

立法會
Legislative Council

LC Paper No. CB(1) 2120/99-00
(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 seventh meeting
held on Friday, 14 April 2000, at 8:30 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 Christine LOH
Hon CHAN Yuen-han

Members absent : Hon Ronald ARCULLI, JP
Hon WONG Yung-kan
Hon Emily LAU Wai-hing, 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 P K CHUNG
Assistant Director of Planning/Technical Services (Acting)

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

I Meeting with the Administration
(LC Paper Nos. 1368/99-00(01) to (04))

The Assistant Director of Planning/Technical Services (Acting) (AD of Plan(TS)(Atg)) briefed members on the Administration's paper on the types of statutory plans.

Types of statutory plans

2. In reply to the Chairman on the difference between the grey and pink parts of the map attached to the paper, AD of Plan (Atg) explained that although both were covered by Outline Zoning Plans (OZPs), the Administration could not exercise planning control over the grey areas, which had not been covered by Development Permission Area Plans (DPA Plans) before. This was because when formulating the Town Planning (Amendment) Ordinance 1991, in consideration of the mixed land-uses in the urban areas and the fact that development control could be exercised through leases, other laws and licensing systems, the Administration did not consider it necessary to extend planning control to the grey areas which were largely covered by OZPs at that time.

3. Mr Edward HO enquired how planning control on areas coloured yellow on the map was exercised. In reply, AD of Plan(TS)(Atg) said that these were generally governed by leases and other relevant laws. However, the Administration was planning to extend planning control to most of these areas by way of statutory plans. As to why such had not been done earlier, AD of Plan(TS) (Atg) and the Principal

Assistant Secretary for Planning and Lands (Planning) (PAS/PL(P)) advised that owing to resource constraints and the fact that such areas were mostly undeveloped areas not yet accessible by roads, the practice had so far been to extend planning control only when they were due for development.

Concerns about DPA Plans

4. Addressing Mr LEE Wing-tat's concern that DPA Plans might freeze development, PAS/PL(P) elaborated on the need for DPA Plans to exercise immediate planning control on areas where the proliferation of open storage uses was serious. He further pointed out that areas not yet covered by statutory plans were mostly rural areas where the leases restricted large-scale developments. As such, the claim that developments would be frozen if certain areas were included in DPA Plans was unfounded. Moreover, DPA Plans would need to be replaced by OZPs within three year unless the effective period was extended up to one additional year by the Chief Executive.

5. Accounting for the absence of consultation before the gazettal of DPA Plans, PAS/PL(P) and AD of Plan(TS)(Atg) stressed that if the preparation of DPA Plans was made known to the public prior to the gazettal of the plans, speculative developments might emerge, taking advantage of the provision that no action could be taken against existing uses before a draft DPA Plan was in effect. This would pre-empt effective planning control. PAS/PL(P) further assured members that despite the absence of consultation, landowners whose land was covered by DPA Plans could lodge objections to the Town Planning Board (TPB) according to the Town Planning Ordinance. Unwithdrawn objections would also be submitted to the Chief Executive in Council for decision.

6. In reply to Mr LEE Wing-tat on the implications of the above highlighted speculative developments, PAS/PL(P) and AD of Plan(TS)(Atg) said a typical example of the adverse outcome was the proliferation of container storage sites in the New Territories.

7. Noting that in preparing DPA Plans, junior staff of the Planning Department (Plan D) and other relevant departments would need to survey the existing uses in targeted areas, Mr LEE Wing-tat cautioned that information on impending planning control, if privy to only a handful few, would be highly valuable and hence the temptation to accept bribes for disclosing such knowledge would be very difficult to resist. As such, to prevent corruption, there might be a need to consider whether the preparation of DPA Plans should be conducted behind closed doors.

8. In response, PAS/PL(P) stressed that since the areas which had yet to be subject to DPA Plan control were mostly environmentally sensitive areas, there was an absolute need for keeping the plan making process confidential or else the effectiveness of planning control would be greatly diminished. In reply to the Chairman and Mr LEE Wing-tat on the internal mechanism to ensure confidentiality,

PAS/PL(P) assured members that all civil servants were subject to the control of the Prevention of Bribery Ordinance and staff of Plan D and other relevant departments would strictly comply with confidentiality requirements. He however admitted that the landowners concerned might have a conjecture about their land being subject to planning control if they saw staff of Plan D surveying their land. Nonetheless, pointing out that helicopters would also be used to conduct such surveys and aerial photographs were admissible evidence of existing uses under the Bill, he was optimistic that the above problem might in part be solved.

