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11 June 2008

Hon. Emily LAU Wai-hing, JP

Chairman

Subcommittee on Building (Planning) (Amendment) Regulation 2008

The Legislative Council

c/o Council Business Division 2, Legislative Council Secretariat

Suite 602, Citibank Tower

3 Garden Road

Central, Hong Kong

Dear Ms Lau,

Application of Section 84 of the Disability Discrimination Ordinance (DDO)

This is to respond to your verbal request made during the meeting of the Subcommittee on Building (Planning) (Amendment) Regulation 2008 (Amendment Regulation) held on 10 June 2008.

The following information is provided to assist Members of the Subcommittee to better understand the implications of Section 84 of the DDO in relation to the discussion on whether or not the existence of the Section alone provides sufficient safeguards that buildings to be built by government departments or public authorities will also comply with the requirements set out in the Amendment Regulation. According to the Legislative Council Brief of the Government, the Amendment Regulation will only be applicable to private buildings.

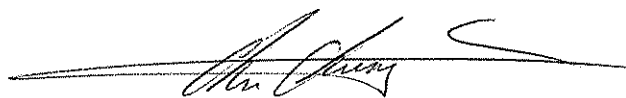
Section 84 of the DDO provides that, notwithstanding any provision in any other Ordinance, a public authority *shall not* approve building plans unless the public authority is satisfied that reasonable access for persons with a disability will be provided to the building. "*Public authority*" as defined under the Section includes the Director of Lands, the Building Authority, the Housing Authority and the Director of Architectural Services. Although a general duty is imposed on the public authority, the Section itself, nor any

other section of the DDO, provides any specific enforcement mechanism in respect of this duty. However, applying general principles, judicial review may be available in respect of the duty under this Section.

With the introduction of the Amendment Regulation, the new design requirements therein will become enforceable legal requirements under Regulation 72(1) of the Building (Planning) Regulations applicable to private buildings. Should Members consider that similar enforceable legal requirements should be created for government and public buildings as proposed by Hon TONG Ka-wah, SC, consideration may be given to amending Section 41 of the Buildings Ordinance (CAP.123) which currently provides that buildings belonging to the Government or certain public authorities shall be exempt from the provisions of the same Ordinance.

Given the Government's long history of experience in complying with the mandatory requirements in the Design Manual – Barrier Free Access 1997 and its clear indication that Government departments and public authorities will also make reference to the Amendment Regulation in the design and construction of government and public buildings, the Equal Opportunities Commission see no difficulties for the Government and the public authorities concerned to comply with the new requirements in the Amendment Regulation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ferrick Chu', is written over a horizontal line.

Ferrick Chu
Head, Policy and Research
Equal opportunities Commission