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HONG KONG SPECIAL ADMINISTRATIVE REGION**ORDINANCE NO. 25 OF 2004**A circular stamp containing the letters "L.S." in a bold, serif font.

TUNG Chee-hwa
Chief Executive
22 July 2004

An Ordinance to amend the Town Planning Ordinance.

[]

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Town Planning (Amendment) Ordinance 2004.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Housing, Planning and Lands by notice published in the Gazette.

2. Interpretation

Section 1A of the Town Planning Ordinance (Cap. 131) is amended 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 in subsection (5)—

(a) in paragraph (a)—

(i) by repealing “16” and substituting “8, 12A, 16, 16A”;

(ii) by repealing “and” at the end;

(b) in paragraph (b)—

(i) by repealing “an application for”;

(ii) by repealing subparagraph (i) and substituting—

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

- (iii) in subparagraph (ii)—
 - (A) by adding “an application for” before “permission for”;
 - (B) by repealing the full stop and substituting “; and”;
- (c) by adding—
 - “(c) under sections 12A(13) and (15), 16(2J) and (2L) and 17(2H) and (2J) to the secretary of the Board,
and, for the avoidance of doubt, the provisions of this Ordinance shall, with necessary modifications, be construed and have application accordingly.”.

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 6B, 6C, 6D, 6E, 6F, 6G and 6H, and, for the avoidance of doubt, the provisions of this Ordinance shall, with necessary modifications, be construed and have application accordingly.”.

5. Sections added

The following are 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, unless the holding of a meeting for the purpose is required either by any express provision of this Ordinance or by necessary implication from any provision of this Ordinance.

(2) Subject to subsections (3) and (4), upon the circulation of papers under subsection (1), 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.

(3) Any member of the Board or of a committee appointed under section 2(3) or 2A may require any business which is being transacted by the circulation of papers under subsection (1) to be transacted at a meeting of the Board or of the committee, as the case may be, by giving a notice in writing to the chairman of the Board or of the committee, as the case may be, within the period specified in the papers.

(4) Where, in respect of any business being transacted by the circulation of papers, a notice is given under subsection (3) to the chairman of the Board or of a committee appointed under section 2(3) or 2A, any resolution approved in writing under subsection (2) in respect of the business shall be void.

(5) For the avoidance of doubt, a reference to circulation of papers in this section includes circulation of information by electronic means, and the reference to the papers in this section shall be construed accordingly.

2C. Meetings of Board and of committees

(1) Subject to subsection (2), all meetings of the Board or of any committee appointed under section 2(3) or 2A shall be open to the public.

(2) Subsection (1) does not apply to—

- (a) in the case of any meeting held under or for the purposes of section 6B, 6F, 12A, 16, 16A or 17, such part or parts of the meeting that are held for deliberation by the Board or the committee, as the case may be, for making any decision under section 6B(8), 6F(8) (whether with or without application of section 6F(9)), 12A(23), 16(3), 16A(5) or 17(6), after hearing any person who, not being a member of the Board or the committee, as the case may be, is entitled or allowed to be heard or otherwise has an opportunity of making representations or providing information at the meeting; and
- (b) in the case of any other meeting, the meeting or any part or parts of the meeting if in the opinion of the Board or the committee, as the case may be, it is likely that—
 - (i) the application of subsection (1) to such meeting or such part or parts of the meeting, as the case may be, would not be in the public interest;
 - (ii) the application of subsection (1) to such meeting or such part or parts of the meeting, as the case may be, would result in premature release of information that would prejudice the position of the Board, the Government, the Chief Executive or the Chief Executive in Council or, in the case of a meeting of the committee, the committee in carrying out its or his functions under this Ordinance;
 - (iii) the application of subsection (1) to such meeting or such part or parts of the meeting, as the case may be, would result in a disclosure of information in breach of

- any duty of confidentiality owed to any person by the Board or the Government or, in the case of a meeting of the committee, the committee, or owed to the Government by the Board or, in the case of a meeting of the committee, the committee, by virtue of any law or any requirement under any law, or in contravention of any prohibition by any order of a magistrate or a court or by any law or any requirement under any law;
- (iv) the application of subsection (1) to such meeting or such part or parts of the meeting, as the case may be, would result in a disclosure of information in respect of which a claim to legal professional privilege could be maintained in law; or
 - (v) any matter transacted at such meeting or such part or parts of the meeting, as the case may be, would be relevant to the institution or conduct of any legal proceedings.

