

立法會
Legislative Council

LC Paper No. CB(1) 2101/99-00
(These minutes have been seen
by the Administration and
cleared by the Chairman)

Ref : CB1/BC/8/99

Bills Committee on Town Planning Bill

**Minutes of the second meeting
held on Tuesday, 7 March 2000, at 4:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
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 : Hon HO Sai-chu, SBS, JP
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

Miss Ophelia Y S WONG
Assistant Director of Planning/Board

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

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I. Election of the Chair

Noting that the Chairman would be out of town on 14 March 2000, on which the third meeting of the Bills Committee would be held to receive professional institutes, members elected Mr Edward HO to be the Chair for the third meeting.

II. Meeting with the Administration

(LC Paper Nos. CB(1)1110/99-00(01) and 1116/99-00, and a set of power-point presentation material tabled at the meeting and circulated to members thereafter vide LC Paper No. CB(1)1131/99-00)

2. Members noted the list of follow-up actions arising from the first meeting on 1 March 2000.

Planning control on building development

Admin. 3. In going through the above list with members, the Principal Assistant Secretary for Planning and Lands (Planning) (PAS/PL(P)) agreed to provide a comparison between the planning control on building development under the existing Town Planning Ordinance (TPO) and the proposed arrangement under the Bill when

the Bills Committee examined Part V of the Bill.

Declaration of interests by Town Planning Board (TPB) members

Guidelines on declaration of interests

4. Members noted that the existing administrative guidelines on declaration of interests by TPB members (the Guidelines) had been circulated to them vide LC Paper No. CB(1)1116/99-00.

5. The Assistant Director of Planning/Technical Services (AD of Plan(TS)) briefed members on the Guidelines. In reply to the Chairman, he confirmed that all cases of declaration of interests were recorded in the minutes of TPB meetings which, though not available for public inspection, would be sent to the parties involved, such as the applicant for planning permission and the objector to a statutory plan, if any, for retention.

6. Explaining the difference between “less direct or substantial interests” and “indirect and remote interests” referred to in the Guidelines, AD of Plan (TS) and the Assistant Director of Planning/Board (AD of Plan/B) pointed out that there were no clear guidelines on what constituted these two types of interests. An example of the latter was the interests involved by a TPB member in his capacity as an ordinary member of a club/institute which had made a planning application or raised an objection to a plan and the member had not involved in the application or objection. Examples of the former were the interests involved as a member of a public body such as the Housing Authority (HA) which had filed a planning application, or as a staff member of an institute which had made a planning application or an objection to a plan in which the TPB member so involved had not taken any part. AD of Plan(B) admitted there was difficulty in differentiating between the above two types of interests and reported that the TPB Secretariat was already conducting a review on the Guidelines (the Review) with a view to clarifying such grey areas.

7. Referring to the expression “frequent dealings” in paragraph 15(c) of Annex A to the Guidelines, Mr Edward HO sought clarification on whether a TPB member would be allowed to participate in the discussion of a planning application filed by a body he had frequent dealings with. In reply, AD of Plan(B) advised that if the TPB member was directly involved in the application by advising or representing the body, he would definitely be considered as having a direct interest and would have to withdraw from the relevant discussion. However, if he was not directly involved in the project but only had frequent dealings with the body, it would be the decision of TPB or the TPB committee concerned whether such dealings constituted a direct interest.

8. Members considered it necessary to have clear guidelines on what constituted “frequent dealings” so that the Board would be able to decide whether a TPB member’s dealings with a body connected with a matter under TPB’s consideration were frequent and significant enough to constitute a direct interest. Mr LEE Wing-tat and Miss Emily LAU, in particular, opined that to uphold the impartiality and

reputation of TPB and individual TPB members, TPB should as a rule require declaration of all relevant dealings, whether frequent or not, to dispel any suspicion of bias or that a TPB member ought not have acted because of certain personal interests. AD of Plan(B) agreed with members on the need for an objective and clear set of criteria on what constituted frequent dealings, and assured members that the issue would be addressed in the Review and the relevant recommendations would be reported to the Bills Committee in time for incorporation in the Bill if necessary.

9. Commenting on the Guidelines, the Chairman considered it inadequate that where holdings in land and properties were concerned, only substantial ones had to be registered in writing. He therefore urged the TPB Secretariat to make reference to the Yau Tsim Mong District Council, which required its members to register literally all holdings in land and properties in the districts concerned for public inspection. In response, AD of Plan(B) clarified that TPB members were already registering all holdings in land and properties.

