

Existing Town Planning Board Administrative Procedures on Declaration of Interests

Issues Raised

At the first meeting of the Bills Committee held on 1.3.2000, Members raised the following issues relating to the existing procedures for declaration of Interests by Town Planning Board (TPB) Members : -

1. How often are the declarations made ?
2. What is the definition of “direct and indirect interests”?
3. How do the TPB administrative procedures compare with the practices of other boards and committees ?
4. What is the practice of avoiding the involvement of TPB Members concerned in deliberations if “interests” are involved ?
5. How can the public access to the declaration made ?

Administration’s Responses

An extract of the relevant part of the existing “TPB Procedure and Practice” handbook on declaration of interests is at [Annex A](#). It should be noted that the handbook does not fully reflect the existing practice and is being reviewed and updated by the TPB Secretariat. The following are the Administration’s responses to the issues raised :-

(a) Issue 1

TPB Members are requested to register their pecuniary interests in writing when they first join the Board, and update the information twice a year to the Secretary, TPB. Members are requested in correspondence to complete the registration usually within two weeks.

If a Member has any direct or personal interest (pecuniary or otherwise) in any matter under consideration by the TPB, he should disclose it either before or at the meeting prior to the discussion of that item even if the interest has been registered in writing. The declaration will be recorded in the minutes.

(b) Issue 2

The types of interests to be declared have been specified in the handbook (please see paras. 15 and 17 of Annex A). There is no definition of “direct” and “indirect” interests. The ongoing review of the handbook includes differentiation of the types of direct and indirect interests.

(c) Issue 3

Compared with the Legislative Council and Housing Authority, the practice of the TPB on declaration of interests is similar. A comparison table is at Annex B. All of them follow the same principle that Members with direct interests should withdraw from the meeting or deliberations on the concerned item. On the interests to be registered in writing, these are restricted to pecuniary interests for the TPB. There are slightly more requirements for the Members of the Housing Authority and the Legislative Council. However, TPB Members are required to declare both pecuniary and non-pecuniary interests before or at the relevant meeting. Only the Legislative Council has clearly stated the sanction against failure to declare interests.

(d) Issue 4

Interests to be declared by TPB Members are classified into 3 levels, namely, substantial direct interest, less direct or substantial interest, and indirect and remote interest. Depending on the level of interests declared, Members are required to withdraw from the meeting; or may stay in the meeting but should refrain from the determination on the subject matter; or are free to participate in the discussion and determination of the matter if the interests are indirect and remote. In case of doubt, the Member should discuss his position with the Chairman prior to the meeting. If it is decided that a substantial conflict is involved, any related papers he may have received should be returned to the Secretary, TPB. Where there is a conflict with an interest, the Secretary, TPB will withhold the issue of the relevant papers to the concerned Member (please see paras. 20 and 21 of Annex A).

(e) Issue 5

A register of TPB Members’ pecuniary interests is kept by the Secretary, TPB and will be made available for public inspection upon request. The declaration of interest either before or at the meeting are recorded in minutes, which will be sent to the parties involved, such as applicants for planning permission and objectors to a statutory plan.

Extracted from “Town Planning Board Procedure and Practice”

PART II - GENERAL MATTERS ON THE PROCEEDING OF MEETINGS

Declaration of Interests

14. It is inevitable that from time to time Members of the Board may have interests (personal, family, or business; direct or indirect; pecuniary or otherwise) in matters that come before the Board. Under the rule against bias, an administrative decision may be quashed if the facts give rise to a real likelihood of bias or it might reasonably be thought that the decision-maker ought not to act because of some personal interests. Furthermore, to protect the impartiality and reputation of the Board and individual Members, it is considered necessary for Members to disclose their interests when there is a real or potential conflict with those in a matter placed before the Board. Members should register their pecuniary interests in writing on a regular basis and, when circumstances warrant, should declare these interests (pecuniary or otherwise) before or at the relevant Board meeting.

15. It is not practical to set a hard and fast rule to judge what should be declared because each individual case is different and it is difficult to cater for unusual and unforeseen circumstances. However, the following are some general cases which can assist Members to identify potential conflicts of interests:-

- (a) Pecuniary interests in a matter under consideration by the Board, interests held either by a Member or by his/her spouse, children under 18 or any close relative, should be declared.
- (b) A directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or other organization which is connected with, or the subject of, a matter under consideration by the Board, should be declared.
- (c) A Member who, as a professional adviser, has personally or as a member of a company, has advised or represented or has frequent dealings with any person or body connected with a matter under consideration by the Board, should make a declaration.

- (d) Any interest likely to lead an objective observer to believe that the Member's decision might have been motivated by personal interest rather than by a duty to act impartially, should be declared, e.g. a private club applying for planning permission for some facilities if he/she is a member of that club.

Registration of Pecuniary Interests

16. The Chairman, Vice-Chairman and Members should register in writing their pecuniary interests when they first join the Board, and update the information twice a year to the Secy/TPB. The registration should be made on a standard form (Appendix IV). A register of Members' pecuniary interests should be kept by the Secy/TPB and will be made available for inspection on request by members of the public.

