

For discussion
on 6 December 2002

**Legislative Council
Panel on Planning, Lands and Works**

Town Planning (Amendment) Bill

Purpose

This paper seeks Members' views on the legislative proposals in the Town Planning (Amendment) Bill (the Amendment Bill).

Background

2. The existing Town Planning Ordinance was first enacted in 1939. In February 2000, we introduced the Town Planning Bill (the Bill) into the Legislative Council (LegCo) proposing an overhaul of the statutory planning system. Due to the complexity of the issues involved, the Bills Committee of the LegCo was not able to complete consideration of the Bill within the last term of LegCo. The Bills Committee was dissolved after nine meetings.

3. We have critically examined the views of the public and the Bills Committee. On the one hand, we note that there is a strong community consensus on the need to streamline the town planning process and to promote public participation. On the other hand, the Bills Committee and stakeholders have divergent views on a number of issues such as the operation of the Town Planning Board (TPB), designation of Special Design Area, Environmentally Sensitive Area and Designated Development, planning control on building development and interim development control, etc. It would therefore be very difficult to reach a consensus on all the proposals in the Bill without going through another protracted process of consultation and discussion. We conclude that it would be more desirable to amend the Town Planning Ordinance in stages, giving priority to those

amendments which have general consensus and would produce more immediate benefits to the community.

Proposal

4. We plan to put forward amendments to the Town Planning Ordinance in the following stages -

- (a) **Stage One** – to include amendments that would streamline and shorten the town planning process, enhance openness of the planning system, and strengthen enforcement control on unauthorized developments.
- (b) **Stage Two** - to include those amendments that require further consideration within the Administration and/or consultation with the stakeholders such as the operation of TPB, designation of Special Design Area, Environmentally Sensitive Area and Designated Development. These will be addressed after the Stage One amendment exercise is completed.
- (c) **Stage Three** – to review the highly controversial proposals such as interim development control and planning control on building development, etc.

Proposals in Stage One Amendments

5. The proposals in Stage One amendments are set out at **Annex**. Key features are highlighted below :

- (a) to speed up the town planning process by standardizing the publication period of new and amendment plans for public comments to 1 month, and by condensing the objection handling process. This will shorten the maximum period for resolving objections to a draft plan from the current 9 months to 6 months;

- (b) to simplify the process by exempting minor amendments to approved development schemes from the need of seeking further planning permission and to enable further delegation of powers from TPB to its committees and to the Director of Planning;
- (c) to make the process more accessible to the public by expressly allowing for applications for amendment to statutory plans and presentation to TPB by the applicant;
- (d) to make the process more transparent by requiring the applicant for planning permission and amendment to statutory plan to obtain consent of or notify owner of the application site;
- (e) to enhance public knowledge by publishing all planning applications and applications for amendment to statutory plan for consultation through posting on-site notices or publishing notices in newspapers;
- (f) to charge fees, on a cost recovery basis, for planning applications and applications for amendment to statutory plan; and
- (g) to plug the technical loopholes of the current Ordinance in respect of provisions for enforcement control against unauthorized developments in the rural areas.

Community Benefits of Stage One Amendments

6. Streamlining the town planning process would expedite the development approval process in respect of both public and private developments. Improved efficiency of the development approval process would bring about positive economic gain and help create job opportunities in the development and construction sectors. Moreover, the Amendment Bill proposes greater public participation in the planning process to enhance public accountability, fairness and openness without lengthening the planning process. The strengthened enforcement provision would help improve the

rural environment.

Way Forward

7. We plan to introduce the Amendment Bill into the LegCo in March 2003.

Annex Proposals in the Town Planning (Amendment) Bill

**Housing, Planning and Lands Bureau
November 2002**

Proposals in the Town Planning (Amendment) Bill

| <u>Proposal</u> | <u>Existing Provision/Practice</u> | <u>Objective of the Proposal</u> |
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| (I) <u>Expediting the Plan-making Process</u> | | |
| 1.1 Publication of draft plan | | |
| <ul style="list-style-type: none"> To standardize the publication period of new or amendment plan to <i>one month</i>. | <p><i>2 months</i> for new or amendment to approved plan; <i>3 weeks</i> for amendment to draft plan.</p> | <p>To remove the inconsistency between the plan publication period for new plan and amendment to draft plan.</p> |
| 1.2 Consideration of objections | | |
| <ul style="list-style-type: none"> To speed up the process by adopting a <i>single objection consideration</i> exercise whereby both the objectors and members of the public who have submitted comments on the objections during a specified period shall have the right to attend and to be heard. Any proposed amendment to meet the objection shall be submitted to CE in C together with the draft plan for a final decision. | <p>Objections are processed in <i>3 stages</i> : preliminary consideration by TPB in the absence of objectors, hearing of objections and hearing of further objections, if received upon gazetting of amendment to meet the objection.</p> | <p>To expedite the objection resolution process while reserving the right of the public to object/comment and to be heard.</p> |

Proposal

- All objectors are required to make their written submissions within a specified period of time before the hearing.

Existing Provision/Practice

There is no statutory time limit for objectors to make further written submissions to TPB before the hearing. This has often resulted in delay of the objection resolution process.

