

11th March, 2000

Ref. : CBI/BC/8/99
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Mrs. Sarah Yuen
Clerk to Bills Committee
Legislative Council

Dear Madam,

Bills Committee on Town Planning Bill
Meeting on 14th March 2000

We refer to your letter dated 8th March 2000 and have pleasure in submitting the following comments which we will raise at the forthcoming meeting :-

i. S.3 - Town Planning Board

Over the numerous previous consultations we have always expressed the view that in order for the Board to be not only fair, but to be seen to be fair, it is vital that the Chairman and Vice Chairman are not public officials. There are many examples such as the Housing Authority, Hospital Authority, LDC etc. where this role is taken by an unofficial. For the same reason the secretariat that supports the Board should also be independent from the Planning Department. In addition there should be a wider representation on the Board from the professional bodies and institutes and the real estate development sector;

ii. S.6 (4) - Zonings for public purpose

If a piece of land is zoned for a public purpose Government is not obliged to resume the land and redevelopment is not permitted even if

there is no restriction under the lease. We wish to draw the Administrations attention to what was stated in the Comprehensive Review of the Town Planning Ordinance - Consultative Document - July 1991 that :-

"There exists an administrative policy for land owners to request the Government to resume their land. If a development proposal on land zoned for a public purpose (e.g. Government/Institution/Community or Open Space use) is rejected by the T.P.B. and if further upon a petition to the (former) Governor in Council, the decision to reject the development proposal is still maintained the Government will either acquire the property within the next financial year or permit the applicant to develop in accordance with the lease".

There are of course other zonings such as Conservation Area, Sites of Special Scientific Interest, Coastal Protection zones etc. which also clearly fall within the context of public purpose and we feel that it would be both right and equitable for Government to formally acknowledge this and give a right for land owners to ask for resumption if their land is so affected. The Bill should be amended to allow for this.

iii. S.9 - Contents of draft plans generally

It is inadvisable to impose statutory control over matters which are subjective in the nature of their consideration. Legislation should provide certainty on land use, density of development and where appropriate pre-determined levels of site coverage and building height. It should not go into areas of building design or aesthetics. In particular we object to the inclusion of the words; 'number of flats and disposition' in S. 9 (1) (a). S.9 (3) provides for the Secretary for Planning and Lands to designate by regulation any class or description of development as designated development without public consultation. This goes against the whole spirit of the Bill and we feel that such designations should be subject to the draft plan procedures;

iv. S.12 - Publication and inspection of planning study

We welcome the opening up of the planning process to include full consultation of planning studies as well as OZPs. This is in fact recognizing what is already occurring administratively. We emphasize that this is the correct stage to have full public participation in the planning process;

v. S.15 - Government policy in planning process

In order that there is certainty in this area we suggest that the Planning Statement which currently accompanies the OZP and the Notes, but which does not have any legal status, should be formally included as part of the plan. This will ensure that all Government's policy objectives behind the preparation of the plan are properly included, again after the full consultation process;

vi. S. 29 - Amendment of draft or approved plan by Board on application of any person

We welcome this formal recognition of the right to make rezoning applications but the clause does not go far enough as it fails to provide for the Applicant to be entitled to a review hearing if the Board's initial decision is disputed. We consider that there should be a right for a hearing similar to that given to a representor under the objection process;

vii. S.31 - Restrictions on development or use without planning permission

The development industry requires certainty as far as possible. As stated previously we welcome the opening up of the planning process at the planning study and OZP preparation stage but once that process

has been completed there must be a clear indication to the industry that proposals which comply with such approved OZPs should be allowed to proceed without the need for further consultation or invitation to object. Where development proposals are in contravention of the OZP, are potentially an offensive trade or otherwise a 'bad neighbour' then additional consultations should be invited. We suggest a list of what falls into this category of development needs to be drawn up and spelt out now, not left till later. The list should be included as part of the consultation process and properly included into the Notes of each OZP.

In a worst case scenario there could be many OZP's with blanket objections say if Government decides to introduce development height profiles along the north shore of Hong Kong Island and the southern part of the Kowloon peninsula. This is bound to be controversial and raise multiple objections. As presently drafted all development is likely to be frozen whilst such objections are being dealt with resulting in at least 9 months delay. Is this what the administration wants ? A mechanism needs to be found the allow conforming development to proceed.

viii. (a) S. 32 (2) - Application Fee

It is noted that in urban and new town Outline Zoning Plans (OZPs), temporary uses of less than 5 years are permitted as of right in all zones. However, in rural OZPs, all developments (Except existing uses), even they are temporary in nature, require a planning permission. To be fair to those applicants, and land owners, in rural OZP districts, it is suggested that for applications of temporary uses of less than 5 years, no application fee be required;

(b) S. 32 (3) (c) - Consideration of Similar Planning application

The right of making application to the Board, at any time, should not be removed, particularly if a fee is to be charged .

ix. S.37 - Conditions relating to provision of public facilities which may be imposed on grant of planning permission

The whole philosophy of provision of public facilities needs to be re-thought. As a matter of general principle if Government requests the inclusion of certain public facilities within a project that go beyond the needs of the project itself it seems right and proper for (i) Government to pay for the construction and (ii) Government to maintain them. Why should the developer bear these cost particularly when in a significant number of cases a full land premium will be charged by the Government through the land exchange mechanism following on from the planning approval ? At the moment there is a contradiction in policy because where G/C requirements are put into sites sold by public auction or tender then there is either a mechanism to pay for the construction costs included in the lease conditions or else the requirement is known and can be reflected in the bidding. For T.P.B. approval cases the developer not only has to pay full premium but also bear the full construction costs without by refund. The time has come for Government to pay its way in all cases and planning policy needs to reflect this thinking;

x. S. 45 (3) and (6) Grounds on which Building Authority shall refuse to give his approval of building plans of building works

The subsections of (6) are so wide ranging and subjective in nature that we foresee the Director of Planning being placed in a very difficult position in the exercise of his authority under this condition. If in doubt he must say 'No' which will inevitably lead to a review of the decision as provided for in S.46 which in practice will occur in virtually every case.

xi. S. 49 Unauthorized development

In the Bill, this part is only applicable to lands within certain areas e.g. development permission areas, and rural OZP areas. Any person who commits an offence is liable to a fine up to a maximum of HK\$1,000,000 or \$2,000,000 of second or subsequent conviction. However, there is no control for Unauthorized Developments in land outside the mentioned areas, for example, land in urban OZPs. It appears that different treatment is given to different district in the same act. Consideration should be given if this would violate the rules of (i) natural justice, (ii) Bill of Right, (iii) discrimination, and (iv) equal opportunity;

If the new planning mechanisms are put in place the Administration needs to recognize the knock-on effect of the potential/actual delay and extend the length of building covenants in both new and existing lease to reflect this.

We will be happy to answer any question from Honorable Members on Tuesday.

Yours ever,

Lau Tak Francis
Chairman Town Planning Committee

cc Francis Ng
President HKIS
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