17. The registrable interests are the pecuniary interests Members hold and those of their spouses and children under the age of 18 including:-

- (i) directorships or partnerships in companies;
- (ii) substantial shareholdings (1% or more of the issued share capital);
- (iii) substantial holdings in land and properties; and
- (iv) remunerated employments, offices, trades, professions or vocations.

18. Where practicable, Members should also give a brief description of the lines of business of companies in which they are involved; and should advise the Secy/TPB about any changes to their registrable pecuniary interests as soon as such changes have occurred.

19. Guidelines for completing the registration form on Members' pecuniary interests are at Appendix V. Members should register their interests and those of their spouses and children under the age of 18 to the best of their knowledge.

Declaration of Interests at or before PC/Board meetings

20. If a Member has any direct or personal interest (pecuniary or otherwise) in any matter under consideration by the Board or the Committees, he/she must, as soon as practicable after the Member has become aware of it, disclose to the chairman at the meeting prior to the discussion of the item, even if this interest has been registered in writing. The following are the guidelines for declaration of interests at Board or Committee meetings:-

- (a) where a Member has a substantial direct interest, whether pecuniary or otherwise, he should declare this and withdraw from the meeting prior to the discussion; but, at the chairman's invitation, he may make a statement on the subject matter prior to his withdrawal if he has an important and unbiased contribution to make;
- (b) where the interests are less direct or substantial, these should be declared but, unless for special reasons he is asked to withdraw, he should be allowed to participate in the discussion but should refrain from the determination on the subject matter. He should however carefully consider whether or not to abstain from giving advice to the Board or Committee; and
- (c) where a Member has only an indirect and remote interest which is unlikely to give him any personal benefit and which a reasonable man would not consider as likely to influence his views and judgment, he should be free to participate in the discussion and determination on the subject matter. Nonetheless, he should make the interest known to the Board or Committee.

21. In case of doubt, the Member should discuss his position with the chairman prior to the meeting. If it is decided that a substantial conflict is involved, any papers or other information relating to the matter under discussion which he may have received should be returned to the Secy/TPB. Where there is a conflict with an interest, the Secy/TPB would withhold the issue of the relevant papers and documents to the concerned Member.

22. From time to time, a Member may be approached by an applicant or an objector either formally or informally to discuss an application or an objection. If he chooses to advise/discuss with the applicant/objector, he should declare an interest when the item is discussed at the meeting and withdraw from the meeting. Any written representations/petition he receives on a particular case should be made known to the Board or Committee who will decide whether they are relevant to the determining of the application/objection.

23. All cases of declaration of interests shall be recorded in the minutes of the meeting.

**Comparison of Practice on Declaration of Interests -
Town Planning Board, Housing Authority and Legislative Council**

	TPB	Housing Authority	Legislative Council
Time limit for registration on appointment	Not specified in the handbook, but Members are requested in correspondence to complete the registration within 2 weeks.	Within 30 days	Within 14 days
Updating	Twice a year	Yearly	Once for each term
Time limit for reporting changes	Not specified in the handbook, but Members do report changes in writing of their own accord.	Within 14 days	Within 14 days
Interests to be registered in writing	Pecuniary : (i) Directorships or partnerships in companies; (ii) Substantial shareholdings (1% or more); (iii) Substantial holdings in land and properties; and (iv) Remunerated employments, offices, trades, professions or vocations.	Pecuniary : similar to TPB Non-pecuniary : membership of public bodies, boards and committees which focus of work is closely related.	Similar to TPB; plus donations, financial sponsorships and overseas visits (payment not wholly borne by Members/public funds), payments or material benefits received arising out of the membership of the Council.
Interests of Member's spouse and children	Required to be declared for all the items under registrable interests.	-	Required to be declared for most of the items under registrable interests.
Definition on direct and indirect interests	No clear definition, only registrable interests are defined.	Pecuniary, non-pecuniary and direct personal interests are defined.	No clear definition, only registrable interests are defined.
Interests to be declared before	Pecuniary (registered) and non-	Related registered interests	Related registered interests

	TPB	Housing Authority	Legislative Council
or at meeting	pecuniary interests		
Circulation of paper to concerned Member withheld	Yes, if known beforehand; if received, return to Secretary.	Yes, if know beforehand; if received, inform Secretary.	-
Participation of Member in discussion after declaring interests	<p>Depending on the nature of interests involved :</p> <p>(i) Withdraw from the meeting if substantial direct interests involved;</p> <p>(ii) Stay in meeting (<i>existing practice is that the Member concerned will not participate in discussion</i>) but refrain from determining on the subject matter if less direct or substantial interests involved; and</p> <p>(iii) Free to participate and determine on the subject matter if indirect and remote interests involved.</p> <p>In case of doubt, the Member concerned should discuss with the chairman, and to be determined by the meeting (<i>existing practice</i>).</p>	To be decided by the chairman. If there is objection to chairman's decision, other Members should vote.	<p>Depending on the nature of interests involved :</p> <p>(i) Withdraw from the meeting and shall not vote if direct pecuniary interests involved; and</p> <p>(ii) if not direct pecuniary interests involved, continual participation subject to whether there is any motion moved by other Members for the withdrawal of that Member with related interests.</p>
Public access to the register	Public can access upon request	Same as TPB	Inspection by any person
Sanction for failure to declare interests	-	-	May be admonished, reprimanded or suspended on a motion to that effect.