Objective of the Proposal

To provide additional time for objectors to make submissions while ensuring all relevant information and comments on the objections are available to TPB well before the hearing in order not to delay the objection resolution process.

1.3 Submission of draft plan to CE in C and reference back of approved plan for amendment

- TPB shall submit a draft plan together with the proposed amendments to meet unwithdrawn objections, if any, to the CE in C for approval within a period of **6 months** after the expiration of the plan publication period, or such further period, being not more than **3 months**, as CE may allow.

Draft plans shall be submitted to CE in C for approval within a period of **9 months**, or such further period, being not more than **6 months**, as CE may allow.

To expedite the objection resolution process.

- CE in C may delegate its power to CE for reference back of approved plans to TPB for amendment/replacement.

Any amendment to approved plans will need approval by CE in C to refer the plans back to TPB.

To speed up the plan making process.

| <u>Proposal</u> | <u>Existing Provision/Practice</u> | <u>Objective of the Proposal</u> |
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| (II) <u>Streamlining the Planning Approval Process</u> | | |
| 2.1 Minor amendments | | |
| <ul style="list-style-type: none">• Upon granting of planning permission for a development scheme by TPB, no further planning permission is required for certain minor amendments to the approved development scheme. | All minor amendments have to be submitted for approval by way of s.16 applications although some of these amendments are currently processed by the Planning Department under the delegated authority of the TPB in accordance with TPB Guidelines. | To avoid hindering the development process due to minor amendments. Also to save costs incurred in the approval process. |
| 2.2. Delegation of authority | | |
| <ul style="list-style-type: none">• To expand the scope of delegation of the powers and functions of TPB to its committees and the Director of Planning. | <p>TPB cannot delegate its powers and functions relating to the review of planning applications.</p> <p>TPB may delegate its powers and functions to its committees in respect of preparation of draft or amendment plans, consideration of s.16 applications and consideration of objections under s.6(6), 6(7), 6(8) and 6(9).</p> <p>TPB may delegate its powers and functions to the Director of Planning in respect of applications for minor amendments and temporary development of up to 6 months within a Development Permission Area.</p> | To enhance the efficiency of TPB and allow TPB to deploy more time on deliberation of major issues. |

Proposal

Existing Provision/Practice

Objective of the Proposal

(III) Enhancing the Openness and User-friendliness of the Planning System

3.1 Application for amendment to statutory plan

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| <ul style="list-style-type: none">• To expressly provide for application for amendment to statutory plans which shall be considered by TPB within 3 months. The applicant will also be allowed to make presentation to TPB. | <p>While there is no express provision allowing for these applications, they are considered by TPB within 3 months in the absence of the applicant under the administrative arrangement.</p> | <p>To formalize the existing administrative arrangement and to make the system more open.</p> |
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3.2 Owner's consent

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| <ul style="list-style-type: none">• If an applicant for planning permission or amendment to statutory plan is not the owner of the application site, he shall be required to obtain consent of or notify the owner. | <p>Owner's consent or notification to owner is not required for submission of an application.</p> | <p>To enhance the fairness and openness of the planning system.</p> |
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3.3 Publication of planning applications for public consultation

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| <ul style="list-style-type: none">• To expressly provide for release of all information (except personal data) submitted to TPB in respect of applications for planning permission and amendment to statutory plan for public consultation purpose. | <p>There is no express provision for TPB to seek public views on planning applications. At present, TPB gauges public views only by administrative means through the relevant District Offices. There is also no provision enabling TPB to release information relating to</p> | <p>To address the existing inadequacies in public consultation on applications for planning permission and amendments to statutory plan. Also help enhance openness of the planning system.</p> |
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Proposal

Existing Provision/Practice

Objective of the Proposal

planning applications and posting on-site notices.

- To require TPB to publicize all planning applications for planning permission and amendment to statutory plan by posting notices on or near the site or publishing notices in local newspapers for public comment.

(IV) Recovering costs for processing planning applications

- Applications for planning permission and amendment to statutory plan shall be subject to a fee as the Secretary for Housing, Planning and Lands may prescribe.

Planning applications are processed free of charge.

To recover the cost of services provided by the Administration.

(V) Strengthening Planning Enforcement Control

- Compliance of an enforcement notice shall be confined to discontinuing an unauthorized development.

To obtain planning permission under s.16 of the ordinance is another means of complying with an enforcement notice.

To address a loophole in the existing ordinance that has hindered the efficiency and effectiveness of planning enforcement action against unauthorized developments in rural New Territories.

- Notices served shall run with the land and be binding on successors of land titles.

No such provision.

To improve efficiency and effectiveness of enforcement action.

Proposal

- Managers of ‘Tso/Tong’ shall be regarded as land owners liable to offences in relation to unauthorized development.

Existing Provision/Practice

While the Town Planning Ordinance does not expressly state that owner includes managers of ‘Tso/Tong’, they are regarded as land owners under the New Territories Ordinance. Moreover, the Court of Appeal ruled on an enforcement case that they were also land owners liable to planning enforcement action.

Objective of the Proposal

To expressly spell out that managers of ‘Tso/Tong’ are also regarded as land owners.