

立法會
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Bills Committee on Town Planning Bill

**Minutes of the third meeting
held on Tuesday, 14 March 2000, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Edward HO Sing-tin, SBS, JP (the Chair)
Hon HO Sai-chu, SBS, JP
Hon LEE Wing-tat
Hon Ronald ARCULLI, JP
Hon WONG Yung-kan
Hon Emily LAU Wai-hing, JP
Dr Hon TANG Siu-tong, JP

Members absent : Hon James TO Kun-sun (Chairman)
Hon Christine LOH
Hon CHAN Yuen-han

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

The Hong Kong Institute of Architects

Mr Barry WILL
President

Mr LAM Wo-hei
Vice President

Mr Anthony NG
Chairman, Board of Local Affairs

Mr Alex LUI
Chairman, Planning & Lands Committee

The Hong Kong Institution of Engineers

Ir Y C KOO
Vice President

Hong Kong Institute of Planners

Mr Andrew CHAN
Co-convenor, Public Affairs Committee

Mr Kenneth TO
Co-convenor, Public Affairs Committee

The Hong Kong Institute of Surveyors

Mr Francis T LAU
Chairman, Town Planning Committee

Mr Edwin TSANG
Member, Town Planning Committee

Mr Roger NISSIM
Member, Town Planning Committee

The Association of Architectural Practices

Mr Dennis LAU Wing-kwong
Chairman

Mr Bosco HO
Executive Committee Member

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. Meeting with professional institutes and the Administration

As agreed at the meeting on 7 March 2000, Mr Edward HO took the Chair on behalf of Mr James TO who was out of town. He informed members that the Hong Kong Institute of Landscape Architects had declined the Bills Committee's invitation to attend this meeting but had indicated its members' support for the relevant proposals in the Bill.

2. The Chair welcomed the representatives from the professional institutes and invited them to express their views on the Bill.

Meeting with the Hong Kong Institute of Architects (HKIA)
(LC Paper No. CB(1)1151/99-00(01))

3. Mr Barry WILL said that HKIA believed the Bill would be able to improve the existing legislative planning framework. He however stressed that care had to be exercised to ensure that the Bill was workable and would facilitate rather than hinder development, especially redevelopment, which was an important part of Hong Kong's development process. In addition, there was also a need to clearly define the powers of the Town Planning Board (TPB). He further advised that in para 5(b) of HKIA's submission, the clause referred to should be 37(1)(b) instead of 36(7)(b).

4. Mr Alex LUI then briefed members on HKIA's submission, highlighting the following major concerns -

- (a) The power of TPB was too great. It should be made more independent, transparent and accountable by having a non-official chairman and an independent secretariat.
- (b) There was insufficient transparency in the designation in town plans of "Environmentally Sensitive Area" (ESA), "Special Design Area" (SDA) and "Designated Development" (DD).
- (c) There were various drawbacks in the proposed planning control framework as highlighted in para 4 of HKIA's submission.

- (d) The proliferation of “Comprehensive Development Areas” (CDAs) or Undetermined Zones would hinder urban renewal efforts, especially as TPB could require the provision of public facilities it found necessary to serve a development.
- (e) The proposal to lodge appeals against the Building Authority (BA)’s refusal of building plans on planning grounds to TPB instead of the Building Appeal Tribunal was undesirable as TPB would be playing a double role by preparing the plans as well as handling appeals regarding non-conformities to such plans at the same time.
- (f) The Bill did not contain any provisions for compensating people affected by the implementation of its provisions.
- (g) The performance bond should be levied sparingly in consideration of its significant financial implications and the fact that no such measure had been introduced to ensure statutory compliance in other areas such as fire safety and environmental protection.
- (h) A “one-stop shop” approach should be adopted as far as practicable to streamline the planning process.

Meeting with the Hong Kong Institution of Engineers (HKIE)
(LC Paper No. CB(1)1151/99-00(02))

5. Ir Y C KOO stated HKIE’s position. Members noted that HKIE in general supported the Bill and was pleased to note that its previous comments on the White Bill had been accepted, namely, that the proposal on planning certificate had been withdrawn and the definition of “building works” had been revised so that it did not include ground investigation, site formation works, demolition, drainage works and slope maintenance works. He however added that HKIE would like to see the concept of sustainable development reflected in the Bill.