(3) Subject to the provisions of this Ordinance, the Board or any committee appointed under section 2(3) or 2A may determine its practice and procedure at its meeting.”.

6. Exhibition of draft plans

Section 5 is amended by repealing “a local newspaper” and substituting “2 daily Chinese language local newspapers and 1 daily English language local newspaper”.

7. Section substituted

Section 6 is repealed and the following substituted—

“6. Representations relating to draft plans

(1) Within the period of 2 months 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 nature of and 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 2 months referred to in subsection (1), it shall be treated as not having been made; or
 - (b) does not comply with any of the requirements specified in or made under subsection (2), it may be treated as not having been made.

(4) The Board shall, as soon as reasonably practicable after the expiration of the period of 2 months 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 Chief Executive in Council has made a decision in respect of the draft plan in question under section 9.

(5) In respect of any representations which are available for public inspection under subsection (4), the Board shall cause a notice that complies with subsection (6) to be published in 2 daily Chinese language local newspapers and 1 daily English language local newspaper once a week during the first 3 weeks of the period during which the representations are so available for public inspection.

- (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); and
 - (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).”.

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), it shall be treated as not having been made; or

(b) does not comply with any of the requirements made under subsection (2), it may 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 Chief Executive in Council has made a decision in respect of the draft plan in question under section 9.

6B. 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 the expiration of the period of 3 weeks referred to in section 6A(1).

(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 all or some of the representations made in respect of the draft plan in question under section 6(1) shall be considered at the same meeting, whereupon such representations, as well as any comment made in respect of any of such representations—

(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 decide whether or not to propose amendments to the draft plan in question in the manner proposed in the representation or otherwise in the manner that, in the opinion of the Board, will meet the representation.

6C. Proposed amendments under section 6B(8) to be made available for public inspection

(1) Where the Board proposes any amendments under section 6B(8), the Board shall, as soon as reasonably practicable after the amendments are proposed, make the proposed amendments available for public inspection at reasonable hours, and shall continue to do so until the Chief Executive in Council has made a decision in respect of the draft plan in question under section 9.

(2) In respect of any proposed amendments which are available for public inspection under subsection (1), the Board shall cause a notice that complies with subsection (3) to be published in 2 daily Chinese language local newspapers and 1 daily English language local newspaper once a week during the first 3 weeks of the period during which the proposed amendments are so available for public inspection.

(3) A notice referred to in subsection (2) shall—

(a) specify the place and hours at which the proposed amendments to which the notice relates are available for public inspection under subsection (1); and

(b) indicate that further representations may be made to the Board in respect of the proposed amendments under section 6D(1) and specify the place and hours at which any further representations so made will be available for public inspection under section 6D(4).

6D. Further representations in respect of proposed amendments

(1) Where the Board proposes any amendments under section 6B(8), within the first 3 weeks of the period during which the proposed amendments are available for public inspection under section 6C(1), any person, other than that who has made any representation or comment after consideration of which the proposed amendments are proposed under section 6B(8), may make further representation to the Board in respect of the proposed amendments.

(2) A further representation referred to in subsection (1) shall—

(a) indicate—

(i) the proposed amendments to which the further representation relates;

(ii) whether the further representation is made in support of, or in opposition to, the proposed amendments; and

(iii) the reasons for the further representation; and

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

(3) Where a further representation 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), it shall be treated as not having been made; or

(b) does not comply with any of the requirements specified in or made under subsection (2), it may 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 further representations made to it under that subsection available for public inspection at reasonable hours, and shall continue to do so until the Chief Executive in Council has made a decision in respect of the draft plan in question under section 9.