Sanctions against failure to declare interests

10. Noting that the LegCo was the only body among the three covered in the Comparison of Practice on Declaration of Interests (the Comparison) which imposed sanctions against failure to declare interests, Miss Emily LAU opined that TPB and HA should follow the same practice. In response, AD of Plan(B) pointed out that according to the Interpretation and General Clauses Ordinance (Cap.1), the Chief Executive had already been empowered to impose sanctions on members of advisory bodies who failed to abide by their rules. In this regard, the Assistant Legal Adviser 1 (ALA1) referred members to Clause 3(6) of the Bill, which declared that “save insofar as is inconsistent with the provisions of this Ordinance, Part VII of the Interpretation and General Clauses Ordinance shall apply as respects the Board and appointments to the Board”. Under section 47A of Cap.1, the order of appointment by the Chief Executive may contain provisions relating to the removal of members of advisory bodies. Miss LAU however opined that such sanctions should be specified in the Bill itself instead to impress upon TPB members the importance of complying with the requirement to declare interests. Her views were shared by Miss CHAN Yuen-han. In response, the Administration agreed to review the need to specify in the Bill sanctions against failure to declare interests.

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11. Keen to ensure that appropriate sanctions would be imposed against failure to declare interests, Miss CHAN Yuen-han requested the Administration to provide for members’ consideration an information paper on the preliminary considerations of the Review, in particular on the sanctions contemplated. In response, AD of Plan(B) advised that the required paper could be made available for members’ comments after examination by TPB members in April 2000, and members’ comments so solicited would be reported to TPB for consideration. She however noted Miss CHAN’s wish for early involvement of LegCo Members in the Review. The Chairman also emphasised that when conducting the Review, TPB should give due regard to the important influence associated with TPB membership, and impose sufficiently heavy sanctions to deter any attempt to conceal one’s personal interests so as to profiteer from acting in a certain party’s favour when deciding on a planning application. In

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his view, removal of membership might not have sufficient deterrent effect and there might be a need to empower the Administration to institute civil and even criminal claims. At the Chairman's request, AD of Plan(B) agreed to provide the Bills Committee with a copy of the existing register of TPB members' interests so as to give members some idea of the types and extent of interests involved. This should facilitate the Bills Committee's decision on how stringent and heavy the requirements and sanctions in relation to declaration of interests should be.

Updating of the register of TPB members' interests

12. In relation to updating of the register of members' interests, Mr LEE Wing-tat referred to the Comparison and pointed out that it was misleading to state that the register of Legislative Council (LegCo) Members' interests was updated only once every term without highlighting at the same time that LegCo Members were required to report any change in this regard to the LegCo Secretariat within 14 days. Miss Emily LAU further pointed out that TPB should in fact follow LegCo's practice in relation to updating of members' interests. In response, AD of Plan(B) stressed that TPB members were already advising the TPB Secretariat of any relevant change in a timely manner. She however agreed to consider members' suggestion of specifying in the Guidelines the time limit for reporting changes

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Public access to the register of TPB members' interests

13. In response to Mr LEE Wing-tat, AD of Plan(B) agreed to refer to TPB for its consideration his proposal to put the register of TPB members' interests on the Internet so as to save the public the trouble of having to obtain the information from the TPB Secretariat in person. In this connection, the Chairman remarked that the proposal should also be referred to the LegCo Commission for consideration. Miss Emily LAU agreed but pointed out that should the proposal be pursued, both Secretariats should ensure that the members they served were fully aware of the new practice.

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Other related concerns

14. In response to Miss Emily LAU on why on certain occasions papers should have been inadvertently circulated to TPB members with a conflict of interests, AD of Plan(B) explained that it was sometimes very difficult to ascertain whether a member was related to a planning application under consideration as it might be filed by the subsidiary of a company to which the member was related. She however assured members that great care had been exercised in checking members' interests and TPB members were time and again reminded to report any possible conflict of interests. If in doubt, the Secretariat would even make telephone calls to seek clarifications from members. In this regard, Miss LAU remarked that the TPB Secretariat might find it useful to refer to relevant practices of the Secretariat of the Executive Council.

