

Civic Party Submission on
Re-organisation of Policy Bureaux of the Government Secretariat

Preamble

1. No re-organisation or shuffling of responsibilities between Policy Bureaux or creation of new Bureaux can possibly redress the fundamental problems of governance and failures in policy-making which have systemic causes, chief of which is the absence of democracy in decision-making by the Government. A self-perpetuating paternalistic attitude persists that the people of Hong Kong are incapable of deciding for themselves what is in their best interests and this permeates most of the bureaucracy. Cosmetic consultations using an array of deceptive methods will only aggravate the sense of anger and alienation amongst the governed. It is essential that no matter what the organizational structure adopted by the Government, the democratic deficit is properly addressed to avoid aggravating the unresponsiveness of Government policies to public needs and demands and public dissatisfaction over Government's decisions and implementation of policies and decisions. Our comments on the organizational structure of Government are set out below. References are to the contents of the Administration's Brief to the Legislative Council (CAB F19/6/3/2 (2007) unless otherwise stated.

General

2. From the perspective of the ordinary citizen, Government should be seamless and in theory we need only be concerned about the outcome not the

process. But when as now, it has become evident that there are serious problems with process and decision-making, we are necessarily concerned about the organization and how it works (or does not). We therefore note that the implementation of the accountability system has necessitated a review to ascertain *"if the current structure can enable Hong Kong to meet the challenges which the third term HKSAR Government has to address"*. Presumably, it cannot. Otherwise, why the re-organisation? But what this review has encompassed and what were the deficiencies identified are not revealed to the Legislative Council (whose powers and functions under the Basic Law include the raising of questions on the work of the government). Did the review examine gaps in responsibility between departments and Bureaux and lack of co-ordination? Did we have examples of departments under the same Bureaux disagreeing with each other? All potentially serious problems.

3. Under the proposed system, the Secretary for Commerce and Economic Development, the Secretary for Development and the Secretary for Financial Services and the Treasury will be directly under the Financial Secretary (FS) and the other Secretaries directly under the Chief Secretary for Administration (the CS). It is stated that Directors of Bureaux will report on the day-to-day business of their bureaux to either the CS or the FS and that *"In addition, there are in-built matrix mechanisms whereby coordination across bureaux and departments can be re-oriented quickly and resources mobilized flexibly to deal with cross-cutting issues promptly and effectively."* None of this is explained in the Paper. What are these in-built matrix mechanisms and how will they assist in decision-making across Bureaux and departments and co-ordination of decision-making between them? Given the major changes involved in hiving off the portfolios of all of the major

Works Departments which are currently under the Secretary for the Environment, Transport and Works and of the Buildings, Planning and Lands all to the newly created Development Bureau, serious issues arise of **how decisions will be made**. This is of particular concern as the Secretary for the Environment will be reporting to the CS whereas the Secretary for Development will be reporting to the FS.

4. Sustainable Development, Protection of the Environment and Heritage Conservation

These are all areas in which the HKSAR has not fared well. As a place which aspires to be Asia's world city and which has a developed economy, we are significantly lagging behind many developed economies. The attitude that sustainable development, protection of the environment and heritage conservation is somehow at odds with a thriving economy still prevails at the highest levels. Quality of life is inextricably linked to a thriving economy. The detrimental effects of pollution, both air and water, are obvious. The highly damaging but accurate portrayal of Hong Kong as a polluted city does impact on its position as a major financial centre. In addition, the specific economic opportunities of paying attention to these issues are ignored.

High priority must be accorded to these issues in the re-organisation. Although the concentration of focus proposed for the Environment Bureau by removing Transport and Works may appear good in theory, we have grave concerns as to how sustainable development principles, environmental concerns and conservation of heritage will be incorporated into planning and infrastructure developments under this proposed re-organisation.

Many of these issues are issues which should be decided by the public not by civil servants behind closed doors with no explanation provided as to how the decision was reached. At the very least, public input into these processes is essential and public opinions and views must be taken into account. Otherwise, the Government can expect increasing public dissatisfaction with the outcomes.

