of time for which the extension should be granted provided planning circumstances on the Outline Zoning Plan have not changed.
21. Time for compliance with planning conditions, etc.	No comment.