

立法會
Legislative Council

LC Paper No. CB(1) 2119/99-00
(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 sixth meeting
held on Tuesday, 11 April 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 CHAN Yuen-han
Hon Emily LAU Wai-hing, JP

Members absent : Hon Ronald ARCULLI, JP
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
Assistant Director of Planning/Technical Services

Ms Brenda AU
Senior Town Planner/Ordinance Review

Department of Justice

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

I Meeting with the Administration
(LC Paper Nos. CB(1)1252/99-00 and 1322/99-00(01))

The Chairman drew members' attention to LC Paper No. CB(1)1252/99-00, which was the Administration's response to members' views expressed at the first and second meetings of the Bills Committee. Members noted that the following papers were included in the response -

- (a) at (01), paper on the work of the Town Planning Board (TPB) and its subcommittees;
- (b) at (02), paper on meeting arrangements of other local and overseas statutory bodies;
- (c) at (03), paper on the composition of TPB, criteria for appointment and termination of appointment; and
- (d) at (04), paper on existing TPB procedures on conduct of meetings.

Work of TPB and its subcommittees

2. The Assistant Director of Planning/Technical Services (AD of Plan/TS) briefed members on paper (01), which provided information on the composition and functions of TPB and its subcommittees.

3. At Messrs LEE Wing-tat and Edward HO's request, the Principal Assistant Secretary for Planning and Lands (Planning) (PAS/PL(P)) agreed to provide an information paper explaining the different types of statutory plans such as Development Permission Area Plans (DPA Plans) and Outline Zoning Plans (OZPs), how they were prepared, and a map showing their distribution.

(Post-meeting note: The required paper was circulated vide LC Paper No. CB(1)1390/99-00.)

4. As to how areas not covered by statutory plans would be handled upon enactment of the Bill, PAS/PL(P) advised that there would not be any difference because planning control could already be extended to such areas under the existing Town Planning Ordinance (TPO). Such areas had not yet been covered by statutory plans mainly because they had no development potential, or were awaiting studies on how they should be developed. The Planning Department (Plan D) was however already planning to assess the potentials of all such areas in the New Territories, and would extend planning control to them by way of statutory plans.

5. In reply to Mr LEE Wing-tat on the division of work among TPB and its committees, AD of Plan(TS) explained that TPB would consider new plans while its two Planning Committees would consider planning applications. Where reviews of applications and hearings of objections to plans were concerned, they were conducted by TPB itself. Since the enactment of the Town Planning (Amendment) Ordinance 1998, TPB was also empowered to appoint objection hearing committees to hear objections.

Meeting arrangements of other local and overseas statutory bodies

Opening of TPB meetings

6. Mr LEE Wing-tat noted from paper (02) that despite the absence of express provisions on open meetings, certain statutory bodies such as the Housing Authority were in practice already opening their meetings to the public. In reply to Mr LEE on the Administration's initial thinking on opening of TPB's meetings, PAS/PL(P) advised that the Administration was prepared to consider Miss Christine LOH's proposal to include an enabling provision in the Bill to allow TPB to exercise discretion to conduct open meetings. AD of Plan(TS) also referred to views expressed by deputations at previous meetings, and pointed out that the majority view seemed to be in favour of opening TPB's objection hearings to the public.

7. Noting that the plan making process was essentially quite open, Mr LEE Wing-tat strongly urged the Administration to specify in the Bill that all TPB meetings relating to the plan-making process would be opened to assure the public that all such decisions would be made in a fair manner. In response, the Senior Town Planner/Ordinance Review (STP/OR) pointed out that unlike OZPs whose planning studies were required to be published, DPA Plans were interim plans normally

prepared within a very short period of time to introduce immediate planning control to areas in need. If the preparation of DPA Plans was made known to the public prior to their gazettal, speculators would make use of the information and set up open storage uses, well knowing that such would be tolerated as “existing uses” before the publication of the relevant DPA Plans. To achieve effective planning control, there was therefore a need to conduct meetings relating to the preparation of DPA Plans behind closed doors.

8. Mr LEE Wing-tat was not convinced, and said that land owners could always engage in small-scale speculative developments to establish existing uses as a precaution against possible planning control. AD of Plan(TS) however pointed out that the definition of “existing use” was complicated and as such was not easy to satisfy. If the scale of a development was intensified, it would not be regarded as an “existing use”. If it was made known that an area would be subject to planning control very soon, the land owner concerned could tailor his speculative development to meet the definition. In this regard, the Chairman requested the Administration to provide for members’ consideration an information paper on the circumstances under which a TPB meeting should be closed to the public.

