

DISCUSSION NOTES ON TOWN PLANNING BILL

by the Association of Architectural Practices

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EXECUTIVE SUMMARY

The Association of Architectural Practices (AAP) consider that the Town Planning Bill does not adequately address the fundamental issues of town planning and land development. The AAP has substantial experience of the impact of Government policy and legislation on land development and therefore makes a number of proposals on both fundamental and administrative issues with a view to effecting long term improvements over the existing arrangements.

1.0 PLANNING STRUCTURE

1.1 A PLANNING COMMISSION TO BE APPOINTED

Similar to other major policies which are of public concern such as Housing and Medical affairs, there should be a high level and accountable body to assist the Chief Executive in dealing with town planning policies. Resembling the set-up of the Housing Authority and Hospital Authority, a Planning Commission should be appointed by the CE to determine overall planning policy, approve territorial development strategy and development statements (e.g. on harbour reclamation). Town Planning at the regional level and district level should be carried out by an independent Town Planning Board.

1.2 THE TOWN PLANNING BOARD SHOULD BE AN INDEPENDENT BODY

To achieving independence for the Town Planning Board and the proper exercise of its functions, the Chairman and Vice-chairman of the Board should be unofficial persons. The Director of Planning should cease to be "the principal executive" of the Board, and in particular that the Board should not delegate its functions to the Director of Planning so that the relationship between the Board and the Director of Planning will be that of an independent body and Government department. The Deputy Director of Planning should also cease to be the secretary of the Board which should be given an independent secretariat.

2.0 PLAN MAKING PROCESS

2.1 DRAFT OZP SHOULD NOT TAKE EFFECT UNTIL IT IS APPROVED

Under both the existing Ordinance and the proposed Town Planning Bill, a draft plan takes effect when deemed suitable for publication by the TPB and is exhibited. The result which follows is that building works which contravene a draft plan are prohibited. The AAP considers this to be fundamentally wrong. A draft plan should only take effect until approval is given by the Board after publication and hearing all objections and representations.

2.2 *SUBJECTIVE AND DISCRETIONARY CONTROL SHOULD NOT BE ALLOWED*

Town Planning Board is empowered to prescribe, by way of note to OZP or other means, detail controls on detail design or even subjective design matter. The AAP finds it inappropriate and potentially dangerous to permit individual discretion to come into play. We consider that notes to OZP should be within a clear and precise scope of broad planning considerations dealing with tangible matters such as landuse, plot ratio and density. Subjective view and discretionary control on design matters such as disposition, character and external appearance of building must be avoided.

3.0 PLANNING PERMISSION SYSTEM

3.1 *COMPREHENSIVE DEVELOPMENT AREA (CDA) ZONING TO BE ABOLISHED*

Under the existing Ordinance and Section 31 of the Town Planning Bill, the TPB is empowered to prohibit the undertaking of any building works in respect of sites zoned as a CDA. Practically any development within a CDA must obtain prior permission of the Planning Department and Town Planning Board. The no. of CDA's has grown from **25** in year 1990 to an alarming figure of **165** in year 2000 and its proliferation has frozen up a majority of our old urban areas from development. The planning idealism of a CDA is ironically built upon a much retarded speed of urban renewal and city development. The AAP strongly opines that all CDA's on existing plans should be deleted and express users stated in their place.

3.2 *UNDUE DELAY TO DEVELOPMENT TO BE AVOIDED*

The AAP is concerned that determination of planning application will be withheld in the case of third party adverse representation. Although objection due to frivolous reasons will not be accepted, it is in reality difficult to distinguish which objections are frivolous from the outset.

4.0 *PLANNING CONTROL ON BUILDING WORKS*

4.1 *DUPLICATED CONTROL AND BUREAUCRACY MUST BE AVOIDED*

Clauses 45 & 48 of the Town Planning Bill stipulates the requirement for the Building Authority to disapprove any building plans which contravene the provisions of the Bill or during the exhibition period of a draft OZP or if the site concerned is subject to any adverse representation. This is basically a re-packaging of the Planning Certificate System which has been severely objected by the key stakeholders and professional institutions during the consultation stage of the White Bill. It is an "old wine in a new bottle".

The reason why we say so is because:

- a. "The provisions of the Bill" are very loose words in themselves and they encompass all sorts of planning considerations including landuse, planning studies, planning standard and guidelines and down to minor design matters that the Planning Department may find an interest to control. In actual practice, the Building Authority will not be able to decide whether or not a building plan submission is in accordance with the provisions of the Bill without referring the plan to the Planning Department for approval.

In other words, no building works would be approved and commenced without the blessing of the Planning Department.

- b. The new clauses, similar to the planning certificate system, create uncertainty and add unnecessary restriction on an existing development right.

The new clauses denote the persistent desire of the Planning Department to extend control beyond the planning stage and into the implementation stage of building projects. Given the already existing control mechanisms on buildings in the form of Government leases, the Buildings Ordinance and the Certificate of Compliance System, the additional layer of control through the new clauses is totally unwarranted and wasteful. Planning control must cease to interfere in the implementation process of building works to ensure certainty and efficiency. The simplicity and clear distinction of the current system has been a fundamental part of Hong Kong's past success. The proposal of allowing planning control on building development will be most detrimental to our ability of continuing this success.

5.0 OTHER MAJOR ISSUES

5.1 COMPENSATION TO BE CONSIDERED

We are concerned that the question of compensation has not been addressed in the Bill. Compensation is a very complex issue and cannot be separated from the type and extent of planning powers being created, the degree of interference permitted into proprietary and other rights of individuals, and the manner in which the administrative powers are prescribed to be used. Development right is a basic human right commonly recognized by the international community. If for planning reasons a Government policy decision is made whereby compensation will not be payable to those aggrieved, then the degree of interference permitted by the planning legislative and administrative powers needs to be stringently curtailed and very precisely defined.