

立法會
Legislative Council

LC Paper No. CB(1) 1220/99-00
(These minutes have been seen
by the Administration)

Ref : CB1/BC/8/99/2

Bills Committee on Town Planning Bill

Minutes of meeting
held on Wednesday, 1 March 2000, at 10:45 am
in the Chamber of the Legislative Council Building

Members present : Hon James TO Kun-sun (Chairman)
Hon HO Sai-chu, SBS, JP
Hon Edward HO Sing-tin, SBS, JP
Hon LEE Wing-tat
Hon Ronald ARCULLI, JP
Hon Christine LOH
Hon CHAN Yuen-han
Hon WONG Yung-kan
Hon Emily LAU Wai-hing, JP

Members absent : Dr Hon YEUNG Sum
Dr Hon TANG Siu-tong, JP

Public officers attending : **Planning and Lands Bureau**

Mr Wilson FUNG
Principal Assistant Secretary/Planning

Mr David LAM
Assistant Secretary/Planning

Planning Department

Mr Raymond T L CHIU
Assistant Director of Planning/Technical Services

Ms Brenda AU
Senior Town Planner/Ordinance Review

Department of Justice

Mr J D SCOTT
Senior Assistant Law Draftsman

Miss Shandy W M LIU
Senior Government Counsel

Clerk in attendance : Mrs Mary TANG
Chief Assistant Secretary (1)6

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Ms Sarah YUEN
Senior Assistant Secretary (1)4

Action

I. Election of Chairman

Nominated by Mr Ronald ARCULLI and seconded by Mr LEE Wing-tat, Mr James TO was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(The Bill, the relevant LegCo Brief (Ref: PLB(CR)184/02), the Legal Service Division report issued vide LC Paper No. LS70/99-00, the Members' Brief issued vide LC Paper No. CB(1)1048/99-00, and a set of power-point presentation material tabled at the meeting and circulated to members thereafter vide LC Paper No. CB(1)1100/99-00)

How to proceed with scrutiny of the Bill

The urgency

2. At the Chairman's request, the Principal Assistant Secretary for Planning and Lands (Planning) (PAS/PL(P)) explained the background to the delay in the introduction of the Bill. Members noted that the Bill had been submitted to the Panel on Planning, Lands and Works of the Legislative Council (LegCo) for consideration as early as March 1999. However, due to controversies arising from the Bill, in particular, concerns that a more open statutory planning system to be effected by the Bill might unnecessarily prolong the development process, there was a need to thoroughly consult and address the concerns of different parties. In addition, the Administration also considered it necessary that the Bill should incorporate the

recommendations of a recent consultancy study on the working procedures of the Planning Department (Plan D). Hence the revised Bill had not been tabled until 16 February 2000. In view of the increasing aspirations of the community for greater involvement in the entire planning process and the carriage of a motion by the LegCo on 18 December 1996 calling for early introduction of the Bill, PAS/PL(P) stressed that there was a need to enact the Bill before the end of the current legislative session on 30 June 2000 and urged members to expedite its scrutiny.

The approach

3. Miss Emily LAU said that to avoid a waste of time and efforts, the Bills Committee should before proceeding further ascertain the possibility of completing scrutiny of the Bill within this legislative session. In proposing ways to expedite scrutiny of the Bill, Mr Ronald ARCULLI pointed out that the Bill could be divided into two parts as in the case of the Companies (Amendment) Bill to facilitate handling of simpler issues first. In response, PAS/PL(P) advised that as the planning process to be improved by the Bill had to be examined as a whole, there might be difficulties in following Mr ARCULLI's suggestion. He however opined that as over three rounds of public consultation had been conducted on the Bill, the Bill, as introduced, represented the greatest consensus among the varying interests. Pointing out that many organisations still had reservations about certain provisions of the Bill, Mr ARCULLI doubted if prior consultation would necessarily accelerate the scrutiny process. Notwithstanding, members agreed to put in their best efforts and aim at completing scrutiny of the Bill before the end of the current session.

4. While agreeing to expedite scrutiny of the Bill, Miss Emily LAU stressed that the Bills Committee should suitably space out meetings to allow sufficient time for digestion of the various issues involved and hence meaningful deliberations. She also opined that care should be taken to avoid a clash of meetings, especially towards the end of the legislative session when a large number of bills would be swarming in. In this regard, Mr Ronald ARCULLI pointed out that the Chairman of the House Committee should discuss with the Administration on drawing a line on the number of bills which the Legislative Council could possibly deal with within the present session.

Solicitation of deputations' views

5. To facilitate deliberation of deputations' concerns, members agreed that the Bills Committee should receive deputations as early as practicable with sufficient time to be allotted for them to elaborate their views. In this regard, the Chairman pointed out that the Clerk should ask the deputations to highlight their major concerns beforehand and then allot time for presentation according to the number and complexity of concerns. To invite submissions by deputations, members agreed to put up an advertisement in the newspapers and on the Internet. At Mr ARCULLI's request, the Administration also agreed to provide for the Bills Committee's reference a list of the names, correspondence addresses and fax numbers of the consultees of the draft Bill.