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9. Miss CHAN Yuen-han opined that instead of including an enabling provision in the Bill to allow TPB to conduct open meetings, the spirit of the Open Meeting Law of the United States (US) should be applied to TPB so that all its meetings would be open to the public except in situations where closed meetings were necessary. This would facilitate monitoring of planning issues by the public while retaining the flexibility for conducting closed meetings. As to the criteria for making the decision to close a meeting, Miss CHAN opined that to achieve a balance, such should be left to public debate.

10. Commenting on Miss CHAN Yuen-han’s proposal, PAS/PL(P) pointed out that in the US situation, the decision on whether a meeting should be closed or open could be made easily because public interest was the major criterion for making the decision. In TPB’s case however, the justification for conducting closed meetings might be the need to protect commercial secrets which were essentially private interests. As such, there was difficulty in defining and justifying the kind of private interests that should be protected. Having regard that there were many types of TPB meetings and hence difficulty in deciding which to close at this stage, it might be simpler to introduce a general enabling provision to allow TPB to make the relevant decisions.

11. The Chairman, Miss CHAN Yuen-han and Mr LEE Wing-tat questioned the need to close TPB meetings to protect commercial secrets when even in the US where commercial interests always reigned high, the Open Meeting Law was also applied to its planning body. Mr LEE Wing-tat, in particular, cautioned that private interests might sometimes clash with public interests. In reply, PAS/PL(P) clarified that the Administration was open on whether to open TPB’s meetings. However, since the Bill had to balance the various views put forward, there was a need to pay heed to

some deputations' objection to the opening of TPB meetings on grounds of confidentiality.

12. Miss Emily LAU supported Miss CHAN Yuen-han's proposal but at the same time agreed with PAS/PL(P) on the need for TPB to retain flexibility to conduct closed meetings where necessary. She stressed that in balancing openness and confidentiality, the enhancement of transparency and accountability should carry greater weight and as such the power to close meetings should if possible be clearly defined and limited.

13. Mr Edward HO expressed reservations about opening all meetings of TPB and pointed out that since the minutes of TPB meetings would be made available to the relevant objectors to draft plans and applicants for planning permission, deliberations at the meetings were in effect in the public domain. He further pointed out that as Hong Kong's business circle was small and TPB members inevitably had business connections, TPB members might find it difficult or embarrassing to openly vote against applications filed by developers, who might be their clients, and hence could not act freely without fear or favour. Professionals might even have hesitation in accepting appointments to TPB in future.

14. Commenting on Mr Edward HO's point on the need to allow TPB members to act without fear and favour, Miss Emily LAU said that as times changed, people should be more willing to perform their public roles under public scrutiny. Mr LEE Wing-tat also pointed out that if Mr HO's concern about pressure from developers was founded, there might be an even greater need to put the decision-making process under closer public scrutiny to ensure that TPB members could act fairly and independently, and to allay suspicion arising from the present lack of transparency. Moreover, the positions of individual TPB members on an application, whether stated in private or public, would inevitably be made known to people in the industry. Mr LEE further opined that to ensure fair competition, planning applications in fact should not be processed behind closed doors.

15. In reply to the Chairman on whether individual members' positions on an application would in fact be made known during a meeting, PAS/PL(P) explained that TPB decisions were usually made by way of consensus rather than by voting. If voting was necessary, such would be conducted by a show of hands.

16. Mr Edward HO emphasized that the issue of whether TPB meetings should be opened should be examined on the assumption that TPB members would act fairly instead of casting doubt on their integrity from the outset. As such, TPB members should be given maximum freedom to perform their public functions without fear and favour instead of being subjected to greater pressure.

17. Mr LEE Wing-tat however pointed out that in making important land use decisions, TPB's power was only second to that of the Executive Council and as such he was keen to ensure that TPB decisions would be made in a fair and transparent

manner. This did not imply that he did not trust TPB members but in consideration of their power, he had higher expectations on them regarding the ability to act fairly under pressure. In his view, developers should also cease to expect professionals working for them to act in their favour when performing public functions.

18. At Mr LEE Wing-tat's request for information on the US experience to shed light on the feasibility of Miss CHAN Yuen-han's proposal, PAS/PL(P) expressed reservation about whether the proposal would be supported by other members and the community, and cautioned that notwithstanding the provision to conduct closed meetings where necessary, the application of such would be limited and would require very strong justifications. He further emphasized that Miss Christine LOH's proposal would be able to achieve a balance and would be a great step forward if incorporated in the Bill. Nonetheless, he agreed to consider Miss CHAN Yuen-han's proposal and provide a comparison between the above two proposals for members' consideration.