Admin. 9. Having regard that draft DPA Plans would need to go through TPB, the Chairman enquired about the mechanism for ensuring that TPB members would likewise keep to themselves relevant information privy only to them and a few civil servants. In reply, PAS/PL(P) advised that confidentiality requirements were already part of TPB's Procedures and Practice. The Chairman however highlighted the need to hold TPB members criminally liable for disclosure of confidential information relating to the plan-making process, regardless of whether such disclosure would result in financial gains. In response, PAS/PL(P) agreed to consider the need for introducing such a provision and report back to the Bills Committee in due course. In this regard, Mr Edward HO commented that reference could be made to similar requirements, if any, imposed on members of the Executive Council.

Admin. 10. The Chairman enquired whether proposed amendments to DPA Plans would also need to be handled behind closed doors. In reply, AD of Plan(TS)(Atg) said that amendments to DPA Plans were in general unlikely because DPA Plans would be replaced by OZPs within three years. He agreed to check if there had been any previous cases.

Interface between TPB and the Country and Marine Parks Board (CMPB)

11. Mr Edward HO pointed out that TPB presently only had power to designate the use of land not included in country parks and special areas because the designation of the latter was the duty of CMPB. He considered this arrangement undesirable because being the statutory body responsible for land use planning in Hong Kong, TPB should have a say in the designation of country parks. Referring to the Administration's plan to extend the country park area on Lantau Island further to the North Lantau Highway, he said that the proposed extension would limit future developments along North Lantau to an extent that reclamation might need to be conducted. He opined that to avoid the above situation, which in his view was the result of the lack of co-ordination, there should be better communication between TPB and CMPB. In response, PAS/PL(P) assured members that the above problem could be resolved at the administrative level. Members noted that the Agriculture, Fisheries and Conservation Department (AFCD) and Plan D, which were responsible for designating country parks and preparing DPA Plans respectively, were always working together closely.

12. Mr Edward HO considered it undesirable that an administrative-led approach should be adopted. Sharing the same concern, the Chairman said that instead of just working together at the administrative level, the two statutory bodies should have more communication, and requested an undertaking from the Administration to improve their interface in future. In response, PAS/PL(P) assured members that although the proposals were prepared by the Administration, the two bodies could comment on the proposals and suggest modifications. Nevertheless, he agreed to examine the Chairman's proposal and advise on the proposed interface mechanism between the two bodies.

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13. Mr Edward HO further opined that TPB and CMPB should in the long run be merged to streamline the overall planning process, especially when the Bill had provided that environmental protection and conservation should be taken into consideration when determining land uses. In Mr HO's view, his proposal could also solve the problem of one body pre-empting the decisions of the other body as was the case of the above example quoted by him. In response, PAS/PL(P) pointed out that the proposal involved a significant change in policy direction and hence warranted detailed examination. He further explained that apart from designating country parks, CMPB also had to perform other statutory duties such as the management of country parks. The Chairman shared his views and, pointing out that the proposal might not have the support of green groups, he also saw a need for another round of consultation if the proposal was to be pursued.

14. The Chairman proposed and Mr Edward HO agreed that alternatively, the Administration might consider requiring TPB to consult CMPB when preparing town plans and AFCD to consult TPB when proposing the designation of country parks. In response, PAS/PL(P) undertook to consider amending the wording of clause 6(1)(h) by substituting "may" by "shall" to require the Administration to consult TPB on all relevant planning matters.

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Power of TPB to show or make provision on a draft plan for various purposes

15. Mr Edward HO referred to clause 7(g), which said TPB "may show or make provision on a draft plan for country parks and special areas designated under the Country Parks Ordinance (Cap. 208)", and enquired about the difference between such power of TPB and that vested in CMPB. In reply, PAS/PL(P) and AD of Plan(TS)(Atg) clarified that TPB's power in this regard was limited to "show" only rather than designating country parks itself. In fact, TPB had to show on draft plans all the planning controls exercised under various laws. Hence the word "or" in the phrase "may show or make provision". The Chairman however considered the wording of the clause misleading. In response, PAS/PL(P) agreed to respond to members' concern on whether the wording could clearly reflect the legislative intent in due course.

