

For consideration
on 23 March 1999

**LEGISLATIVE COUNCIL
PANEL ON PLANNING, LANDS AND WORKS**

Town Planning Bill

PURPOSE

This paper briefs Members on the major provisions in the Town Planning Bill (the Bill).

BACKGROUND

2. The existing Town Planning Ordinance was first enacted in 1939. In July 1996, the Government published for public consultation the proposals of a new planning legislation in the form of a White Bill. During the consultation period from July to December 1996, more than 30 briefing sessions on the White Bill were held with various public bodies, professional institutes and advisory committees. A total of 59 written submissions were received. The Panel was briefed on the White Bill proposals on 6 August 1996.

3. The public views on the proposals of the White Bill are diverse and on some issues conflicting. While there is general support for a more open planning system with more extensive public consultation at various stages of the plan making process and the processing of planning applications, there have also been concerns about the possible delay to development and impact on the efficiency of the planning process as a result of a more open system.

4. In the interest of more careful consideration and discussion of these views, the Government decided to proceed with an interim amendment to the Town Planning Ordinance in 1998 instead of introducing a comprehensive bill to replace the existing Ordinance. The purpose of the interim amendment is to streamline the planning process for greater efficiency through introducing a statutory time-limit on the processing of objections to draft town plans (9 months). The amendment was subsequently enacted and

came into operation in April 1998. In the interim, views expressed by the public were critically reviewed and in the course of doing so, the Government has further consulted key stakeholders, including various professional institutes and LegCo Members. The Government has now completed the review of the Bill and will soon seek the Executive Council's agreement to the Bill before introducing it into the Legislative Council.

OBJECTIVES OF THE BILL

5. The objectives of the Bill can be summarized as follows:-

- (a) to make the planning system more open and accountable to the public;
- (b) to streamline procedures and improve efficiency;
- (c) to enhance better planning control on building developments;
- (d) to enable more comprehensive considerations in the planning process; and
- (e) to enhance effectiveness and efficiency in enforcement actions against unauthorized development.

6. These objectives are generally in line with the public expectations and aspirations but some of them may conflict with each other. In particular, the objective of making our statutory planning process more open and transparent requires a more elaborate and longer consultation process. This will inevitably create additional procedural requirements and may slow down development, thus militating against the other equally important policy objective of improving efficiency and expediting development. We believe that the revised Bill has struck a right balance among these objectives.

MAJOR PROVISIONS OF THE BILL

7. The major provisions of the Bill in comparison with those in the existing Town Planning Ordinance and the White Bill are set out in **Annex I**. Members will be briefed on the detailed provisions of the Bill at the meeting.

WAY FORWARD

8. We aim to seek ExCo's agreement to the Bill in late April with a view to introducing the Bill into the Legislative Council for First Reading on 12 May 1999.

Panning, Environment and Lands Bureau

March 1999

**Comparison of the Main Provisions Under the Existing Town Planning Ordinance,
the Town Planning White Bill and the Town Planning Bill**

<u>Existing TPO</u>	<u>The White Bill</u>	<u>The Town Planning Bill</u>	<u>Objective of the Proposal</u>
1. <u>Planning Structure</u>			
1.1 <u>Chief Executive in Council (CE in C)</u>			
CE in C approve draft plan.	Basically same as current system. CE in C is also empowered to make final decision on unwithdrawn adverse representations and <i>to amend draft plan to meet such representations and to approve a draft plan in part.</i>	Same as the White Bill.	To <i>provide greater flexibility</i> to CE in C in the decision on draft plan and unwithdrawn adverse representations.
1.2 <u>Town Planning Board (TPB)</u>			
(a) Comprises both official and non-official members. 5 members form the quorum of any TPB meeting.	(a) Same as current system. <i>Non-official members</i> would form the <i>majority of the quorum</i> . One or more than one Deputy Chairman.	(a) In addition to the proposals in the White Bill, the quorum requirements of the TPB and its committees meetings are increased to 9 and 7 members respectively.	(a) To <i>enhance independence</i> of the TPB.
(b) No provision for declaration of interest by TPB members.	(b) Express provision for <i>declaration of interest</i> .	(b) Same as the White Bill.	(b) To <i>enhance accountability</i> of the TPB and <i>transparency</i> of its operation.

Note : Major proposals highlighted in italics.