6E. Withdrawal of representations, etc.

(1) Any person who makes any representation under section 6(1), or makes any comment in respect of any such representation under section 6A(1), may by notice in writing to the Board withdraw the representation or comment, as the case may be, at any time before the representation or comment, as the case may be, has been considered at a meeting under section 6B(1).

(2) Any person who makes any further representation under section 6D(1) may by notice in writing to the Board withdraw the further representation at any time before the further representation has been considered at a meeting under section 6F(1).

(3) Where any representation, comment or further representation is withdrawn under subsection (1) or (2)—

- (a) the representation, comment or further representation, as the case may be, shall thereafter be treated as not having been made; and
- (b) in the case of the withdrawal of any representation, any comment made under section 6A(1) in respect of the representation shall thereafter be treated as not having been made.

6F. Consideration of further representations in respect of proposed amendments

(1) Where any further representation is made under section 6D(1), the Board shall hold a meeting to consider the further representation as soon as reasonably practicable after the expiration of the period of 3 weeks referred to in that section.

(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 further representation to which the meeting relates under section 6D(1); and
- (b) the person who made any representation or comment after consideration of which the proposed amendments in question are proposed under section 6B(8).

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

- (a) the person who made the further representation to which the meeting relates under section 6D(1); and
- (b) the person who made any representation or comment after consideration of which the proposed amendments in question are proposed under section 6B(8),

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 all further representations made in respect of the proposed amendments in question under section 6D(1) shall be considered at the same meeting, whereupon such further representations—

(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 further representation at a meeting under subsection (1), the Board shall decide whether or not to amend the draft plan in question, either by the proposed amendments in question, or by the proposed amendments as further varied in such manner as it considers appropriate.

(9) Where, in respect of any proposed amendments proposed under section 6B(8), any further representation is made under section 6D(1) but no such further representation indicates under section 6D(2)(a)(ii) that it is made in opposition to the proposed amendments—

(a) subsections (3) and (4) shall not have application to any meeting to be held under subsection (1) in respect of any such further representation, and the other provisions of this section shall, with necessary modifications, be construed and have application accordingly; and

(b) subsection (8) shall be construed as requiring the Board, upon consideration of any such further representation, to amend the draft plan in question by the proposed amendments.

6G. Cases where there are no further representations in respect of proposed amendments

Where, in respect of any proposed amendments proposed under section 6B(8), no further representation is made under section 6D(1) within the period of 3 weeks referred to in that section, the Board shall, as soon as reasonably practicable after the expiration of the period, amend the draft plan in question by the proposed amendments.

6H. Effect of amendments under section 6F or 6G

(1) Where the Board amends a draft plan under section 6F(8) (whether with or without application of section 6F(9)) or 6G, the draft plan shall thereafter be read as including the 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.

(2) Where any draft plan is read as including any amendments under subsection (1), the Board shall, as soon as reasonably practicable thereafter, make the amendments available for public inspection at reasonable hours, and shall continue to do so until the Chief Executive in Council has made a decision in respect of the draft plan under section 9.”.

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, 6D, 6E, 6F, 6G and 6H”;
- (b) in subsection (2)—
 - (i) by repealing “3 weeks” and substituting “2 months”;
 - (ii) by repealing “twice” and substituting “once”;
 - (iii) by repealing “a local newspaper” and substituting “2 daily Chinese language local newspapers and 1 daily English language local newspaper”;
 - (iv) by adding “place and” before “hours at”;
- (c) by repealing subsection (4) and substituting—
 - “(4) Where the Board makes any amendments to a draft plan under subsection (1)—
 - (a) subject to paragraph (b), sections 6, 6A, 6B, 6C, 6D, 6E, 6F, 6G and 6H shall apply, with necessary modifications, to and in relation to the amendments as they apply to and in relation to a draft plan exhibited under section 5; and
 - (b) sections 6, 6A, 6B, 6C, 6D, 6E, 6F, 6G and 6H shall so apply as if—
 - (i) the reference to “the period of 2 months during which a draft plan is exhibited under section 5” in section 6(1) were a reference to the period of 2 months during which the amendments are exhibited under subsection (2);

