

# Town Planning (Amendment) Ordinance 2004

This pamphlet aims to provide a summary of the major provisions of the Town Planning (Amendment) Ordinance 2004 (the Amendment Ordinance). The Amendment Ordinance published in the Government Gazette on 23 July 2004 will come into operation on a date to be appointed by the Secretary for Housing, Planning and Lands.

This pamphlet is intended for reference only and should not be regarded as a formal interpretation of the law.

## Background

The existing Town Planning Ordinance (the Ordinance) was first enacted in 1939. Apart from some major amendments made in 1974 relating to the planning permission system and those made in 1991 relating to planning enforcement and the setting up of planning committees and the Town Planning Appeal Board, the Ordinance has remained largely in its original form. In 1996, the Government published a White Bill on Town Planning to seek public views on the proposal to overhaul the planning system. Having considered the public comments received, the Government introduced the Blue Bill into the Legislative Council (LegCo) in 2000. Due to complexity of the issues involved, however, the then LegCo was unable to complete the scrutiny of the Bill before the expiry of its term.

Building on the experience of the Blue Bill, the Government considered it more appropriate to adopt a phased approach to amend the Ordinance to first put forward those proposals with general consensus and which would produce immediate benefit to the community at large. The Town Planning (Amendment) Bill 2003 (the Amendment Bill)

covering the Stage One Amendment was introduced into LegCo in May 2003 and passed on 7 July 2004.

## Objectives of the Amendment Ordinance

The main objectives of the Amendment Ordinance 2004 are:

- to enhance the transparency of the planning system;
- to streamline the town planning process; and
- to strengthen enforcement control against unauthorized developments in the rural New Territories.

## Major provisions of the Amendment Ordinance

### Enhancing the transparency of the planning system

The Amendment Ordinance provides for the opening up of all meetings of the Town Planning Board (the Board) and its committees to the public except for the deliberation part and some special circumstances (e.g. where confidential information or legal matters/proceedings are involved, or where premature release of information would prejudice the Board's or the Government's position in carrying out its functions under the Ordinance).

In addition, the Amendment Ordinance contains provisions to further enhance the transparency of the plan-making as well as the planning application processes, and to achieve greater public participation whilst maintaining the efficiency of the planning application system.

## Plan-making Process

A major part of the Amendment Ordinance is related to the plan-making process. The existing section 6 is repealed and replaced by new sections 6 and 6A to 6H. Under the Amendment Ordinance,

- all new plans, amendments to approved plans or amendments to draft plans will be exhibited for two months for public inspection;
- any person may make representations (either supportive or adverse) to the Board within the two-month period;
- the Board shall publish the representations for three weeks for public comments and make available all representations for public inspection;
- any person may make comments (either supportive or adverse) on the representations within the three-week period;
- the Board will hold a meeting to consider the representations and comments. The persons who have submitted representations or comments may attend the meeting and be heard by the Board;
- after the hearing, the Board will decide whether to propose amendments to the draft plan to meet the representations. If the Board decides to propose amendments, such proposed amendments will be published again for three weeks for further representations;
- any person, other than the original 'representor' or 'commenter', may submit further representations (either supportive or adverse) to the Board within the three-week period;
- if adverse further representations are received, the Board will hold another meeting to consider all the further representations, at which the original 'representor' or 'commenter' and the 'further representor' may attend and be heard by the Board;

- after the further hearing, the Board will decide whether to make amendments to the draft plan; and
- upon completion of the representation consideration process, the Board is required to submit the draft plan incorporating the amendments together with the representations, comments and further representations to the Chief Executive in Council for approval within nine months of the expiry of the plan exhibition period (or within a further six-month period as may be extended by the Chief Executive).

The new plan-making process is shown in **Figure 1**.

## Planning Application System

As part of the proposal to achieve greater public participation in the planning process, the Amendment Ordinance has incorporated a new section 12A to provide for applications for amendments of plans, which have hitherto been conducted on an administrative basis. Under section 12A,

- any person may make an application to the Board for amendment of an approved plan or a draft plan (except for a new draft plan or matters relating to an amendment shown on the amendment plan);
- an application for amendment of plan shall be considered at a meeting by the Board within three months, and the applicant may attend the meeting and be heard by the Board;
- if the Board accepts the amendment or part of the amendment proposed by the applicant, the Board will initiate the plan-making process to incorporate the amendment into a draft plan; and
- the draft plan incorporating the amendment made by the Board will then be exhibited for public inspection in accordance with the provisions of the Ordinance.