<u>Existing TPO</u>	<u>The White Bill</u>	<u>The Town Planning Bill</u>	<u>Objective of the Proposal</u>
(c) To prepare, amend and publish statutory plans; consider and hear objections to statutory plans; submit draft plans to CE in C for approval; consider and review applications for planning permission; and recommend to CE in C for land resumption.	(c) In addition to the existing functions, to prepare and publish <i>planning studies</i> and review the Planning Authority's decisions on <i>planning certificates</i> .	(c) In addition to the existing functions, to prepare and publish planning studies and <i>review appeals against the Building Authority's rejection of building plans on "town planning" grounds</i> .	(c) To <i>enhance openness and fairness</i> in the plan-making process and to ensure that <i>appeals in relation to town planning matters</i> will be considered by the TPB.
(d) No express provision for TPB to conduct its business by way of circulation of papers.	(d) TPB may conduct its business by way of <i>circulation of papers</i> .	(d) Same as the White Bill.	(d) To <i>enhance efficiency and provide greater flexibility</i> in the operation of the TPB.
1.3 <u>Appeal Board (AB)</u>			
(a) To consider appeal against TPB's decision on application for planning permission.	(a) In addition to the existing functions, to <i>determine appeal against the Planning Authority's decision on reinstatement notice</i> .	(a) Same as the White Bill.	(a) To <i>provide an independent mechanism</i> for consideration of such appeals which are considered by Secretary for Planning, Environment and Lands under the existing Ordinance.
(b) No time limit on when AB should consider appeals.	(b) AB shall consider an appeal <i>within 3 months</i> .	(b) AB shall consider an appeal within 3 months but <i>subject to application</i> by either of the parties, the <i>3-month</i>	(b) To <i>enhance efficiency</i> in the processing of appeal cases.

<u>Existing TPO</u>	<u>The White Bill</u>	<u>The Town Planning Bill</u>	<u>Objective of the Proposal</u>
		<i>period can be extended.</i>	
(c) No provision for determining appeal on the basis of written submission.	(c) Express provision for AB to <i>determine appeal on the basis of written submission</i> subject to consent of concerned parties.	(c) Same as the White Bill.	(c) To <i>enhance efficiency</i> and <i>provide greater flexibility</i> in the processing of appeal cases.
(d) An AB member should not take part in decision unless present at all hearing.	(d) The hearing of an appeal may continue despite a change in membership.	(d) The hearing of an <i>appeal may continue despite a change in membership</i> only if it has the <i>consent of the parties</i> to the appeal.	(d) To <i>enhance efficiency</i> and <i>provide greater flexibility</i> in the processing of appeal cases.
(e) No statutory time limit for notification of AB's decision.	(e) Appellant to be notified of AB's decision <i>within one month after determination.</i>	(e) Same as the White Bill.	(e) To <i>enhance efficiency</i> in the processing of appeal cases.
1.4 <u>The Planning Authority (PA)</u>			
(a) Director of Planning as the PA to undertake enforcement action against unauthorised development.	(a) Same as current system.	(a) Same as current system	(a) To maintain the <i>existing well-established practice</i> for the PA to provide effective control on unauthorised development.
(b) TPB may delegate its power to the PA in respect of minor amendment to planning permission and temporary development within development permission area.	(b) Further delegation of power to the PA in respect of <i>whether a condition of approval has been fulfilled.</i>	(b) Same as the White Bill.	(b) To <i>streamline planning procedures</i> and <i>relieve workload</i> of the TPB.

<u>Existing TPO</u>	<u>The White Bill</u>	<u>The Town Planning Bill</u>	<u>Objective of the Proposal</u>
2. <u>Plan-Making Process</u>			
2.1 <u>Publication of planning study</u>			
No requirement under the existing Ordinance.	<i>A planning study to be prepared for a new, replacement or, if necessary, amendment plan. To be published for 3 months for public comment.</i>	A planning study to be published for 1 month for public comment.	To enable the TPB to <i>collect public view</i> at the early stage of the plan-making process.
2.2 <u>Publication of draft plan</u>			
(a) 2 months publication period for new or replacement draft plan.	(a) Same as current system.	(a) <i>1 month publication period</i> for new or replacement draft plan.	(a) To <i>streamline planning procedures and enhance efficiency</i> in the plan-making process.
(b) 3 weeks publication period for amendment to draft plan.	(b) 6 weeks publication period for amendment to draft plan.	(b) <i>1 month publication period</i> for amendment to draft plan.	(b) To allow <i>adequate time for the public to comment</i> on amendment to draft plan.
2.3 <u>Procedures for consideration of objections/representations</u>			
(a) Only person affected by draft plan can submit objection.	(a) Any person can submit representation.	(a) <i>Only person affected by draft plan</i> can submit representation. Same as current system.	(a) To maintain the current system which has already struck a <i>proper balance between efficiency and right of participation</i> in the plan-making process.
(b) No provision for publication of objection.	(b) To <i>publish representations for 1 month</i> for public comment.	(b) To <i>publish representations for 2 weeks</i> for public comment.	(b) To <i>enhance openness and fairness</i> in the representation consideration process.