- (ii) each of the references to “the draft plan” in section 6(1) and (2)(a) were a reference to any of the amendments;
- (iii) the reference to “the representations made in respect of the draft plan in question under section 6(1)” in section 6B(6) were a reference to the representations made in respect of any of the amendments under section 6(1) (as having application in the manner described in this subsection);
- (iv) the reference to “the draft plan in question” in section 6B(8) were a reference to the part or parts of the draft plan that concerns or concern any area covered by the amendments to which the representation in question and the comment in question (if any) relate;
- (v) each of the references to “draft plan in question” in sections 6F(8) and (9)(b) and 6G, the first and second references to “draft plan” in section 6H(1) and the first reference to “draft plan” in section 6H(2) were a reference to the part or parts of the draft plan to which section 6B(8) (as having application in the manner described in this subsection) has application; and
- (vi) each of the references to “draft plan in question” in sections 6(4), 6A(4), 6C(1) and 6D(4), the third reference to “draft plan” in section 6H(1) and the second reference to “draft plan” in section 6H(2) remained a reference to the draft plan.

(5) For the avoidance of doubt, where sections 6, 6A, 6B, 6C, 6D, 6E, 6F, 6G and 6H 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) Subject as otherwise provided in this Ordinance, 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) a schedule of the representations (if any) made under section 6(1) in respect of the draft plan (whether with or without any amendments made under this Ordinance) or any of the amendments made under section 7 to the draft plan (whether with or without any amendments made under this Ordinance), and the comments (if any) made under section 6A(1) in respect of any of such representations;
- (b) a schedule of the further representations (if any) made under section 6D(1) in respect of any proposed amendments to the draft plan (whether with or without any amendments made under this Ordinance); and
- (c) a schedule of the amendments (if any) made by the Board under this Ordinance to the draft plan (whether with or without any amendments made under this Ordinance).”;

(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 “2 months”.

11. Revocation, replacement and amendment of approved plans

Section 12 is amended—

(a) in subsection (3)—

(i) by repealing “any amendment” and substituting “a plan showing any amendments”;

(ii) by repealing “it replaces or amends” and substituting “the new plan replaces or the amendments amend, as the case may be,”;

(iii) by repealing everything after “(1)(b)(ii)” and substituting—

“—

(a) subject to paragraph (b), sections 3, 4, 4A, 5, 6, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 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, 6E, 6F, 6G, 6H, 7, 8, 9, 10 and 11 shall so apply as if—

(i) each of the references to “the draft plan” in section 6(1) and (2)(a) were a reference to any of the amendments;

(ii) the reference to “the representations made in respect of the draft plan in question under section 6(1)” in section 6B(6) were a reference to the representations made in respect of any of the amendments under section 6(1) (as having application in the manner described in this subsection);

(iii) the reference to “the draft plan in question” in section 6B(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 in question and the comment in question (if any) relate; and

- (iv) each of the references to “draft plan in question” in sections 6F(8) and (9)(b) and 6G, the first and second references to “draft plan” in section 6H(1) and the first reference to “draft plan” in section 6H(2) were a reference to the part or parts of the plan to which section 6B(8) (as having application in the manner described in this subsection) has application.”;

- (b) by adding—

“(3A) For the avoidance of doubt, where sections 3, 4, 4A, 5, 6, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 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.”;

- (c) 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”;
- (d) 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”.

12. Section added

The following is added—

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

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

(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) set out—

(i) whether the applicant considers he has within a reasonable period before the application is made—

(A) obtained the consent in writing of each person (other than himself) who is a current land owner in respect of the application, or notified such person in writing of the application; or

(B) taken such reasonable steps as the Board requires in order to obtain the consent of such person in respect of the application, or to give notification to such person in respect of the application; and

(ii) particulars of such consent or notification or such steps, as the case may be;

(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) Where 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 (16), 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 within a reasonable period before the application is made—

(i) obtained the consent in writing of each person (other than the applicant) who is a current land owner in respect of the application, or notified such person in writing of the application; or

(ii) taken such reasonable steps as the Board requires in order to obtain the consent of such person in respect of the application, or to give notification to such person in respect of the application.