Meeting with Hong Kong Institute of Planners (HKIP)
(LC Paper No. CB(1)1151/99-00(03))

6. On behalf of HKIP, Mr Kenneth TO called for the early enactment of the Bill and highlighted the following issues which HKIP felt the Bill should address -

- (a) The Bill should provide that both the Chairman and the Deputy Chairman of TPB should not be public officers and that TPB meetings should be open to the public. The TPB Secretariat should also be made independent (Clause 3).
- (b) The Secretary for Planning and Lands should not be empowered to designate any class or description of development as DD by regulations without public consultation (Clause 9(3)).
- (c) The present system whereby TPB and the Appeal Board should adhere to the zoning of the Development Permission Area (DPA) plan even though it had been replaced by an Outline Zoning Plan (OZP) was fair and should be retained by deleting clause 10(4), which required TPB and the Appeal Board to consider an application on the basis of the OZP instead when the application was to be reviewed (Clause 10).
- (d) Public consultation should not be confined to the planning study for the preparation of an OZP or an amendment to an OZP. It was essential to afford the public the opportunity to make comments or representations on the studies in connection with the Territorial Development Strategy and Sub-regional Development Strategies, and express provisions to that effect should be included in the Bill (Clause 11).
- (e) The proposed one-month period for public inspection of the planning study and for the draft plan was grossly insufficient and should be extended to two months (Clauses 12 and 16).
- (f) As a representer or commenter was only given two months' notice of the date of an inquiry relating to his unwithdrawn adverse representation, it was unrealistic to require him to make submissions to TPB in writing not less than six weeks before the inquiry (Clause 21(4)).
- (g) Unless there was positive action on the part of the representer to withdraw his representation, it was unfair to treat his representation as having been withdrawn on the expiration of the 21-day period after the date of notice of TPB's intention to amend a draft plan in the manner proposed by the representer (Clause 22(4)).
- (h) Whilst in meeting changing circumstances there might be a need for TPB to make amendments to a draft plan during the nine-month period within which a submission to the Chief Executive in Council under Clause 25(1) should be made, the nine-month

period for the amendments should not be added to the original nine months but should be treated separately (Clause 25(3)).

- (i) Where application for planning permission was concerned, it was inappropriate that TPB should be empowered to refuse to consider an application similar to one refused by it within two years because changes in Hong Kong were rapid and sometimes an application was rejected simply because of insufficient information. As such, to avoid unduly prolonging the development process the two-year ban should be lifted or at least reduced to one year. Moreover, Clause 32(4)(a)(i) should be rephrased to reflect the legislative intention of enabling TPB to consider an application before the expiration of the gazettal period of the relevant draft plan mentioned in Clause 16(1) although it should not grant the application. It should also be clarified under Clause 32(6) how the submission by an applicant of further information and particulars would be treated “as if it were an application under this section” (Clause 32).
- (j) TPB should issue practice notes on the new requirements for particular types of application for planning permission set out under Clause 33 before their implementation (Clause 33).
- (k) There was grave concern that in determining a planning application TPB should have regard to “any statement of Government policy and any planning intention relating to the subject matter of any draft or approved plan in respect of the land or the development or use of the land to which the application relates”. Since such statement of Government policy and planning intention might not be within the knowledge of the applicant at all or at the time of application, it was recommended that such information should be clearly stated in the explanatory statement which should become part of the plan and that the affected person should have the right to make representations on such statement (Clause 36).
- (l) There was concern about the seemingly wide jurisdiction of TPB in imposing conditions relating to the provision of public facilities (Clause 37).

Meeting with the Hong Kong Institute of Surveyors (HKIS)
(LC Paper No. CB(1)1151/99-00(04))

7. Mr Roger NISSIM highlighted two major concerns of HKIS, namely, the extent of public participation in the planning process that was desirable and the degree of control that the Planning Department (Plan D) should exercise

over the development process. In HKIS's view, a balance should be struck in these two areas to avoid causing undue delay to the development process. He then briefed members on the salient points of HKIS's submission as follows -