<u>Existing TPO</u>	<u>The White Bill</u>	<u>The Town Planning Bill</u>	<u>Objective of the Proposal</u>
(c) TPB to give preliminary consideration to the objection in the absence of the objector.	(c) Basically same as the current system. TPB to give <i>preliminary consideration</i> to a representation and comment on the representation <i>in the absence of the representer and commenter</i> .	(c) Same as the White Bill.	(c) To continue with the current system.
(d) TPB to hear unwithdrawn objection and the objector may attend. TPB may also set up special committee to conduct the hearing and deal with the objection either individually or collectively.	(d) TPB to hold a one-staged inquiry or <i>group inquiry</i> into unwithdrawn representations and comments. <i>The representers and commenters are entitled to attend</i> . TPB may also set up <i>special committee</i> to conduct the inquiry.	(d) Same as the White Bill.	(d) To <i>enhance openness and fairness</i> as well as <i>efficiency</i> in the hearing of representations to draft plan.
2.4 <u>Submission of draft plan to CE in C</u>			
(a) Within 9 months after expiration of the plan exhibition period, TPB to submit the draft plan and a schedule of unwithdrawn objections to CE in C for approval.	(a) Within 9 months after expiration of the plan publication period, TPB to submit the draft plan and all unwithdrawn representations to CE in C for a final decision.	(a) Same as the White Bill.	(a) To <i>enhance efficiency and streamline procedures</i> in the processing of representations to draft plan.
(b) CE may grant extension to the 9-month time limit for a period not more than 6 months.	(b) Same as current system.	(b) Same as current system.	(b) To <i>allow flexibility</i> for the TPB to meet the statutory time limit on the processing of representations to draft plan.

<u>Existing TPO</u>	<u>The White Bill</u>	<u>The Town Planning Bill</u>	<u>Objective of the Proposal</u>
2.5 <u>Amendments to statutory plan</u>			
(a) TPB may consider amendments to a draft plan after plan publication.	(a) Same as current system.	(a) Same as current system.	(a)&(b) To provide <i>added flexibility</i> and <i>enhance efficiency</i> in the plan-making process and to address the <i>planning blight problem</i> .
(b) No provision for application for amendment of draft or approved plan.	(b) Provision included to allow <i>application for amendment of draft or approved plan</i> .	(b) Provision included for TPB to consider application for amendment of draft or approved plan <i>within 3 months</i> .	
3. <u>Application for Planning Permission</u>			
3.1 <u>Consent of or notification to owner</u>			
No requirement under the existing Ordinance.	The applicant to obtain <i>consent or notify the owner</i> of the application site.	Same as the White Bill.	To ensure that the owner of the application property is <i>aware of</i> the application and to <i>enhance transparency</i> in the planning application system.
3.2 <u>Publication of application</u>			
No requirement under the existing Ordinance.	TPB to publish applications for planning permission for public comment for 1 month.	TPB to <i>publish only applications for selected uses</i> for public comment. The <i>list of applications requiring publication</i> is to	To make the planning application system <i>more open</i> .

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be notified by the TPB *in the Gazette*.

3.3 **Consideration of application**

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| (a) TPB to consider applications within 2 months upon its receipt. | (a) The period extended to 3 months. | (a) For applications which require publication, TPB to consider applications <i>within 3 months</i> . For applications which do not require publication, TPB to consider applications <i>within 2 months</i> . | (a) To <i>maintain efficiency</i> in processing those applications which do not require publication. |
| (b) No statutory time limit for notification of TPB's decision. | (b) Applicant and commenter to be <i>notified of TPB's decision within 1 month</i> after determination. | (b) Same as the White Bill. | (b) To <i>enhance efficiency</i> in the processing of planning applications. |
| (c) TPB may consider planning application in respect of an objection site even when the objection is yet to be decided. | (c) <i>Determination</i> of planning application to be <i>withheld until expiration of plan publication period</i> ; where the application site is subject to third party adverse representation, determination to be withheld <i>until CE in C has made a final decision on the representation</i> . | (c) Same as the White Bill. | (c) To ensure that decision of the TPB and CE in C on the draft plan and representations will <i>not be preempted by approval of planning applications</i> while " <i>escape routes</i> " are also provided to enable the TPB to approve a planning application notwithstanding adverse representation. |

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| (d) No special arrangement for processing application for temporary development and minor amendments to planning permission. | (d) <i>Fast-track approach</i> for processing such applications to be dealt with <i>within 45 days</i> . | (d) Same as the White Bill. | (d) To <i>streamline planning procedures</i> and <i>enhance efficiency</i> in the processing of planning applications. |
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3.4 **Enforcement on Planning Conditions**

No express provision under the existing Ordinance.