(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 (16).

(7) In respect of any application referred to in subsection (6), the Board—

(a) shall cause a notice that complies with subsection (8) to be posted in a prominent position on or near the land to which the application relates, or on any premises or structure on the land, at the beginning of the period during which the application is available for public inspection under subsection (6); or

(b) shall cause a notice that complies with subsection (8) to be published in 2 daily Chinese language local newspapers and 1 daily English language local newspaper once a week during the first 3 weeks of the period referred to in paragraph (a).

(8) A notice referred to in subsection (7)(a) or (b) 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) and specify the place and hours at which any comments so made will be available for public inspection under subsection (12).

(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), it shall be treated as not having been made; or

(b) does not comply with any of the requirements made under subsection (10), it may be treated as not having been made.

(12) The Board shall, as soon as reasonably practicable after the expiration of the period of 3 weeks referred to in subsection (9), make all comments made to it under that subsection available for public inspection at reasonable hours, and shall continue to do so until the application in question has been considered at a meeting under subsection (16).

(13) 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 (16), 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.

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

- (a) subject to paragraphs (b) and (c), the further information shall be regarded as having been included in the application;
- (b) subsection (6) shall further apply, with necessary modifications, to and in relation to the further information as it applies to and in relation to the application; and
- (c) subject to any exemption under subsection (15)—
 - (i) subsections (7), (8), (9), (10), (11) and (12) 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
 - (ii) for the purposes of subsection (16), the application shall be regarded as received when the further information is received.

(15) Where the Board is satisfied that there are reasonable grounds to do so, it may exempt any further information accepted by it for the purposes of an application under subsection (13) from subsection (14)(c).

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

(17) The Board shall, in respect of any meeting to be held to consider an application under subsection (16), give reasonable notice of particulars of the meeting (including the date, time and place of the meeting) to the applicant.

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

(19) If, at a meeting held to consider an application under subsection (16), 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.

(20) Without prejudice to subsection (19), 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 (16) to such date as it considers appropriate.

(21) Where any meeting is adjourned under subsection (19) or (20), the provisions of this section also apply, with necessary modifications, to the meeting so adjourned, save to the extent that the Board otherwise directs.

(22) In considering an application at a meeting held under subsection (16), the Board shall also take into account any comment made in respect of the application under subsection (9).

(23) Upon consideration of an application at a meeting under subsection (16), the Board may—

(a) accept, in whole or in part, the application; or

(b) refuse the application.

(24) Where the Board accepts, in whole or in part, an application under subsection (23)(a), the Board shall—

(a) subject to paragraphs (b) and (c), request the Chief Executive in Council to refer the original approved plan to the Board for amendment under section 12(1)(b)(ii);

(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(1)(b)(ii) 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 in Council to refer the relevant approved plan, when it is available, to the Board for amendment under section 12(1)(b)(ii); 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(1)(b)(ii) 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 in Council to refer the relevant approved plan, when it is available, to the Board for amendment under section 12(1)(b)(ii).

(25) In this section—

“current land owner” (現行土地擁有人), in relation to an application made under subsection (1), means 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 of such period before the application is made as is specified by the Board by notice published in the Gazette;

“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(1)(b)(ii), 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 (24)(b) or (c), means the approved plan which has further to the reference of the plan to the Board for amendment under section 12(1)(b)(ii) 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 (24)(b) or (c), means the draft plan which has further to the reference of the plan to the Board for amendment under section 12(1)(b)(ii) been exhibited under section 5.”.

13. 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) for the purposes of section 12A(3)(c), 16(2)(c) or 16A(3)(b)—

(a) may be fixed at levels sufficient to effect the recovery of expenditure incurred, or likely to be incurred, whether by the Board or by the Government, in relation generally to the processing of applications made under section 12A(1), 16(1) or 16A(2), as the case may be; 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 the processing of any particular application 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) The Secretary for Financial Services and the Treasury, and any public officer authorized by the Secretary in that behalf, may in any particular case waive or reduce any fees prescribed under subsection (2) as the Secretary or the public officer, as the case may be, thinks fit.

