

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 2122/99-00

(These minutes have been seen  
by the Administration and  
cleared by the Chairman)

Ref : CB1/BC/8/99/2

**Bills Committee on Town Planning Bill**

**Minutes of the ninth meeting  
held on Thursday, 4 May 2000, at 4:30 pm  
in Conference Room B 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 CHAN Yuen-han  
Hon Emily LAU Wai-hing, JP

**Members absent** : Hon Christine LOH  
Hon WONG Yung-kan  
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  
Acting Deputy Director of Planning/District

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Ms Brenda AU  
Senior Town Planner/Ordinance Review

**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

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**I Meeting with the Administration**  
(LC Paper Nos. CB(1)1499/99-00(01) and (02))

The way forward

The Chairman advised that at the House Committee meeting on 28 April 2000, members agreed that the Chairmen of the 16 Bills Committees in action should give an indication at the next House Committee meeting on 5 May 2000 as to whether their Bills Committees could complete scrutiny work within the current term, and accordingly invited the Administration to express views in this regard.

2. In response, the Principal Assistant Secretary for Planning and Lands (Planning) (PAS/PL(P)) pointed out that issues examined by the Bills Committee essentially fell into two categories. The first category included issues which the Administration was ready to reconsider for amendments to the Bill after having revisited them in the light of members' views, for example, opening of the meetings of the Town Planning Board (TPB), appointment of non-public officers as the TPB Chairman and Vice-Chairman and involvement of TPB in strategic planning. PAS/PL(P) was confident that consensus could be reached on the above three issues within a short time. The other category covered issues which, though very important, could in the Administration's view be taken up after the passage of the Bill to allow them to be more thoroughly examined. These issues were -

- (a) The complicated compensation issue which could be considered separately as regards whether compensation should be paid for imposing planning controls in general and for designation of special design areas (SDAs) and environmentally sensitive areas (ESAs). Having regard that there were no compensation provisions in the existing Town Planning Ordinance (TPO), the issue might not need to be examined in the context of the Bill;

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- (b) Interface mechanism between TPB and other committees such as the Country and Marine Parks Board (CMPB);
- (c) The appointment of full-time paid TPB members. Since the issue involved public money and significant changes to TPB's operation, it warranted more detailed examination and should best be considered in the context of the review on the operation of TPB; and
- (d) Interface between the Bill and the Roads (Works, Use and Compensation) Ordinance (R(WUC)O) and the Railways Ordinance (RO) to allow TPB to participate in the planning of major road and rail projects. Since the latter two ordinances already had an open planning mechanism which allowed for public participation and objection handling, there was no need for a link among the three.

3. On whether the Bill could be enacted within this legislative term, PAS/PL(P) emphasized that if members agreed to deal with the above four issues separately from the Bill, he was confident that scrutiny of the Bill could complete on schedule. On the contrary, he would have reservation about whether the Bill could be enacted in time. He further emphasized that even with some issues outstanding, the Bill if enacted would still be a great improvement over the existing TPO by making the planning process more open and efficient. As such, there was a need for its early enactment.

4. At the Chairman's invitation for views in this regard, Mr Ronald ARCULLI opined that the compensation issue should be settled before the Bill went ahead. He also pointed out that apart from the above highlighted outstanding issues, there were also a number of other major issues that had yet to be fully deliberated. For example, problems relating to the operation and composition of TPB. He was of the view that the Bills Committee would not be able to complete its work in time.

5. Mr LEE Wing-tat expressed similar views and cast doubt on the Administration's claim that consensus on the first category of issues highlighted by the Administration was forthcoming. Given the complexity of the Bill and its far reaching implications on the community at large, he cautioned against the Bills Committee rushing through the Bill without going into the details of the various issues that might affect the planning and development of Hong Kong in the years to come.