As part of the proposal to enhance the transparency of the planning application system, new provisions are incorporated in sections 12A, 16 and 17.

- First of all, an applicant for planning permission or amendment of plan is required to obtain the consent of or notify the 'current land owner' \* of the application site or to take reasonable steps in order to obtain consent or to give notification within a reasonable period before the application is made. This will enable the owner of the site to be fully aware of the applicant's intention to submit an application relating to his land or premises.
- Upon receipt of a section 12A or 16 planning application or a section 17 review, the Board will publish the application, either by posting a notice at a prominent position on or near the land, or advertising in two local Chinese and one local English newspapers. The public will have the opportunity to submit their comments on the application to the Board within the three-week publication period.
- All documents submitted by the applicant to the Board in respect of an application under section 12A or 16 or a review under section 17 will be available for public inspection.

The new procedures for processing a planning application under sections 12A, 16 and 17 are shown in **Figure 2**. Same as the existing practice, all applications for amendment of plan and planning permission shall be considered by the Board within three months and two months respectively, while section 17 reviews shall continue to be heard by the Board within three months.

\* 'current land owner' is defined in sections 12A and 16 as any person whose name is registered in the Land Registry as that of an owner of the land to which the application relates, as at the commencement date of such period before the application is made as is specified by the Board by notice published in the Gazette.

To streamline the planning approval process, a new section 16A is added to provide for exemption of certain amendments of planning permission granted by the Board from further application and exemption of certain amendments of planning permission granted by the Board from further publication for public comments. These amendments will be classified as Class A and Class B amendments. The list of Class A and Class B amendments will be published in the Gazette.

## Power and Function of the Board

The Amendment Ordinance provides for further delegation of the power and function of the Board to its committees appointed under section 2(5) in respect of applications made under section 12A and 16A and matters under section 8. Same as the previous provision in relation to processing of minor amendments to a section 16 permission, the power and function in respect of applications made under section 16A may be delegated to a public officer.

In respect of submission of further information by an applicant for planning permission or amendment of plan, the Board shall have the discretion to determine whether to accept such further information as part of the application and if accepted, whether such further information needs to be published for further comments by the public. As submission of further information after an application is made is very common in practice, the Amendment Ordinance provides for the delegation of such power to the Secretary of the Board in order to avoid delay in the processing of the application.

**Enforcement Against Unauthorized Development in the Rural New Territories**

Since the Amendment Ordinance 1991 comes into force, the Planning Authority (the Authority) is empowered to take enforcement action against unauthorized developments in the rural New Territories. Over the years, the Authority has experienced technical difficulties in carrying out its duties. The main provisions in the Amendment Ordinance 2004 are to address some of these deficiencies in order to enhance the efficiency and effectiveness of planning enforcement control with a view to safeguarding the rural environment and minimizing adverse environmental impact on the residents in the rural areas.

Major provisions relating to enforcement include:

- power to enter any land or premises (except domestic premises) or to have access through any land or premises (except domestic premises) for investigation on suspected unauthorized development (UD);
- a notice may be served under section 22 to request for information relating to a suspected UD;
- failure to comply with the notice served under section 22 is an offence and will be liable to a fine of up to HK\$100,000;
- a notice may be served under section 23 to request for discontinuation of an UD if the Authority is of the opinion that there is an UD;
- in forming an opinion on whether there is an UD, the Authority shall have regard to aerial photographs taken by the Lands Department, the relevant statutory plans and other relevant information;

- upon the service of a notice under section 23(1), the notice recipient shall be required to discontinue the UD within a specified period. The submission of a planning application for regularizing the UD will not be taken as a reasonable step to comply with the notice as is allowed under the previous ordinance; and
- technical amendments to section 23(9) and addition of section 23(9A) to clarify the burden of proof on the defendant as well as the prosecution.

**Planning Application Fees**

In line with the Government's 'user-pay' principle, the Amendment Ordinance provides for charging of fees for planning applications made under sections 12A, 16 and 16A. It also provides that the Secretary for Financial Services and the Treasury may waive or reduce the prescribed fee on special circumstances. The level of fees will be set out in the Town Planning (Fees) Regulation. There will be no fee charges for applications for review under section 17.