(6) 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), and for the purposes of subsection (3)(a), any expenditure incurred, or likely to be incurred, whether by the Board or by the Government, in relation to the processing of any application made by any such Government department under section 12A(1), 16(1) or 16A(2), as the case may be, shall be disregarded.”.

14. Expenses of the Board

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

15. Applications for permission in respect of plans

Section 16 is amended—

- (a) in subsection (2), by repealing everything after “and shall” and substituting—

“—

- (a) set out—

(i) whether the applicant considers he has within a reasonable period before the application is made—

(A) obtained the consent in writing of each person (other than himself) who is a current land owner in respect of the application, or notified such person in writing of the application; or

(B) taken such reasonable steps as the Board requires in order to obtain the consent of such person in respect of the application, or to give notification to such person in respect of the application; and

(ii) particulars of such consent or notification or such steps, as the case may be;

(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) Where 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 within a reasonable period before the application is made—

- (i) obtained the consent in writing of each person (other than the applicant) who is a current land owner in respect of the application, or notified such person in writing of the application; or
- (ii) taken such reasonable steps as the Board requires in order to obtain the consent of such person in respect of the application, or to give notification to such person in respect of the application.

(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 at a meeting under subsection (3).

(2D) In respect of any application referred to in subsection (2C), the Board—

- (a) shall cause a notice that complies with subsection (2E) to be posted in a prominent position on or near the land to which the application relates, or on any premises or structure on the land, at the beginning of the period during which the application is available for public inspection under subsection (2C); or
- (b) shall cause a notice that complies with subsection (2E) to be published in 2 daily Chinese language local newspapers and 1 daily English language local newspaper once a week during the first 3 weeks of the period referred to in paragraph (a).

(2E) A notice referred to in subsection (2D)(a) or (b) 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) and specify the place and hours at which any comments so made will be available for public inspection under subsection (2I).

(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), it shall be treated as not having been made; or
- (b) does not comply with any of the requirements made under subsection (2G), it may be treated as not having been made.

(2I) The Board shall, as soon as reasonably practicable after the expiration of the period of 3 weeks referred to in subsection (2F), make all comments made to it under that subsection available for public inspection at reasonable hours, and shall continue to do so until the application in question has been considered at a meeting under subsection (3).

(2J) 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 (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.

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

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

- (b) subsection (2C) shall further apply, with necessary modifications, to and in relation to the further information as it applies to and in relation to the application; and
 - (c) subject to any exemption under subsection (2L)—
 - (i) subsections (2D), (2E), (2F), (2G), (2H) and (2I) 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
 - (ii) for the purposes of subsection (3), the application shall be regarded as received when the further information is received.
- (2L) Where the Board is satisfied that there are reasonable grounds to do so, it may exempt any further information accepted by it for the purposes of an application under subsection (2J) from subsection (2K)(c).”;
- (c) in subsection (3), by repealing “in the absence of the applicant” and substituting “at a meeting”;
 - (d) by adding—
 - “(3A) In considering an application at a meeting under subsection (3), the Board shall also take into account any comment made in respect of the application under subsection (2F).”;
 - (e) in subsection (7), by adding “under a permission granted” after “permitted”;
 - (f) 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 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 of such period before the application is made as is specified by the Board by notice published in the Gazette.”.

16. Section added

The following is added—

“16A. Amendments to permissions in respect of plans

(1) Where any permission is granted under section 16, the permission may, apart from being read as it is, be read as having effect subject to any amendments which are Class A amendments.

(2) Where any permission is granted under section 16, the person to whom the permission is granted may apply to the Board for acceptance of any amendments which are Class B amendments in relation to the permission for the purposes of this section.

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

(6) An application may be accepted under subsection (5) subject to such conditions as the Board requires.