5. New Development Bureau

We have grave reservations about the creation of the new Development Bureau. Our concerns are heightened by the fact that this is in fulfillment of the Chief Executive's election platform in which he highlighted that the third term HKSAR Government would advocate a "*progressive view on development*". Whatever it may mean to him, to us it means a regressive approach where development, meaning building of infrastructure is put above all other considerations such as the environment, principles of sustainable development, conservation of heritage and the quality of life. The stated object of the re-organisation is "*to speed up the implementation of large-scale projects and enhance planning and implementation efficiency*". In this, the Government is acting against the best interests of the public and the clearly expressed desire to see action against pollution and further environmental degradation and bad planning favouring the interests of the few against the interests of the rest of the community.

6. There is an ongoing failure to recognize that planning must involve the public. The notion that "planning efficiency" needs to be enhanced, if by that is meant, "speeded-up" is profoundly mistaken. We are surrounded by

Government's failures in grossly overestimating population growth, transport movements and modes of transport, schools and hospitals required and provision of open space, recreational areas, cultural needs etc. These are all failures of planning. West Kowloon is a failure in planning (not implementation). Many URA projects represent a failure in planning (not implementation). Speeding-up the process will only worsen the quality of life. Planning for the medium and longer term must have in-built maximum flexibility. Resistance to change and an attitude that once the plan has been made, it becomes immutable is what is damaging to Hong Kong. However, we would support the principle of efficiency in implementation. Thus the new Development Bureau's work should be confined to implementation of works but the planning process must first be opened up to the public. We would not wish to see the reorganization as a means of overriding public concerns and objections and ignoring appropriate and legitimately expressed views on planning and land use, density of development, etc.

7. As concerned citizens, we ask the Legislative Council to fulfil its constitutional duty of asking these and other questions of the Government to fully explain the reasons behind the re-organisation and in particular what deficiencies and problems the review revealed and how the Government proposes to address the importance of environmental protection, sustainable development and heritage protection when planning under the structure as re-organised.

Specific proposed changes

8(i) The Legal Aid Department

The explanation proffered in paragraph 3(g) for the change from the current organisation fails to address the most important reason for the existing status. Currently, Legal Aid Department is under no government bureau or department but is the direct responsibility of the Chief Secretary whose executive arm is the Director of Administration. Short of independence, this is the most independent arrangement possible. This is similar to the arrangement with the Judiciary: the Judiciary Administrator is only responsible on the administrative aspects of the Judiciary. On all questions of policy, the Department is under the Chief Secretary. By removing the Legal Aid Department to the Home Affairs Bureau and putting it under the Secretary for Home Affairs, the LAD is subsumed under a policy branch. This undermines its independence not only in terms of government structure, but also brings it into direct conflict of interest as the Director of Legal Aid approves applications to sue the government and its different branches. The Chief Executive has also failed to consult the Legal Aid Services Council which has the statutory duty of advising the Chief Executive on legal aid services, especially as to the independence of the Department. At the very least, that consultation should take place before any change. This Council should ask how the issue of conflicts of interest will be addressed and the independence of the Department preserved. This is crucial to the maintenance of the Rule of Law in Hong Kong.

The independence of the Legal Aid Department will be fundamentally undermined by this proposal to put it under Home Affairs and for this reason, we oppose it.

- (ii) Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service

Currently, this Secretariat is under the Civil Service Bureau and no change is proposed. However, since it is clearly recognized that the Judiciary is not part of the Civil Service and for the sake of preserving the independence of the judiciary, the Joint Secretariat should be split in two and a separate Secretariat should be established for the Advisory Board on Judicial Salaries and Conditions of Service which should be under the Administration Wing.

9. Human Rights

Matters relating to human rights and implementation of international treaties covering human rights such as the two International Covenants and other instruments such as ICERD, CAT, CRC, and CEDAW are currently within the portfolio of the Secretary for Home Affairs along with responsibility for equal opportunities, anti-discrimination, privacy protection and access to information. While it is accepted that Home Affairs has a wide portfolio, the rationale for switching this important part of the Home Affairs portfolio to the Constitutional and Mainland Affairs Bureau is not accepted. The explanation put up by the Administration is that the implementation of the Basic Law is an integral part of the Constitutional Affairs portfolio. If the logic of this is accepted, then all the matters involving implementation of the

Basic Law would be an integral part of the Constitutional Affairs portfolio and many other Bureaux would be unnecessary. This plainly is not so. There should either be established a separate Bureau (encompassing responsibility also for Law Reform measures) or it should remain with the Home Affairs Bureau.