(Post-meeting note: The said list has been provided and letters inviting submissions sent out according to the list.)

The Bill in general

6. With the aid of power-point presentation, the Senior Town Planner/Ordinance Review briefed members on Parts I and II of the Bill.

7. In reply to Mr Ronald ARCULLI on whether the working relationship between the Buildings Department (BD) and Plan D would undergo any significant change upon enactment of the Bill, PAS/PL(P) advised that although it would be expressly specified in the Bill that the Buildings Authority (BA) should refuse to approve building plans which contravened the provisions of the Bill (Clause 45), no fundamental change in the two departments' working relationship would result. This was because although BA could exercise discretionary power to approve building plans which contravened the provisions of the Town Planning Ordinance (TPO), it would as a matter of established practice first consult with Plan D to ensure compatibility with planning intentions before they approved building plans. Mr Ronald ARCULLI doubted if this was the case, citing examples where plans approved by BA were not approved by Plan D thereafter on grounds that they contravened planning intentions. In this regard, the Assistant Director of Planning/Technical Services (AD of Plan(TS)) assured members that upon enactment of the Bill, such cases would not happen. He further advised that the Bill would also provide that appeals against BA's refusal of building plans on planning grounds would be directly lodged to the Town Planning Board (TPB) instead of the Building Appeal Tribunal to facilitate the appeal process.

8. Mr Ronald ARCULLI found it inappropriate that the exercise of power by BA should be subject to consultation with Plan D. Mr Edward HO also pointed out that the Hong Kong Institute of Architects was gravely concerned about such proposed restraints and called for more in-depth examination of this point upon meeting with the Institute. In response, PAS/PL(P) explained that for the purpose of ensuring consistency in decisions made by different departments, it was not uncommon for departments to consult other departments concerned before discharging their duties. At the Chairman's request, he agreed to provide a comparison between the planning control on building development under the existing TPO and the proposed arrangement under the Bill.

Admin

9. Noting that paras 19 and 20 of the relevant LegCo Brief seemed to have only highlighted that the Bill was consistent with the human rights provisions of the Basic Law, Mr Ronald ARCULLI sought to ensure that the Bill would also be consistent with other provisions of the Basic Law. PAS/PL(P) confirmed this to be the case. At the Chairman's request, the Assistant Legal Adviser (1) (ALA1) agreed to check if the paragraph on Basic Law implications in other LegCo Briefs on legislative proposals had similar reference to human rights implications.

(Post-meeting note: ALA1 confirmed that some LegCo Briefs on other legislative proposals contain the same statement that (a) the bill does not conflict with those provisions of the Basic Law carrying no human rights implications in the paragraph on Basic Law implications, and (b) that the bill is consistent with the human rights provisions of the Basic Law in the paragraph on human rights implications.)

Part I of the Bill: Preliminary

10. Members did not raise any question on Part I of the Bill.

Part II of the Bill: Clauses 3 to 6 - Appointment of Town Planning Board (TPB)

Declaration of interests by TPB members

11. In reply to Miss Christine LOH on the existence or otherwise in the TPB of a system of registration and declaration of interests, PAS/PL(P) advised that despite the absence of relevant provisions in the existing TPO, TPB already had its own administrative procedures on declaration of interests. The schedule to the Bill would have express provisions for declaration of interests by TPB members. As to how TPB planned to enforce the proposed statutory requirement for its members to declare interests, PAS/PL(P) pointed out that TPB should be given the flexibility to work out its own guidelines and these details need not be set down in law. Miss Christine LOH however opined that some major principles should at least be incorporated for reference. Mr Ronald ARCULLI also opined that members should have the opportunity to comment on the implementation details. In response, the Administration agreed to provide the existing administrative guidelines on declaration of interests by TPB members.

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(Post-meeting note: The required information has been circulated vide LC Paper No. CB(1)1116/99-00.)

12. The Chairman pointed out that there should be detailed definitions of direct and indirect interests in the Bill to facilitate compliance with the above requirement of TPB members to declare interests. In response, PAS/PL(P) and AD of Plan(TS) advised that due to the absence of such definitions in the written law, it was TPB's decision as to what constituted direct or indirect interests.

13. In order to ensure a high degree of transparency and credibility of TPB's system for declaration of interests, Mr Ronald ARCULLI urged the Administration to make reference to relevant practices of similar Government advisory bodies. He further opined that as TPB members' interests had already been registered upon appointment, there should be a mechanism that could ensure that where a member had an interest in a particular matter to be considered by TPB, he would be denied access to the relevant papers and be asked to withdraw from meetings. In response,

PAS/PL(P) and AD of Plan(TS) advised that details on the existing mechanism would be available in the required guidelines for members' detailed deliberation.

14. In response to Mr LEE Wing-tat on how frequent the register of members' interests was updated and how the public could access such records, PAS/PL(P) said accessibility to records of interests would be ensured by section 3(4) of the Schedule to the Bill. As to the frequency of updating, such would be elaborated in the required guidelines.