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16. Mr Edward HO asked if clause 7(a) on TPB's power to show or make provision on a draft plan for streets, railways and other main communications would help answer individual TPB members' call to allow TPB to participate in the planning

of major road projects. In reply, PAS/PL(P) clarified that as in the case of clause 7(g), the provision would generally empower TPB to show major works of streets, railways and other main communications on a draft plan.

17. Mr Edward HO however opined that after all major works of railways and roads had been planned, TPB's power in making overall planning was highly limited because the fundamental design would have significant implications on land use planning. For example, the routings of the Central-Wanchai Bypass and Island Eastern Corridor Link had necessitated the Central and Wanchai reclamations. This was why some TPB members were of the view that they should be consulted before the routings of major road infrastructure works were finalized.

18. In response, PAS/PL(P) advised that the Transport Bureau had consulted Plan D and TPB when conducting the Third Comprehensive Transport Study and the Second Railway Development Study to plan and prioritize future transport infrastructure requirements and implementation of rail projects. TPB also had the power to make provision for minor roads in an OZP in consultation with the Highways Department and the Transport Bureau. Moreover, the Administration was already considering certain TPB members' suggestions of amending the Bill to enable TPB to play a greater role in the relevant planning process. Since these suggestions had gone beyond the purview of the Planning and Lands Bureau and involved possible amendments to the Roads (Works, Use and Compensation) Ordinance (R(WUC)O) and the Railways Ordinance (RO), there was a need to carefully examine them in consultation with the Transport Bureau before he could report back to the Bills Committee on the outcome. Meanwhile, the interface between the Bill and R(WUC)O and RO lay in provisions in the latter two which provided that all road and railway projects gazetted under them and approved by the Chief Executive would be deemed as having been approved under the Town Planning Ordinance.

Power of TPB to impose control on buildings within certain areas

19. Mr LEE Wing-tat referred to clause 9(1)(i), which provided that TPB might control the flat size, design, character and external appearance of buildings within an environmentally sensitive area (ESA), a special design area (SDA) or a comprehensive development area (CDA), and sought to ensure that such power of TPB would be exercised sparingly so as not to suppress innovation and style in architecture. PAS/PL(P) explained that in designating the above areas, TPB would have to be satisfied that there was a genuine need for protection and special control. In fact, SDAs were introduced to meet public demand to put certain areas under greater planning control in recognition of their architectural, archaeological, cultural or historical interests. Members were assured that TPB would designate SDAs on an absolute need basis and the relevant OZPs would also have to be published for public comments. As for CDAs, guidelines had also been issued to clearly spell out that they should be designated sparingly and only when there were no other suitable land use zonings.

20. The Chairman had hesitation in conferring on TPB the above power unless he was convinced of an absolute need to do so. In response, PAS/PL(P) stressed that the provision was necessary in tackling planning problems presently encountered, and was supported by many organizations, especially green groups.

21. Mr LEE Wing-tat expressed concern about possible abuse of the above power and hence over-regulation, and highlighted the need for great care in wielding such power which would adversely affect the development potential and value of private land. In his view, the social cost of preserving areas of architectural, archaeological, cultural or historical interests should not be borne by the landowners concerned but should be shared by the whole society. His views were echoed by the Chairman, who pointed out that the landowners concerned might need to earn their livelihood on the land, and hence might pursue judicial review against the imposition of such control on their land. Mr Edward HO also highlighted the need to maintain a balance of such power with private property rights, especially as some members of the public might not agree with the Administration on its decision on the preservation of land for historical values. In response, PAS/PL(P) clarified that the above control might not necessarily affect development potential because it was related to the design or disposition of buildings but not the plot ratio. He agreed to provide a written response to address members' concerns.