Building Authority to refuse issuing occupation permits if the relevant planning conditions have not been complied with.

TPB may levy “*performance bond*” to ensure full compliance of planning conditions imposed by the TPB.

To ensure *compliance with planning conditions* imposed by the TPB in granting planning permission, thus enhancing the *effectiveness* of the planning system.

4. **Planning Control on Building Works**

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| (a) The Building Authority has discretion to approve building plans which contravene the provisions of the TPO. | (a) Obtaining a <i>planning certificate</i> is a pre-requisite for approval of building plans. | (a) Consequential amendments to the Buildings Ordinance is included to ensure that <i>the Building Authority shall refuse to approve building plans which contravene the provisions of the TPO</i> . | (a) To provide more <i>effective planning control</i> on building works. |
| (b) The Building Authority may approve building plans in respect of an objection site even when the objection is yet to be decided. | (b) Issue of planning certificate by the PA to be withheld during plan publication period; and if the site is subject to adverse representation, until CE in C has made a final decision on the | (b) <i>Approval of building plans will not be granted during the plan publication period; and if the site is subject to adverse representation, until CE in C has made a final</i> | (b) To ensure that decision of the TPB and CE in C on the draft plan and representation will <i>not be preempted by approval of building plans while “escape routes”</i> are also provided to enable the |

Existing TPO

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representation.

decision on the representation.

Building Authority to approve building plans notwithstanding adverse representation.

5. Planning Enforcement : Unauthorised Development

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|---|--|---|---|
| (a) Enforcement action against undertaking of unauthorised development. | (a) Same as current system. Enforcement power enhanced through : - <ul style="list-style-type: none">- notices served with the land and <i>binding on successor</i>;- making <i>landowners, managers</i> registered under s.15 of the New Territories Ordinance, and <i>directors</i> of companies <i>liable</i>;- <i>aerial photographs</i> <i>admissible</i> as evidence in court;- imprisonment sentence introduced. | (a) Same as the White Bill, except that <i>no imprisonment sentence will be introduced and the maximum fines will be increased.</i> | (a) To <i>improve efficiency and effectiveness</i> of enforcement against unauthorised development. |
| (b) SPEL to review PA's decision in respect of reinstatement notice. | (b) AB to <i>review PA's decision in respect of reinstatement notice.</i> | (b) Same as the White Bill. | (b) To provide an <i>independent mechanism</i> for consideration of such appeal. |

<u>Existing TPO</u>	<u>The White Bill</u>	<u>The Town Planning Bill</u>	<u>Objective of the Proposal</u>
6. <u>Other Major New Provisions</u>			
(a) No such provision under the existing Ordinance.	<p>(a) (i) Designation of “designated development” (“DD”), “environmentally sensitive area” (“ESA”) and “special design area” (“SDA”). Carrying out of developments in them require permission from TPB. An <i>environmental report</i> should be submitted as part of the application for DD and development within ESA. An urban design plan should be submitted as part of application for development within SDA.</p> <p>(ii) <i>Environmental statements</i> to be submitted with all planning applications.</p> <p>(iii) <i>No transfer of unexpended gross floor area</i> from one zone to another within the same site except obtained planning permission from TPB.</p>	<p>(a) (i) Same as the White Bill except that environmental report has been <i>renamed as “Report on Key Environmental and Planning Issues”</i>.</p> <p>(ii) Environmental statements required to be submitted <i>for applications which require publication</i>.</p> <p>(iii) Same as the White Bill with modifications to better reflect the intention.</p>	<p>(a) (i) To give more <i>emphasis to environmental and urban design considerations</i> in the planning process.</p> <p>(ii) Same as (a)(i) above.</p> <p>(iii) To provide <i>clearer and better planning control</i> on development proposals.</p>

<u>Existing TPO</u>	<u>The White Bill</u>	<u>The Town Planning Bill</u>	<u>Objective of the Proposal</u>
(b) No such provision under the existing Ordinance.	(b) To set up planning registers for public inspection.	(b) All statutory planning records <i>including statutory plans, approved Master Layout Plan</i> etc. will be kept by the PA for public inspection.	(b) To <i>enhance openness</i> and <i>ensure availability</i> of planning information to the public.

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