Conduct of TPB meetings

15. On whether there were provisions in the Bill that specified TPB could hold its meetings in public, PAS/PL(P) replied in the negative but advised that TPB would be allowed to decide how its meetings were to be conducted. He pointed out that deliberations of the TPB, particularly those relating to planning applications, could involve sensitive commercial interests. There was great concern over opening this part of TPB meetings to the public. Miss LOH found the above-proposed arrangement unsatisfactory. She pointed out that since one of the Bill's aims was to enhance the transparency of TPB, and that the Bill was also seeking to empower TPB to conduct its business by way of circulation of papers, she opined that the Bill should at least provide an express provision to allow TPB to open its meetings. At her request, PAS/PL(P) agreed to consider her suggestion of including in the Bill an enabling provision to that effect. Mr Ronald ARCULLI however cautioned that if TPB was to hold all its meetings in public where possible, the rule of the game would have changed and there might be a need to consider the introduction of planning enquiries. He further highlighted the need for flexibility to conduct closed meetings where necessary to maintain confidentiality of matters under consideration which might involve commercial secrets. While agreeing with Miss LOH on the opening of TPB meetings, Miss Emily LAU also concurred with Mr ARCULLI on the need to exercise flexibility where commercial secrets were involved. At Miss LAU's request, PAS/PL(P) agreed to advise whether open meetings were conducted by other advisory bodies.

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Composition of TPB

16. Members in general opined that the Bill should specify the number of members on the TPB and the criteria for their appointment. In reply, PAS/PL(P) explained that no ceiling on the number of TPB members had been imposed because there was a need to provide the Chief Executive with flexibility in adjusting the number of TPB members to reflect the changing demands of the community without having to amend the relevant legislation. Addressing Miss Emily LAU's concern that the arrangement might have been introduced to facilitate the appointment of pro-Government members to TPB whenever necessary, PAS/PL(P) explained that appointment of new members was based on the need for representation of a particular sector and the candidates' performance and a member would not be replaced before the end of his term unless he had committed a criminal offence or serious misconduct.

The Chairman pointed out that in consideration of the powers and possible financial gains involved, the Administration should enhance the transparency and certainty of TPB's composition to assure the public that all planning decisions were made fairly.

17. As regards Miss Christine LOH's question on whether there was any ceiling on the number of public officers appointed to TPB, PAS/PL(P) advised that similar flexibility had been provided for the Chief Executive to appoint any number of public officers to TPB when necessary. He also pointed out that the Bill provided for a non-official majority in the quorum of TPB meetings, specifying that of the quorum of nine members, five of them should be non-public officers. Members were not convinced of the above claimed need for flexibility. In particular, Mr Ronald ARCULLI pointed out that flexibility had already been provided for in section 1(3) of the Schedule to the Bill, which said that "a public officer appointed under section 3 of this Ordinance may nominate any public officer to be his representative on the Board."

18. To ensure the representativeness of TPB, Miss CHAN Yuen-han proposed that the Bill should specify the sectors to be represented in TPB to ensure all relevant sectors could participate in the planning process. Mr Edward HO emphasised that in particular a certain proportion of professionals involved should be appointed. Miss Emily LAU shared their views and said that a balanced representation was important.

Admin 19. In response to the above concerns expressed by members about the composition of TPB, PAS/PL(P) undertook to consider members' suggestion of designating in the Bill the number of members and public officers to be appointed to TPB and to advise whether similar provisions had been included in relevant ordinances governing the operation of other Government advisory boards. He also agreed to advise on the composition of TPB, the criteria for appointment, and whether the appointment could be terminated.

Other concerns

20. Miss Emily LAU enquired if the Government had any stand on whether the Chairman of TPB should be a public officer. In reply, PAS/PL(P) said that no consensus had been reached on this controversial issue partly because of the difficulties in identifying a suitable candidate from the private sector who was free from any conflict of interests and yet had the necessary expertise and vision in town planning. Hence there was no express provision on this in the Bill and the Chief Executive had the discretion to appoint either a public officer or a non-public officer as the Chairman of TPB. However, the Administration would take this opportunity to revisit the issue, including whether the post should be remunerated. Commenting on the Chairman's proposal to consider appointing retired judges to be the TPB Chairman, PAS/PL(P) pointed out that apart from being fair and impartial, the TPB Chairman should also have a vision on the future development of Hong Kong.

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21. Mr Ronald ARCULLI was concerned that due to unstable meeting attendance, TPB members who examined the planning applications might not necessarily be the same group of members who voted on the applications. Addressing his concern, the Administration agreed to provide an information paper on the conduct of TPB meetings explaining how the attendance of members was monitored and how planning applications were dealt with at the meetings.

III. Any other business

22. Members agreed that the second, third and fourth meetings of the Bills Committee should be held as follows -

Date	Time
Tuesday, 7 March 2000	4:30 pm to 6:30 pm
Tuesday, 14 March 2000	10:45 am to 12:45 pm
Tuesday, 28 March 2000	8:30 am to 12:30 pm

23. Members also agreed to receive deputations at the meeting on 28 March 2000 and if possible, at the 14 March 2000 meeting as well.

24. The meeting ended at 12:50 pm.

Legislative Council Secretariat
27 March 2000