Conduct of TPB meetings*Feasibility of conducting open meetings*

- Admin. 15. Commenting on the proposal to include an enabling provision in the Bill to allow TPB to exercise discretion to conduct open meetings, PAS/PL(P) confirmed that even without this enabling provision, TPB could open its meetings. Moreover, TPB was already receiving objections in the form of hearings, and all parties concerned were invited to attend. He further pointed out that the need for the enabling provision could be better examined when discussing the one-stage enquiry and after considering all parts of the Bill so as to take all possible scenarios of open meetings into consideration. Members agreed but the Chairman pointed out that while there might not be a need to introduce an enabling provision to open TPB meetings, the provision would prove useful in reminding TPB that its meetings should in principle be held in public as far as practicable.
- Admin. 16. Miss Emily LAU opined that if TPB's hearings were already open to relevant parties, they might be further opened to the public. In response, PAS/PL(P) pointed out that this could be implemented even under present circumstances and undertook to refer Miss LAU's proposal to TPB for consideration during the Review. AD of Plan(B) confirmed this to be on the agenda of the Review but pointed out that existing meeting rooms might not be able to accommodate the conduct of open meetings, and the use of audio-visual aids might be necessary to overcome such physical limitations. Mr Ronald ARCULLI however cautioned against possible chaos in open hearings, having regard that TPB's hearings could sometimes become fairly heated. AD of Plan(B) acknowledged this to be the case but pointed out that the Chairman concerned could exercise discretion in keeping order during open hearings.
- Admin. 17. Miss CHAN Yuen-han called upon the Administration to refer to the practices of TPB's UK counterpart, which as she understood conducted open meetings. In response, PAS/PL(P) stressed that although research into overseas practices had shown that unlike Hong Kong, hearings of objections to plans in overseas countries like the US, UK and Australia were conducted in public, it had to be recognised that, as different from Hong Kong, planning applications in these countries were considered by their local authorities rather than by an independent statutory body like TPB. At Miss CHAN's request, he agreed to provide information on the conduct of public consultation and hearings in the plan-making process of the UK, Australia and US.
- Admin. 18. As to whether open meetings were conducted by other local advisory bodies, PAS/PL(P) reported that of the 19 statutory bodies studied, only the Privacy Commission for Personal Data and the Administrative Appeals Board had statutory provisions for opening their hearings. In addition, although there were no such provisions, HA had all along been holding open meetings while the Country and Marine Parks Board would soon follow suit. In this regard, Miss Christine LOH pointed out that the Arts Development Council (ADC) should also have a set of guidelines for conducting open meetings and enquired whether ADC was among the 19 statutory bodies studied. In response, PAS/PL(P) agreed to provide the list of the 19 statutory bodies together with a full analysis on their membership, quorum and

practices in conducting their meetings.

19. In ascertaining whether TPB's meetings should be conducted in public, the Chairman sought information on the work of TPB and its committees and the types of meetings held. In response, representatives of the Administration advised that two planning committees, namely, the Metro Planning Committee and the Rural and New Town Planning Committee, were set up under TPB to facilitate the preparation of statutory plans and consideration of planning applications. Major new plans would be considered by TPB, whereas the two planning committees would consider applications for planning permission under section 16 of the TPO, and make and exhibit amendments to draft plans under sections 7(1)-(3) of the TPO. Where reviews of applications and hearings of objections to plans were concerned, they were conducted by TPB itself. However, under the Town Planning (Amendment) Ordinance 1998, TPB was also empowered to appoint objection hearing committees to hear objections. At members' request, the Administration undertook to elaborate the above in writing for members' reference. In reply to members on the composition of the two planning committees, PAS/PL(P) also confirmed that their members were appointed by the Chief Executive from among TPB members.

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Unstable meeting attendance

20. As regards members' concern 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 them, PAS/PL(P) and AD of Plan(B) advised that research into TPB's meeting minutes, which also recorded the change in attendance during the discussion of every application, had shown that TPB's meeting attendance was quite stable. Moreover, members who had not participated in the first part of the discussion on an item would in most cases refrain from expressing any views on the item or taking part in making the relevant decision, which was usually made by way of consensus rather than by voting. As such, the concern that a TPB member might unfairly vote on an application without taking part in its discussion was not real and there was no need to specify in the Bill the way TPB meetings should be conducted. Mr Ronald ARCULLI questioned the claimed stable attendance at TPB meetings and stressed that according to his own experience, this was not the case. At Mr ARCULLI's request, PAS/PL(P) 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.