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22. As for Mr LEE Wing-tat's proposal to introduce a compensation mechanism for exercising the above control, PAS/PL(P) explained that the contractual rights of both the Government as lessor and private owners as lessees were subject to statute law. Whenever there was a conflict between statute law and the contractual provisions of leases, the statute law should prevail. Members noted that the position had been applied in practice locally in respect of a large number of statutory provisions, including those in the Buildings Ordinance and pollution legislation, which might affect and reduce lessees' rights. The courts had also held that planning or other statutory powers affecting lessees' rights did not amount to any derogation from grant. As such, the Bill had no provision for compensation for diminution of development rights due to planning actions.

23. PAS/PL(P) further pointed out that the question of compensation for planning actions should be examined in conjunction with other parts of the Bill. Members noted that according to clause 9(1)(a), TPB already had the power to provide for the control of height, number of storeys, plot ratio, gross floor area, site coverage, number of flats, disposition and use of buildings of an area even though it was not a SDA. As such, if compensation had to be paid every time control was imposed, the implications would be both far-reaching and significant. PAS/PL(P) informed members that the Planning and Lands Bureau was conducting an internal review on land-related compensation issues with relevant bureaux such as the Home Affairs Bureau and the Environment and Food Bureau.

Scope of clauses 9(1)(d) and (e)

24. Addressing the Chairman's concern about the scope of clauses 9(1)(d) and (e), which in his opinion was too wide, the Senior Town Planner/Ordinance Review and PAS/PL(P) explained that since the purpose of the provisions was to control traffic and drainage impacts, their scope would need to be sufficiently wide to ensure every transport and drainage control measure which might need to be taken would be covered to enable TPB to exercise control as necessary. He further pointed out that the provision, being the itemized version of the relevant provision of the existing Town Planning Ordinance (TPO), was in fact an improvement and would help to ensure that TPB would exercise its power within certain parameters. The Chairman and Mr Edward HO however opined that to clearly define TPB's powers and responsibilities, there was a need to clearly explain the drafting intentions behind clauses 9(1)(d) and (e). At the Chairman's request, PAS/PL(P) agreed to provide a response to this issue.

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Other concerns

25. Mr LEE Wing-tat highlighted the concern expressed by some deputations on the problem of developments being frozen in areas affected by a draft town plan due to the proposed Interim Development Control mechanism. In response, PAS/PL(P) assured members that the whole process for publication of a draft town plan and processing of objections to it would in general take ten months only. The process could at most be extended for a period of six months. Moreover, the Interim Development Control mechanism would only affect those sites subject to an objection. 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. PAS/PL(P) further assured members that most developments, especially those in urban areas, were covered by existing OZPs where land uses were more or less firmed up.

26. Responding to Mr Edward HO, PAS/PL(P) said that the definition of "building works" would be revised and it would not include ground investigation, site formation works, demolition, drainage works, slope maintenance works, and even foundation works, unless otherwise specified in the Notes of the statutory plans. As such, the above works could generally go ahead to save time pending planning approval. Mr LEE Wing-tat however pointed out that risks would be involved in so doing.

27. Mr LEE Wing-tat considered it undesirable that any comment made in respect of an adverse representation withdrawn under clause 17(3) should be treated as not having been made according to clause 19(4). In his view, the Administration should also respond to such comments because after publication, such comments were already

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in the public domain and might contain valid concerns. In response, PAS/PL(P) assured members that the Administration would still take such comments into consideration although it did not need to publicly respond to them and, for the purpose of preparing the plan, would treat them as not having been made. He agreed to consider Mr LEE's view and make amendments to the Bill if necessary.

28. Miss Christine LOH referred to clauses 22 and 26, and enquired whether by allowing the Chief Executive in Council to approve a draft plan in part or with amendment, the Bill had in effect introduced a significant change to the existing plan-making process. PAS/PL(P) replied in the affirmative and explained that this new power to be vested in the Chief Executive in Council had been introduced to avoid the circumstances whereby generally agreed draft town plans were being held up by isolated objections to particular sites. As to whether this proposed provision had been discussed with TPB, PAS/PL(P) confirmed that TPB had been consulted on the Bill a few times although the above change had not been specifically highlighted. Noting this, Miss LOH said she would discuss the change with TPB members and invite them to write to the Bills Committee if they had any views.

29. The meeting ended at 10:30 am.

Legislative Council Secretariat
31 October 2000