- (a) It was unfair that if a piece of land was zoned for a public purpose, Government was not obliged to resume the land and redevelopment was not permitted even though there was no restriction under the lease. In zoning a piece of land for a public purpose, Government should allow the affected land owner to seek resumption of his land by Government, introduce a land exchange mechanism where conservation was required, or pay compensation (Clause 6(4)).
- (b) HKIS welcomed the opening up of the planning process to effect full consultation on strategic studies, planning studies as well as OZP preparations. This move was only formalising what was already occurring administratively at the right time (Clause 12).
- (c) To provide certainty in Government policy in the planning process, the Planning Statement currently accompanying the OZP and the Notes should be formally included as part of the plan to ensure that all policy objectives behind the preparation of the plan were properly incorporated (Clause 15).
- (d) The development industry required certainty as far as possible. Although HKIS welcomed the opening up of the planning process at the planning study and OZP preparation stage, it considered that upon completion of that process, proposals which complied with such approved OZPs should be allowed to proceed without further consultation or invitation to object. Only when development proposals contravened an OZP, or involved an offensive trade or a "bad neighbour" use should there be additional consultation. There was also a need to draw up a list of what fell into this category of developments and include such in the Notes of each OZP (Clause 31).
- (e) The whole philosophy of provision of public facilities had to be rethought. As a matter of general principle, if Government requested the inclusion of certain public facilities in a project, it seemed right and proper for Government to pay for their construction and maintenance (Clause 37).

8. Mr Roger NISSIM further pointed out that all relevant professions were already vigorously participating in the planning process and a strong control mechanism was in place. As such, there might not be a need for the Bill to ensure participation and extend control further. Moreover, although

only few new provisions had been added, the Bill was so complex and difficult to understand that even conforming developments might be held up. His views were echoed by Mr Edwin TSANG, who stressed that he could not see any need to rewrite the much more user-friendly TPO.

9. Mr Francis LAU supplemented the following points -

- (a) It was unfair to provide that where the whole or part of a development permission area (DPA) was included in a draft OZP published under Clause 16, the DPA plan for the same area should cease to have effect whether or not it became an approved plan. This was because such a provision would abort all efforts and investments previously devoted to the affected projects (Clause 10).
- (b) The proposal that on submission of further information, TPB could treat the submission as if it was a fresh application and regard the original application as not having been made was unfair particularly if the information so submitted was not considered significant (Clause 32(6)).
- (c) As shown in clauses 35 to 37, Plan D had unduly taken up the duties of other departments. For example, there was no need for TPB to levy a “performance bond” to ensure full compliance of planning conditions imposed as such had already been satisfactorily monitored by the Lands Department. In HKIS’s view, Plan D’s purview should be restricted to steps within the planning stage and a plan should not go back to it after approval (Clauses 35 to 37).

HKIS 10. At the Chair’s request, Mr Francis LAU agreed to provide the Bills Committee with a supplementary paper on the above points.

Meeting with The Association of Architectural Practices (AAP)
(LC Paper No. CB(1)1151/99-00(05))

11. Mr Dennis LAU shared the views of other institutes, especially those of HKIA. While pointing out that the Bill was a great improvement on the White Bill, he highlighted the following salient points in AAP’s submission for the Administration to address -

- (a) A high-level and accountable body in the form of a Planning Commission should be appointed by the Chief Executive to formulate the overall planning policy, and approve territorial development strategies and development statements (e.g. on harbour reclamation).

- (b) To achieve independence of TPB, its chairmanship and deputy chairmanship should be taken up by persons who were not public officers and it should have an independent secretariat.
- (c) The proliferation of CDAs had frozen up a majority of the old urban areas from development. All CDAs on existing plans should be deleted and express uses stated in their place.
- (d) The requirement of BA to disapprove any building plan which contravened the provisions of the Bill was basically a re-packaging of the Planning Certificate System and would create uncertainty and impose unnecessary restrictions on existing development rights. The above proposal of allowing planning control on building development would prolong the planning process and undermine Hong Kong's ability to continue its past success.
- (e) The Notes to OZPs should be within a clear and precise scope of broad planning considerations dealing with tangible matters such as land-use, plot ratio and density. Subjective views and discretionary control on design matters such as disposition, character and external appearance of buildings should be avoided.
- (f) Development right was a basic human right. If for planning reasons the development right of a person was affected, he should be compensated for his loss.

12. Mr Bosco HO supplemented the following points -

- (a) While the Bill should provide that the planning process of a development would be made more transparent, its implementation stage (i.e., the OZP stage) should not undergo public consultation again or else the development process would be unduly prolonged. The Bill's proposal to shift part of BA's power, which was responsible for monitoring the implementation stage, on to Plan D, which should look after the planning process only, was confusing.
- (b) Having regard that TPB had great power and could exercise subjective discretion, it should be made independent and representative of all relevant professionals.