6. Miss CHAN Yuen-han opined that compensation was an integral part of the Bill and therefore could not be dealt with separately. Since this particular issue and other general principles of the Bill had yet to be agreed upon, not to mention clause-by-clause examination, it was practically impossible that scrutiny of the Bill could complete in time. As such, she proposed that the work of the Bill Committee should be curtailed to vacate a slot to enable the activation of a bills committee on the waiting list. She also proposed that a report on the Bills Committee's deliberations should be prepared to facilitate future reference to the points raised by the Bills Committee and

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Clerk follow-up by new Legislative Council (LegCo) members when the Bill was re-introduced.

7. Mr Edward HO pointed out that while planners called for the early enactment of the Bill, architects, surveyors and real estate developers had indicated their preference for adhering to the existing legislation over putting in place a new Bill hastily passed without careful scrutiny. Having regard that clause-by-clause examination had yet to begin on the voluminous Bill, and the grounds upon which the Building Authority (BA) should approve or refuse plans of building works had yet to be clarified, he saw great difficulty in completing the scrutiny of the Bill in time. Moreover, the Administration had taken years to draw up the Bill after considering the diversified views of the community, but only introduced the Bill on 16 February 2000, four months before the end of the LegCo term. It was therefore unfair to expect or require LegCo to complete the scrutiny of the Bill within such a short period.

*(Post-meeting note: In view of the foregoing, the Chairman reported to the House Committee at its meeting on 5 May 2000 that it would be unrealistic to complete the scrutiny of the Bill within the current LegCo session. The House Committee agreed that the work of the Bills Committee should be curtailed and the Bills committee was subsequently dissolved. Thereafter, a report on the deliberations of the Bills Committee was prepared and circulated vide LC Paper No. CB(1) 1726/99-00.)*

Response to the list of concerns raised at the meeting of the Bills Committee on 14 April 2000

(LC Paper No. CB(1)1392/99-00(01))

8. In response to members' concerns raised at the meeting of the Bills Committee on 14 April 2000, PAS/PL(P) made the following points -

- (a) As regards members' comment on the drafting of clause 7(g), which in their view seemed to allow TPB to show or make provision for country and marine parks on a draft plan and might give rise to conflicts with CMPB, the legal opinion sought was that clause 7(g) as presently drafted would only empower TPB to show on its draft plans areas which had been designated under the Country Parks Ordinance and the Marine Parks Ordinance and not to designate these areas. If members still had concerns, the Legal Adviser of the Secretariat and Government's law draftsman could jointly work out how the clause should be redrafted to clear up any misunderstanding.
- (b) On members' concern about the extent of power conferred upon TPB under clause 9(1), in particular clauses 9(1)(d) and (e) which allowed for the control of traffic and drainage impacts, it had to be noted that the purpose of introducing clause 9 was to define the seemingly wide power conferred upon TPB under clauses 7 and 8 of the Bill and section 4 of

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(c) As to members' views on clause 19(4) and their request that comments made in respect of an adverse representation withdrawn under clause 17(3) should not be treated as not having been made, there was difficulty in granting such request. This was because under the interim development control proposed, TPB should not grant permission to planning applications where the application site was subject to a third party adverse representation until the Chief Executive in Council (CE in C)'s decision on the representation was made. As such, if the adverse representation was withdrawn, there was a need to treat it as not having been made so as not to hold up the relevant application. Nonetheless, in consideration of members' concern that all relevant views, including those made in respect of withdrawn adverse representations, would be given due attention, the Administration would consider referring such views to CE in C for consideration together with those unwithdrawn ones.

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(d) On whether interim amendments had ever been made to Development Permission Area Plans (DPA Plans), research conducted by the Administration had shown that 14 DPA Plans had been amended before they were replaced by Outline Zoning Plans (OZPs). The amendments had all stemmed from objections to the plans and only one other DPA Plan had been amended in the interim mainly in response to rezoning requests. Details of this particular case could be provided if necessary but members could be assured that the Administration would always refrain from amending DPA Plans before they were replaced.