10. Sustainable Development Unit

The Sustainable Development Unit is to be transferred from the Administration Wing to the Environment Bureau to "*allow the Unit to draw on the professional and technical expertise available within Environmental Protection Department to better serve the Council on Sustainable Development*" (LC Paper No. CB(2)1813/06-07 (02). Whoever wrote this justification is clearly not aware of the Council's terms of reference which include for instance population policy. Nor can he or she be aware what appears on the relevant Government web-site. Does this mean that the only professional and technical expertise envisaged to be required no matter what the Council's terms of reference lies in the area of environmental protection?

More importantly, how are sustainable development principles to be applied in the Development Bureau? According to paragraph 6 of the Paper referred to above, "*Sustainable development means seeking common ground among competing social, economic and environmental values.*" **This is wholly inconsistent with what appears on Government's own web-site.**

According to Government's own definition, sustainable development according to the World Commission on Environment and Development (ie the generally accepted definition), "*development that meets the needs of the*

present without compromising the ability of future generations to meet their own needs". The Government itself says "Every citizen, every business, every Government Department and Bureau needs to start working in partnership to achieve sustainable development. In simple terms, sustainable development for Hong Kong means:

*finding ways to increase prosperity and improve the quality of life while reducing overall pollution and waste;
meeting our own needs and aspirations without doing damage to the prospects of future generations; and
reducing the environmental burden we put on our neighbours and helping to preserve common resources.*

In other words, the concept of sustainable development requires a change of mindset to bring about full integration of the needs for economic and social development with that to conserve the environment. It also requires the Government and all sectors of the community to work hand in hand in order to achieve a sustainable future for Hong Kong.

We therefore ask how this change of mindset is to be carried through and sustainable development principles applied in all the portfolios within the new Development Bureau. We suggest that Planning Department be placed under the Environment and Conservation Bureau (as to which, see below) so that sustainable development principles and protection of the environment can be fully integrated in planning and land use. We also suggest the Sustainable Development Unit, as well as the Council for Sustainable Development, be maintained under the Chief Secretary.

11. Heritage Conservation

It is proposed that the Secretary for Development will be in charge of "development-related heritage conservation".

We have the following concerns with regard to conservation of heritage:

That the proposed closer interface between development and heritage conservation means we can expect to see more disasters such as sites given to developers for commercial and residential developments which completely overshadow a conserved building or ruin the site of which the conserved building was once part such as the development of the former Marine Police Headquarters site in Tsimshatsui

We consider that heritage conservation ought to be placed along with conservation of nature and the natural environment within the portfolio of an enlarged Environment and Conservation Bureau which could also incorporate portfolios of planning and land use. This would best ensure the application of sustainable development principles, protection of the environment and heritage.

12. So far as the Administration's proposal is concerned, we have the following questions:

Will Government transfer the work of Antiquities Advisory Board (AAB) and its secretariat AMO from Home Affairs Bureau to the new Development Bureau? If so, how will it re-assure the public (including conservation concern groups) that heritage values and sustainability concerns will be given due consideration and treated in accordance with the most rigorous professional standards, and not be handled as some secondary set of criteria subject structurally to the ruling interests of the "developmentalist" within the Bureau?

What measures will the new Bureau make to ensure that the work of AAB and AMO will be substantially improved? Will sufficient resources be given to make conservation work more effective and answerable to public concerns? Will resources be provided by the new Bureau to enable the community stakeholders to come up with alternative proposals in urban development projects having direct impact on their social fabric and livelihood?

How will the new Bureau improve the processes of public engagement in planning and development in particular, those most directly affected by planning and development proposals? How will the Bureau address environmental and heritage-related concerns?

13. We urge the Government to ensure that the new Bureau will take sustainable development as the key approach to handling infrastructure projects and their impact on environment, heritage, quality of life and community well-being. The new Bureau should be titled the Bureau for Sustainable Development.