Enquiries on this pamphlet may be addressed to the Planning Information and Technical Administration Unit of the Planning Department at 17/F, North Point Government Offices, 333 Java Road, North Point, Hong Kong or by email to [enquire@pland.gov.hk](mailto:enquire@pland.gov.hk). Technical documents can be downloaded from the Planning Department Homepage at [www.info.gov.hk/planning](http://www.info.gov.hk/planning) and the Town Planning Board Homepage at [www.info.gov.hk/tpb](http://www.info.gov.hk/tpb).

 **Planning Enquiry Hotline**  
Tel. No. : 2231 5000

Figure 1

**The New Plan-making Process**

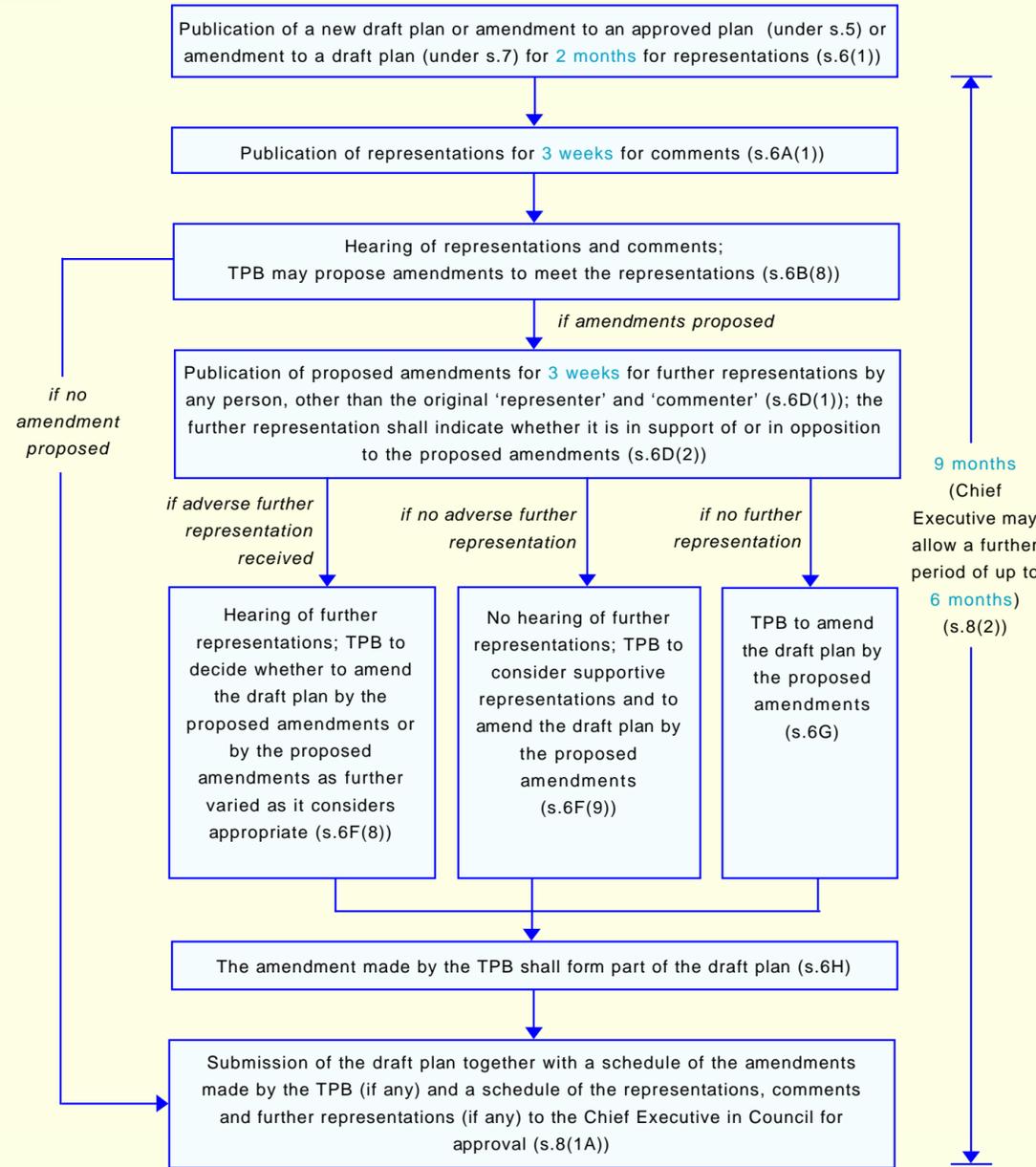


Figure 2

**New Procedures for Processing Application for Amendment of Plan and Planning Permission**