- (c) Since Government would ask a landowner to make up for the shortfall in land premium if his land was up-zoned, it followed that it should pay compensation to a land owner if his land was down-zoned.
- (d) The Bill should not be enacted before the above points made by AAP were addressed.

Deliberation with the deputations

The Bill in general

13. Noting that despite the painstaking efforts made to bring the Bill to this stage, certain major issues remained to be solved and it appeared that the professions still found the Bill wanting in certain aspects, Mr Ronald ARCULLI highlighted the difficulties members faced in introducing amendments to the Bill and asked the institutes to indicate whether they were willing to accept the Bill as it was without any amendments. In reply, Mr Dennis LAU of AAP confirmed that they would oppose to passage of the Bill as it stood. Mr Roger NISSIM of HKIS echoed Mr LAU's view. Messrs Barry WILL and LAM Wo-hei of HKIA, on the other hand, said they believed the Administration and the Bills Committee would listen to their views carefully and incorporate such in the Bill as appropriate.

14. In this regard, the Chair pointed out that the Administration might be willing to move amendments themselves. Miss Emily LAU echoed the Chair's view and assured the deputations that the Bills Committee would seriously consider their views.

The operation of TPB

15. Members highlighted the Bills Committee's deliberations on the operation of TPB at its first two meetings, namely, the composition of TPB, the quorum of TPB meetings, declaration of interests by TPB members, the conduct of TPB meetings and concerns about unstable attendance at TPB meetings, and invited the deputations' views on these aspects. In this regard, members directed that a summary of such deliberations should be provided to the deputations for their reference in preparing their written response.

Clerk

(Post-meeting note: A letter to that effect was sent to the deputations on 15 March 2000.)

Urban design

16. Pointing out that urban design involved a very wide scope and essentially subjective judgement, the Chair invited the deputations to comment

on whether and how TPB should exercise control on urban design as proposed in Clause 9(1)(c). In reply, Mr Francis LAU and Mr Roger NISSIM of HKIS, Mr Dennis LAU of AAP and Mr Barry WILL of HKIA opined that TPB should only control land-use, plot ratio, building height and density, and subjective views and discretionary control on building design and aesthetics should be avoided. In particular, Mr Barry WILL of HKIA pointed out that the industry was undergoing fast changes in its search for new construction materials and methodologies to incorporate the concept of sustainable building. As such, TPB might not have the necessary expertise to exercise control on urban design. Mr Roger NISSIM of HKIS, on the other hand, could not see any need for such control. He stressed the need to keep the door open for innovation and style and allow developers and architects to further develop Hong Kong's dynamic skyline and its wide range of interesting buildings free from any unnecessary constraints.

17. In this connection, Mr Alex LUI of HKIA and Mr Dennis LAU of AAP further pointed out that as public developments played an important role in shaping Hong Kong's skyline, urban design control should be applied to them as well. Mr LUI further stressed that since little could be done to improve the layout of an area after approval of its planning study, the overall direction of urban design should be carefully examined and accommodated to at the planning study stage.

18. Mr Kenneth TO of HKIP, on the other hand, opined that urban design control by TPB was necessary although such control should be restricted to specific developments such as the Central reclamation project through the designation of SDAs. This was because there was a need for public participation in urban design and, by requiring publication of draft plans whose contents included urban design requirements (Clause 9) as well as public consultation on applications for designating SDAs (Clause 32), the public could be provided with such an opportunity. As to whether TPB had the necessary expertise for controlling urban design, Mr TO pointed out that such expertise and experience could be built up over time. As a result, he did not agree that TPB should in principle be denied the power to control urban design although the extent and ways of control should be further examined.

Meeting with the Administration

19. The Principal Assistant Secretary for Planning and Lands (Planning) (PAS/PL(P)) thanked the deputations for their views and responded to their major concerns as follows -

- (a) TPB had general control in urban design under clause 9 of the Bill. Under the provisions of the clause, every draft plan had to go through the public consultation process during which objections to TPB's land use control proposals could be raised.

Where SDAs were concerned, TPB had greater control under Clauses 9(1)(i) and 33. SDAs were in fact introduced to meet public demand to put certain areas under greater planning control in recognition of their architectural, archaeological, cultural or historical interests. TPB would designate SDAs on an absolute need basis and the relevant OZPs would also have to be published for public comments and objections.

Admin.

- (b) As for TPB's functions and composition, there was a need to retain certain flexibility for the Chief Executive to appoint a public officer to be the Chairman of TPB as necessary. Subject to the Bills Committee reaching a consensus on this issue, the Administration would be prepared to consider any proposed amendments to the Bill.