14. Environment Bureau

In addition to the points made above, it is stated in the Paper (para. 3(d)) that maintaining a quality environment requires a consistent and vigorous adoption of the principle of sustainable development in all policy formulation but no explanation is given as to how, by separating this portfolio into a Bureau on its own, this assists in achieving such an aim. Also, although it is stated that a closer interface between the policies relating to environmental protection and energy should improve the quality of the

environment, again there is virtually no explanation of how this Bureau will achieve this aim.

15. A number of specific points should be made about the structure of the Bureau:

- (1) It is clear that the statutory functions and powers of the Director of Environmental Protection under the Environmental Impact Assessment Ordinance require that the post of Director be filled by a person with the necessary professional and technical expertise. It is therefore inappropriate that the post should be twinned with that of the Permanent Secretary and be filled by one person who does not have the requisite professional and technical expertise. The post of Director of Environmental Protection should be separated and should be filled by a person with the necessary professional and technical expertise required to carry out the statutory duties imposed upon the Director under the EIA Ordinance which cannot and ought not to be performed by someone wearing 2 hats. That the post of Director is and is intended to be **independent** is clear from section 3 which requires the Director to report to the Chief Secretary for the Administration any act or failure in contravention of the Ordinance on the part of any public officer.

- (2) Much of the work of environmental protection and conservation best practice and even policy-making is necessarily within the area of specialist professional scientific and engineering expertise. In such areas, it is essential that the most careful consideration be given to which posts should be filled by professional grades and if necessary, the appropriate rank or status accorded to them. A constant turnover of AOs who have little understanding of the issues involved fails to ensure the necessary continuity

and advocacy for this most important work of Government and will eventually lead to the erosion of professional expertise to the detriment of the public interest.

16. Labour and Welfare Bureau

The proposed re-organisation by taking the Labour portfolio from the Economic Development and Labour Bureau, Manpower Training from the Education and Manpower Bureau, Welfare from Health, Welfare and Food Bureau, and putting both Labour and Welfare under a newly structured Labour and Welfare Bureau is a major and significant structural change. We hope that this denotes a positive move within the Government which is to take a proactive role in combating poverty and reducing unemployment through providing more intensive training / retraining and employment assistance programmes to disadvantaged groups, unemployed persons and CSSA recipients. But we would like to stress that the welfare programmes are far more than employment services. There are a whole range of services for people with disabilities, elderly people, children and youth, and families, which do not only help them overcome crises and difficulties but help them participate in the society in a meaningful way, build their human and social capital, and enhance family functioning and resiliency. They would continue to constitute a crucial part of the whole welfare policy.

The deeper meaning of welfare is to enhance the resiliency of a person, whether it is by means of distributing money to the poor, or providing welfare services to the deprived. Welfare is about building a caring society and raising the quality of life on a macro-level. Welfare is about providing equality of opportunity and promoting a society without prejudice and

without discrimination on the grounds of race, sex, age or social status or any of the other prohibited grounds. It is therefore developmental in nature and it strengthens social capital. It fights for fairness, equality, justice and respect in social policies, through which, society is strengthened and sustainable development is made possible.

Whichever Bureau is responsible for the Elderly Commission, the Women's Commission and any other Commission which focuses on the family, youth and children and other social policies, the approach of Government should be to work through the strong network of NGOs and others providing welfare services giving them adequate resources and support. Ultimately, Government must recognize that its policies in education, planning, housing, and transport and all other aspects have enormous impact on the lives of Hong Kong citizens. They can enhance or worsen quality of life, increase or lessen opportunities for upward mobility and narrow or widen the gap between the haves and the have-nots with consequences for social stability. What matters most is whether Government has the commitment, capacity and capability to improve not worsen the lives of its citizens.

17. Transport and Housing

The preferred explanation for putting Transport and Housing under one Bureau is "*the interface between public transportation and major housing developments*" (para. 3(e)). Housing policy involves a great deal more than public transportation infrastructure. There must be some basis for putting the portfolios under one Bureau other than re-organisation for the sake of re-organisation. Given the importance of housing policy, it should either be a

Bureau on its own or at least, be placed under the Bureau responsible for population policy and planning.

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