(7) Where the Board has under subsection (5) accepted any application or applications in respect of any permission granted under section 16, the permission may, apart from being read as it is, be read as having effect subject to the amendments which are the subject of—

(a) where only one such application has been accepted, the application; or

(b) where two or more such applications have been accepted, any one of the applications.

(8) The Board shall notify the applicant in writing of its decision under subsection (5), and where it refused the application shall also notify the applicant of his right to a review under section 17.

(9) Notwithstanding anything in this section, in construing any reference in this section to a permission granted under section 16 (however described), any amendments taking effect in relation to the permission under this section shall be disregarded.

(10) 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 (12); and
- (b) specify any class or description of relevant amendments for the purposes of the definition of “Class B amendments” in subsection (12).

(11) A notice published under subsection (10) is not subsidiary legislation.

(12) In this section—

“Class A amendments” (A類修訂) means relevant amendments of a class or description specified by the Board under subsection (10)(a);

“Class B amendments” (B類修訂) means relevant amendments of a class or description specified by the Board under subsection (10)(b);

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

17. 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) In respect of any application referred to in subsection (2A), the Board—

(a) shall cause a notice that complies with subsection (2C) to be posted in a prominent position on or near the land to which the application relates, or on any premises or structure on the land, at the beginning of the period during which the application is available for public inspection under subsection (2A); or

(b) shall cause a notice that complies with subsection (2C) to be published in 2 daily Chinese language local newspapers and 1 daily English language local newspaper once a week during the first 3 weeks of the period referred to in paragraph (a).

(2C) A notice referred to in subsection (2B)(a) or (b) 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) and specify the place and hours at which any comments so made will be available for public inspection under subsection (2G).

(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), it shall be treated as not having been made; or
- (b) does not comply with any of the requirements made under subsection (2E), it may be treated as not having been made.

(2G) The Board shall, as soon as reasonably practicable after the expiration of the period of 3 weeks referred to in subsection (2D), make all comments made to it under that subsection available for public inspection at reasonable hours, and shall continue to do so until the decision in question has been reviewed under this section.

(2H) 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.

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

- (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, subsection (2A) shall further apply, with necessary modifications, to and in relation to the further information as it applies to and in relation to the application; and
- (c) subject to any exemption under subsection (2J)—
 - (i) where the application is an application for a review of the Board's decision under section 16, subsections (2B), (2C), (2D), (2E), (2F) and (2G) 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
 - (ii) for the purposes of subsection (2)—
 - (A) the application shall be regarded as received when the further information is received; and
 - (B) anything done under subsection (2) before receipt of the further information shall have effect subject to anything done under that subsection upon application of this subsection.

(2J) Where the Board is satisfied that there are reasonable grounds to do so, it may exempt any further information accepted by it for the purposes of an application under subsection (2H) from subsection (2I)(c).”;

(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.”.

18. Power to inspect and require provision of information

Section 22 is amended—

- (a) in subsection (1)—
- (i) by adding “, and enter land and any premises on it through which access is needed for the purposes of” after “purposes of”;
 - (ii) by adding before paragraph (a)—
“(aa) ascertaining whether there is or was unauthorized development or any matters that in the opinion of the Authority constitute or constituted an unauthorized development;”;
 - (iii) in paragraph (a), by repealing “and” at the end;
 - (iv) 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 (2), by repealing everything before “the Authority” and substituting—
- “(2) Notwithstanding subsection (1)—
- (a) the Authority shall not exercise any power under subsection (1) for the purposes of ascertaining any matter under subsection (1)(aa) unless the Authority has reasonable grounds to suspect that there is or was unauthorized development and it is necessary to enter the land or premises in question, or to have access through the land or premises in question, as the case may be, in order to enable the Authority to ascertain the matter; and
 - (b)”;