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Implications of open meetings on the appointment of TPB members

19. In reply to the Chairman on the possible implications of Miss CHAN Yuen-han's proposal on the appointment of TPB members, PAS/PL(P) expressed concern about increased difficulty in appointing members to TPB if its meetings were opened. This was because due to TPB's heavy workload, there was already some difficulty in identifying people who were willing to serve on TPB. In fact, some TPB members had already indicated that they would not serve on TPB if all its meetings were opened.

20. Noting that TPB members on average had to spend over 30 hours attending and preparing for meetings every month in return for an honorarium of less than \$4,000, Miss Emily LAU said that this might be the real reason for reluctance to sit on TPB rather than the fear of open meetings. She opined that members of the community providing public service should be adequately remunerated for their service and be encouraged to accept enhanced transparency. Mr LEE Wing-tat however suspected that the reason behind the reluctance to serve on TPB might be that there were too few TPB members to share out the heavy workload. To tackle this problem, he urged the Administration to enlarge TPB's membership. In response, PAS/PL(P) advised that to address the above problems, the consultant previously engaged in a study on the business of Plan D including the operation of TPB had recommended the appointment of some full-time paid TPB members. The recommendation was presently under examination by the Administration.

The appointment of full-time paid TPB members and its implications on the conduct of business

21. Pointing out that the recommended appointment of full-time paid TPB members would have significant implications on TPB's operation, Miss Emily LAU opined that the Administration should aim at incorporating it in the Bill if it was

adopted. Mr LEE Wing-tat and the Chairman echoed her point and urged the Administration to form an initial view on the recommendation before scrutiny of the Bill was completed. They considered that such recommended appointment of full-time paid members would help address the above concerns about TPB's workload problem and pressure from developers.

22. At members' request to make an early decision on the recommendation, PAS/PL(P) reiterated that the implementation of the recommendation might not require legislation and hence it needed not be incorporated in the Bill. He further advised that due to the need to carefully examine the number of full-time paid TPB members, the relationship between them and other TPB members, the level of pay and the financial implications, the Administration might need to take more time to arrive at a decision. Moreover, the recommendation also had to be considered in conjunction with other recommendations put forward by the consultant. As such, if the recommendation would need to be resolved before completion of scrutiny of the Bill, the scrutiny process would be unduly prolonged. Nonetheless, PAS/PL(P) undertook to seriously review the honoraria to appointed members of TPB and consider the appointment of full-time paid members to TPB.

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23. The Chairman however cautioned that many members might consider the recommendation important and their decision on whether to support the Bill might hinge on its implementation. Miss Emily LAU also reiterated that the need to conduct the study itself was indicative of the existence of problems in TPB's composition and operation, and stressed that members had to be assured that the problems would be properly tackled.

Composition of TPB, criteria for appointment and termination of appointment

24. PAS/PL(P) briefed members on the paper on the captioned subject and supplemented that the membership of TPB had been recently expanded to strengthen representation of relevant fields such as engineering, architecture, environment, etc. The interests of planning-related sectors such as landscape architecture and heritage preservation which had not previously been represented had also been covered.

25. As to the number of non-official members on TPB, PAS/PL(P) drew members' attention to the fact that the number of non-official members on TPB had recently been significantly increased by 11 by widening the sectors represented, so that non-official members presently totalled 37. He agreed to provide a paper on the new composition of TPB.

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(Post-meeting note: The said paper was circulated vide LC Paper No. CB(1)1368/99-00(04).)

26. In reply to Mr LEE Wing-tat on the existence of any term limits on TPB members, PAS/PL(P) confirmed that according to the guidelines from the Home Affairs Bureau, TPB members could serve a maximum period of six years only.

However, four TPB members with more than six years of service had been re-appointed recently because in expanding the TPB membership and in anticipation of the enactment of the Bill, it was advisable to retain a certain number of experienced TPB members to ensure smooth operation. He however assured members these long serving members would be replaced by new TPB members in the following term.

27. Advising Mr LEE Wing-tat on whether the meeting attendance rate was one of the criteria for re-appointment of TPB members, PAS/PL(P) confirmed such to be one of the factors considered. Noting that TPB members with a meeting attendance rate of lower than 50% had been re-appointed for the new term, Mr LEE Wing-tat opined that such was undesirable and should be avoided. In response, PAS/PL(P) stressed that efforts had in fact been made to avoid re-appointing TPB members who had very low meeting attendance rates.

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28. Mr LEE Wing-tat enquired whether the meeting attendance rate of TPB members was publicized. STP/OR replied in the affirmative and said that the attendance rates of individual TPB members had been made available to press reporters upon request. In this connection, PAS/PL(P) agreed to provide the meeting attendance rates of individual TPB members during the past two years to the Secretariat for members' perusal.