(e) In relation to members' concern about the deeming provisions under clauses 82 and 83, which provided that any works or use authorized under R(WUC)O or any scheme authorized under RO would be deemed to be approved under TPO, it had to be noted that each of the above three ordinances had its own statutory process for handling objections and all draft plans and road and rail projects would ultimately be submitted to CE in C for approval. As such, projects authorized under R(WUC)O and OR should be acceptable under TPO.

9. In reply to the Chairman on the control measures TPB could provide for under clauses 9(1)(d) and (e), PAS/PL(P) advised that TPB would show on draft plans transport facilities such as pedestrian precincts in consultation with the Transport Bureau and the Transport Department. In a similar way, the drainage systems would also need to be shown on a draft plan to ensure their compatibility with other facilities.

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*Request for TPB's involvement in planning transport control and infrastructure requirements*

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10. As for the Chairman's enquiry on whether TPB would be consulted before transport infrastructure requirements were finalized, PAS/PL(P) assured members that Transport Bureau would consult TPB on every major road and rail project and when conducting transport studies such as the Third Comprehensive Transport Study and the Second Railway Development Study. Even after such major road and rail projects were gazetted, TPB members could still raise objections if they found them undesirable and their views, whether heeded or not, would be forwarded to CE in C for consideration. Moreover, the Administration was also willing to amend the word "may" in clause 6(1)(h) to "shall" such that TPB "shall" give advice to the Government relating to overall planning for Hong Kong, including major transport infrastructure projects and strategic planning. In reply to Miss Emily LAU on the effect of such an amendment, PAS/PL(P) said that all Government departments and bureaux would then need to consult TPB when conducting strategic planning and planning major transport infrastructure projects.

11. The Chairman however pointed out that some TPB members had expressed the wish to actually take part in the planning of major transport projects rather than just to give advice. He also opined that if TPB was given the role, public participation and compatibility of such projects with other planning initiatives could be ensured. His views were echoed by Miss Emily LAU, who highlighted the need for overall planning to achieve sustainable development. Mr Edward HO also pointed out that if all major works of railways and roads were finalized before involving TPB, TPB's power in making overall planning would be highly limited because the fundamental design of the major works would have significant implications on land use planning. As such, he proposed that clauses 82 and 83 should be amended to the effect that road and rail projects would not be gazetted until approved by TPB.

12. In response, PAS/PL(P) and the Acting Deputy Director of Planning/District said the Administration was in principle opposed to TPB members' request for the following reasons -

- (a) As stated above, TPB was already consulted on all major road and rail projects in the context of territorial and sub-regional studies. Thereafter, the results of the studies would, after being endorsed by CE in C, passed on to relevant departments for translation into various plans for submission to TPB for approval as appropriate. As such, TPB was already taking part in the planning process of all developments in an interactive way. Moreover, since planning studies were all conducted on a regular basis, they could adequately reflect the changing needs of the community to ensure good planning.

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- (b) Apart from the above channel, TPB's involvement could also be ensured by the present arrangement under which objections to road projects could be submitted to TPB for handling. TPB was also empowered to ask relevant departments to modify road and rail infrastructure on a town plan, and to submit its comments on road and rail projects to CE in C for consideration when making the final decisions.
- (c) A fundamental change would have resulted if the power to formulate road and rail projects was given to TPB instead of the executive arm of the Chief Executive embodied in the Transport Bureau and the Transport Department under the relevant ordinances.
- (d) Since all relevant departments and bureaux would be involved in the planning process in close collaboration, and all developments would ultimately be submitted to CE in C for approval, overall planning to achieve sustainable development could already be ensured at the administrative level and there was no need for legislative measures for such purposes.