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Quorum of TPB meetings

21. In reply to Miss Emily LAU on how the attendance of TPB meetings compared with their quorums, AD of Plan(B) reported that the attendance was satisfactory and during the past two years, most TPB regular board meetings had recorded an attendance of around 80%. She however admitted that as TPB meetings could sometimes span very long, it was inevitable that the attendance might sometimes drop to around 10 or less in the late afternoons. Commenting on members' proposal to increase the proposed quorum for the TPB board meeting at 9 to help solve the problem of unstable meeting attendance highlighted above, PAS/PL(P) stressed that

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the Administration had made reference to other advisory bodies in proposing the quorum. Members noted that HA, which had a membership of 32, also had a quorum of nine. The Hong Kong Industrial Estates Corporation, on the other hand, had a quorum of four out of eleven members. As such, the Administration considered the proposed TPB board meeting quorum reasonable. However, if the Bills Committee found it necessary, the Administration would be willing to consider increasing the quorum.

Composition of TPB

Designated number of members to be appointed to TPB

22. Members in general favoured the imposition of a ceiling on the number of TPB members. In particular, Miss Emily LAU opined that instead of just imposing a ceiling, a fixed number should be specified to prevent appointment of pro-Government members to TPB whenever necessary. In response, PAS/PL(P) stressed the need to provide the Chief Executive with flexibility in adjusting the number of TPB members to reflect the changing demands of the community. In this regard, Mr Edward HO said that flexibility could be achieved by specifying the number of TPB members in the subsidiary legislation, which could be amended more easily.

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23. In recognition of the above views of members and the results of a research which showed that most other Government advisory boards have a designated number of members and public officers, PAS/PL(P) agreed to consider members' proposal to impose a ceiling on the number of TPB members and Mr Edward HO's suggestion of designating such in the subsidiary legislation. He further reported that of the 19 Government advisory boards studied, 15 provided for the size of membership by specifying its exact number, the minimum or maximum number or the range. However, of the 19, only six had specified the maximum number of public officers and only four had some rough guidelines regarding the sectors to be represented. At Miss CHAN Yuen-han and Miss Christine LOH's request to work out for the Bills Committee's comments a proposal on the number of members and sectors to be represented on TPB, PAS/PL(P) reiterated that the Administration would gladly welcome any suggestion in this regard.

Sectors represented

24. Addressing members' concern about the representativeness of TPB, PAS/PL(P) stressed that all along TPB's non-official members had been able to represent a wide range of professions, expertise and community interests. In response to members' request to recap sectors presently represented, he advised that the existing 34 TPB members represented an even distribution of academics, engineers, businessmen, surveyors, lawyers, planners, and representatives from the transport trade and green groups. He further pointed out that the Administration did not favour specifying the number of representatives from each sector for two reasons. Firstly, there was a need to retain flexibility to appoint members from new relevant professions such as landscape architects, information technology professionals and antiquities conservationists. Secondly, all of the TPB members were appointed in their personal

capacity rather than as representatives of particular sectors.

25. In this regard, the Administration noted Mr Edward HO's comment on the need to ensure that certain core professions such as planners, architects, etc would be represented on TPB. As to Miss CHAN Yuen-han's proposal to include representatives from the grassroots, AD of Plan(TS) advised that there were already social workers and District Council members on the TPB.

Public consultation

26. Miss CHAN Yuen-han stressed the importance of public consultation in town planning, especially consultation with the residents affected. In response, PAS/PL(P) highlighted that public consultation on town plans had already been conducted at the plan-making stage through consultation on planning studies, so that the draft plans so prepared would have incorporated all public views as appropriate. Even during the planning application process, there were still channels for the public to express opinions through the respective district officers. In assuring Miss CHAN that views of the local residents would be heeded, PAS/PL(P) cited as an example the reclamation at Central and Southeast Kowloon, whose extent had been significantly reduced due to objections by the public. AD of Plan(TS) further assured members that all representers would be informed in writing on whether their views had been incorporated in the plans and if not, the reasons.

III. Any other business

27. Members noted that Dr YEUNG Sum had withdrawn his membership from the Bills Committee.

28. Members also noted that invitations for submissions had been sent to 27 organisations as per the "list of organisations invited to submit views on the Town Planning Bill" tabled at the meeting. At the Chairman's invitation for additions to the list, Mr Edward HO proposed that the Association of Architectural Practices be invited to participate in the third meeting of the Bills Committee to be held on 14 March 2000. Miss Emily LAU also suggested that Green Peace be invited to submit views.

29. Members further noted that advertisements inviting submissions from the public had been placed in the South China Morning Post and Ming Pao, and on the website of the LegCo on the Internet on 3 March 2000. A press release to that effect had also been issued on the same day.

30. The meeting ended at 6:35 pm.