(Post-meeting note: a table showing the meeting attendance rates of individual TPB members was circulated vide LC Paper No. CB(1)1510/99-00.)

Existing TPB procedures on conduct of meetings

How decisions were made

29. AD of Plan(TS) briefed members on the paper on the captioned subject. Noting that TPB decisions were normally made by way of consensus, the Chairman enquired whether this had been the practice ever since TPB was established and expressed concern that such a tradition might stifle the expression of independent views. AD of Plan(TS) advised that during the past one to two years, the number of cases requiring voting by members had been on the increase. As to Mr LEE Wing-tat's enquiries on how consensus was achieved, and whether any reservation or objection expressed during the process would be recorded, AD of Plan(TS) replied in the affirmative.

Quorums

30. On the quorum for meetings of the Objection Hearing Committee, AD of Plan(TS) informed Mr Edward HO that according to sections 2A(4) and (5) of the existing TPO, the quorum was three and the number of non-official members should be greater than that of official members at any time. Accounting for the absence in the Bill of the requirement of a majority of non-official members to be present throughout all TPB meetings, PAS/PL(P) assured Miss Emily LAU that there was no

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Admin difficulty in satisfying this requirement, and agreed to include in clauses 3(2) and 4(3) of the Bill provisions similar to section 2A(5) of the existing TPO regarding the requirement. He also reported that the Administration had also agreed that the proposed quorum for a meeting of a TPB committee of seven members in clause 4(3) was too small and was willing to increase it to nine. As to whether the quorum for the TPB meeting would be increased accordingly, PAS/PL(P) said that such should be considered with reference to the quorums of other statutory bodies.

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Concerns about unstable meeting attendance

31. Mr LEE Wing-tat was concerned that according to paragraph 3 of the paper, members who were not present during the earlier part of the presentation or discussion of a case were still allowed to take part in the decision making process although they would normally abstain from voting. Addressing his concern, AD of Plan(TS) pointed out that TPB meeting minutes recorded the change in attendance during the discussion of every application and there was no record showing that members who had left the meeting during the presentation or discussion would come back and vote on the case. Miss Emily LAU however opined that instead of relying on a tacit mutual understanding among members to refrain from voting if they had not taken part in the discussion, a mechanism should be established to ensure this.

32. Miss Emily LAU expressed concern that on a few occasions where TPB might require more time and/or information for deliberation on very complex cases at a separate meeting, members' attendance might vary at different meetings. AD of Plan(TS) stressed that such cases were few. In most cases, the consideration and deliberation on a planning application or an objection by the TPB took place at the same meeting. Since TPB was not a judicial body and hence the credibility of witnesses was not involved, legal advice had confirmed that it was legally proper for those members who were not present at the presentation and/or hearing of a planning application or objection case to deliberate on the case provided that such TPB members were fully apprised of all the previous presentations and deliberations TPB had at the time of deliberation. In order to enable TPB to make an informed decision on the case, all relevant information including the submissions by the applicant or objector, TPB papers prepared by Plan D, and minutes recording the oral presentation and discussion related to the case would be made available to all members. Miss LAU was however unconvinced that members who had not attended previous discussions would be able to make an informed decision. To assure members, PAS/PL(P) and AD of Plan (TS) undertook to address Miss LAU's point in the review on the TPB Procedures and Practice (P&P), and to report its outcome to members after consideration by TPB. Noting that the Administration intended to use the P&P to prevent TPB members who had not taken part in the relevant discussion from voting on a case, the Chairman cautioned that if such was not provided for in the Bill, the TPB member prevented from voting might seek judicial review on the ruling. He invited the Assistant Legal Adviser 1 to give some thoughts on this issue.

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33. In reply to Mr LEE Wing-tat on whether the public would have access to minutes of TPB meetings, STP/OR advised that such would automatically be made available to the relevant objectors to draft plans and applicants for planning permission. Information was also available to the public upon enquiry in person, by phone or through other electronic means such as fax or the Internet.

(Post-meeting note: As advised by the Administration thereafter, relevant information available on the Internet included the gist of TPB's decisions on planning applications, rezoning requests and objections, detailed reasons for rejection, conditions of planning approval, and broad development parameters, etc.)

34. With the aid of power-point presentation, STP/OR briefed members on Part IV of the Bill.

II Any other business

35. Members agreed that the seventh, eighth and ninth meetings of the Bills Committee should be held as follows -

Date	Time
Friday, 14 April 2000	8:30 am
Tuesday, 18 April 2000	2:30 pm
Wednesday, 26 April 2000	10:45 am

(Post-meeting note: The meeting scheduled for 18 April 2000 was subsequently cancelled.)

36. The meeting ended at 12:45 pm.

Legislative Council Secretariat
25 October 2000