- (c) in subsection (3), by repealing “has been unauthorized development and it is necessary to enter the land or premises in order to ascertain whether there is or has been” and substituting “was unauthorized development and it is necessary to enter any land or premises, or to have access through any land or premises, in order to enable the Authority to ascertain whether there is or was unauthorized development or any matters that in the opinion of the Authority constitute or constituted an”;
- (d) by adding—
- “(7) For the purposes of exercising any power or performing any duty under or for the purposes of section 20, 21 or 23, or determining whether there is or was any contravention of any of the provisions of section 20, 21 or 23, where the Authority has reasonable grounds to believe that any person has any relevant information, the Authority may by notice in writing served on the person require him to provide the relevant information to the Authority, within the period 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.
- (9) In subsection (7), “relevant information” (有關資料) means information reasonably required by the Authority for the purposes of—
- (a) ascertaining whether there is or was unauthorized development or any matters that in the opinion of the Authority constitute or constituted an unauthorized development;
- (b) identifying any person—
- (i) who undertakes or continues, or undertook or continued, any development; or
- (ii) on whom a notice may be served under section 23(1).”

19. 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 referred to in subsection (3) is or was” and substituting “relevant matters referred to in subsection (3) were”;
- (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) if 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)—

(i) by adding—

“(aa) the unauthorized development which existed according to the opinion of the Authority in fact was not a development;”;

(ii) in paragraph (b), by repealing “the development” and substituting “the unauthorized development which existed according to the opinion of the Authority in fact”;

(iii) in paragraph (c), by repealing “the development is” and substituting “the unauthorized development which existed according to the opinion of the Authority in fact is”;

(iv) in paragraph (d), by repealing “permission for the development was” and substituting “the unauthorized development which existed according to the opinion of the Authority in fact was a development for which permission had been”;

(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) the unauthorized development which existed according to the opinion of the Authority in fact was a development or was an unauthorized development; or

(b) the relevant matters which constituted such unauthorized development according to the opinion of the Authority in fact constituted such unauthorized development.”;

(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 document, or any copy of a document, 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 such unauthorized development.”.

20. Section added

The following is added—

“24A. Evidence

In any proceedings under this Ordinance, any document incorporating an image of an aerial photograph of land, or any copy of such document, purporting to be issued by the Lands Department and purporting to be signed or initialled by any public officer authorized by the Director of Lands in that behalf shall on its production be admissible, without further proof, as prima facie evidence of the matters shown therein.”.

21. Sections added

The following are added—

“27. Board to supply copies of documents or materials

Where any document or material is available for public inspection under section 6(4), 6A(4), 6C(1), 6D(4), 6H(2), 12A(6) or (12), 16(2C) or (2I) or 17(2A) or (2G), the Board shall supply a copy of the document or material to any person on payment of such fee as the Board may determine.

**28. Transitional and saving provisions relating to
Town Planning (Amendment) Ordinance 2004**

(1) The amendments effected by sections 6, 7, 8, 9(a), (b) and (c) and 10 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 11(a), (b), (c) and (d) 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 15 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 17 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 19 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 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 a notice of which has been published under section 5;
- (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; and
- (c) 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 2004 (25 of 2004);

“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

22. 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.”.

23. 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) if 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.”.

24. 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

25. Procedure after publication of plan and scheme

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

- (a) by repealing “the Board shall, whether or not the works are shown on any draft plan under that Ordinance”;

- (b) in paragraph (a)—
 - (i) by adding “the Board shall, whether or not the works are shown on any draft plan under that Ordinance,” before “exhibit”;
 - (ii) by repealing the semicolon at the end and substituting “, and the provisions of that Ordinance shall apply accordingly; and”;
- (c) 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

26. Development schemes

Section 25(8) of the Urban Renewal Authority Ordinance (Cap. 563) is amended—

- (a) by repealing “section 6 or 7 of the Town Planning Ordinance (Cap. 131) and such amendment includes” and substituting “the Town Planning Ordinance (Cap. 131), whether under section 6F(8) (whether with or without application of section 6F(9) of that Ordinance) or 6G of that Ordinance or section 7 of that Ordinance, and the amendments include”;
- (b) by repealing “a notice is first given under section 6(7) of that Ordinance or the date when the amendment is” and substituting “the proposed amendments in question are first made available for public inspection under section 6C(1) of that Ordinance or the date when the amendments are”.