13. Miss Emily LAU was unconvinced of the existence of good co-ordination, pointing out that projects submitted to the Public Works Subcommittee always failed to tie in with other considerations to achieve sustainable development. In response, PAS/PL(P) said that despite room for improvement, the Administration recognized the need for co-ordination and sustainable development and was examining how best to achieve the above as exemplified by the "Sustainable Development for the 21<sup>st</sup> Century" Study and the proposal to set up the Council for Sustainable Development and the Sustainable Development Unit.

14. Miss Emily LAU enquired about TPB's power under clause 7(a) to show or make provision on a draft plan for streets, railways and other main communications. In reply, PAS/PL(P) explained that where gazetted and approved projects were concerned, TPB's power would be limited to showing only. Nonetheless, if the district concerned was a new one, TPB would have the power to make provision for roads on the relevant OZP on the basis of studies conducted by Plan D in consultation with the Transport Bureau and the Transport Department after the study results had been endorsed. The Chairman was concerned that TPB would need to await the results of the studies before it could finalize an OZP. In response, PAS/PL(P) said that TPB could make a preliminary plan first on the basis of the results of the latest studies.

15. Addressing Mr Edward HO's concern about road and rail links between districts, PAS/PL(P) assured members that when preparing plans for new towns, attention would be paid to their external links with other districts.

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Response to members' concerns raised at the meeting of the Bills Committee on 26 April 2000

(LC Paper No. CB(1)1499/99-00(01))

16. The Senior Town Planner/Ordinance Review (STP/OR) briefed members on LC Paper No. CB(1)1499/99-00(02), which was provided in response to members' request at the meeting of the Bills Committee on 26 April 2000 for information relating to the imposition of plot ratio (PR) restrictions in Kowloon and New Kowloon through amendments to 16 OZPs.

17. Recalling that according to the TPO, all Government departments had to comply with TPB's decisions, Mr Edward HO questioned how, as claimed by STP/OR, an administrative measure was available to retain the original PR of sites sold just before amendments to impose PR restrictions were introduced.

18. At the Chairman's invitation to give assistance in this regard, the Assistant Legal Adviser 1 advised that according to section 16 of the Buildings Ordinance (Cap. 123), BA might refuse approval of plans of building works on grounds of non-compliance with the relevant OZPs. However, in the case of the Wing On Limited vs. Building Authority 1996, the judge had ruled that section 16 was also subject to BA's residual discretion under special circumstances, such as protection of the environment and public interests.

19. PAS/PL(P) and STP/OR assured members that the above quoted administrative measure was fully legitimate because when the paper on the proposed amendments to the 16 OZPs was submitted to the Executive Council (ExCo) for approval, ExCo's attention had already been drawn to the fact that a few sites newly sold or had their leases just modified might be unduly affected, and that TPB would need to make suitable zoning arrangements for such sites to allow them to retain their original PR.

20. The Chairman enquired about the existence of cases where developments were subject to a lower PR when redeveloped due to the absence of the provision for redevelopment up to the existing bulk in some OZPs. In response, STP/OR confirmed that she was not aware of any such cases. Moreover, since the policy was that redevelopment was permitted up to the existing bulk or the new permissible PR, whichever was the greater, the Administration would propose amendments to the relevant OZP as necessary to ensure no site would be unfairly subject to a lower PR when redeveloped.

21. In reply to Mr HO Sai-chu on why a higher domestic PR was allowed for "large sites", STP/OR said that this was because with an adequate internal provision of parking and loading/unloading facilities, such sites would be able to accommodate more people without creating any adverse impact on the local traffic conditions.



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22. As to the result of the imposition of PR restrictions on the 16 OZPs, PAS/PL(P) advised Mr HO Sai-chu that since many of the old residential districts covered were previously subject to airport height restrictions, their average existing PRs were relatively low. As such, even though height restrictions due to infrastructural capacity constraints were recently imposed on them, there would still be a modest amount of additional development in most cases, or at least no loss when compared to the existing bulk.

23. The meeting ended at 6:30 pm.

Legislative Council Secretariat

15 November 2000