Admin.

- (c) On the proposal of designating in the Bill the number of members to be appointed to TPB, the Administration was willing to consider imposing a ceiling on it in the Bill having regard to the provisions adopted in other Ordinances. In fact, the Administration was considering enlarging TPB's membership from the present 34 to around 40 to facilitate the appointment of new members to it in response to emerging needs.
- (d) As regards the suggestion of specifying "Government policies" in OZPs, the Administration considered it impracticable because many Government policies were involved in the planning process and it was practically impossible to list out all Government policies. As such, the present arrangement requiring TPB to give regard to all relevant policies by circulating the draft plans to various bureaux/departments for comments during preparation of the plans was satisfactory and could help avoid leaving out any related policies despite frequent policy changes.
- (e) In relation to comments that planning control was interfering in the implementation process of building works so that the development process was prolonged, it should be noted that the Interim Development Control mechanism presently proposed to replace the original Planning Certificate system would only affect those sites subject to an objection. Moreover, the Chief Executive could approve draft plans in part to avoid the circumstances whereby generally agreed draft town plans were being held up by isolated objections to particular sites in them. Even in the case of a blanket objection to an entire OZP, developments could still proceed whilst the objection was being dealt with as long as the developments would not affect injuriously the interests of the representer, the neighbourhood and

the community. As such, most developments would not be frozen by the Bill. Should a project fall under the scope of an objection, delay would not be long as the Bill had already time-limited the processing of objections to draft town plans within a period of nine months. Last but not least, as the definition of “building works” had been revised and it did not include ground investigation, site formation works, demolition, drainage works and slope maintenance works, the above works could go ahead to save time pending planning approval.

- (f) As to why appeals against BA’s refusal of building plans should be lodged to TPB instead of the Building Appeal Tribunal, this was because the building plans concerned had been refused on planning grounds and hence filing the appeal to TPB could facilitate the appeal process.
- (g) Regarding concerns about the proliferation of CDAs, guidelines had already been issued through TPB in May 1999 to clearly spell out that CDAs should be designated sparingly and only when there were no other suitable land uses. Moreover, as at February 2000, of the 156 CDAs designated so far, the development of 26 had already completed, 22 were under development and 47 had had their master layout plans approved by TPB. Of the 61 CDAs left, 33 of them were only designated for less than three years. These sites would soon be reviewed again by TPB. If no plan could be worked out upon expiry of this three-year period, an annual review would be conducted with a view to rezoning the CDAs to some other zonings. Such a mechanism would help contain the number of CDAs and prevent them from delaying urban development.
- (h) Concerning claims that Government was always quick at demanding payment of additional premium in the case of up-zoning but reluctant to pay compensation in the event of down-zoning, the former was true only when modification to the lease was required. Similarly, compensation would not be paid for rezoning if the original use permitted under the lease had not been affected. As for exceptional cases whereby the proper rights under their leases were affected, the Administration was examining possible compensation schemes but this could be dealt with in an exercise separate from the Bill. Meanwhile, in the event that land was resumed for a public purpose, compensation would be paid according to the Lands Resumption Ordinance. In addition, there was also an administrative policy that enabled one to request the Government to resume his land zoned for public purpose, when his application for planning permission to

develop the land according to the provisions of the statutory plan and lease conditions had been rejected and all rights of review and appeal had been exhausted. However, this policy had not been used for a long time.

20. In response to the hypothetical question posed by Mr Ronald ARCULLI (para 13 above refers), PAS/PL(P) stressed that the Administration was prepared to consider suitable amendments that might be agreed by the Bills Committee. The Administration had no intention of pushing through the Bill, as it was, unamended.

Admin.

21. The Chair drew the Administration's attention to the fact that according to the Buildings Ordinance, "building works" included foundation works and as such the implementation process of building works could not proceed pending planning approval as claimed above. PAS/PL(P) undertook to review the definition under the Bill. Upon request, PAS/PL(P) also agreed to set out in writing the Administration's response to all of the points made by the deputations at this meeting, including the points stated above.

II. Any other business

22. The Chair reminded members that the fourth meeting of the Bills Committee would be held on Tuesday, 28 March 2000, from 8:30 am to 12:30 pm to receive business and land development-related associations and statutory and advisory bodies.

23. The meeting ended at 12:45 p.m.

Legislative Council Secretariat
9 October 2000