

立法會 *Legislative Council*

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Paper for the House Committee meeting on 2 June 2000

Report of the Bills Committee on Town Planning Bill

Purpose

This paper reports on the Bills Committee's deliberation and its decision to curtail its work.

Background

2. The existing Town Planning Ordinance was first enacted in 1939 and has largely remained in its original form. With the increasing complexity of the social, economic and political environment in Hong Kong, there is a need to fundamentally review and update the Ordinance to provide guidance for and control over the planning and development in Hong Kong to meet the prevailing needs of the community. In 1996, the Administration published the Town Planning White Bill for public consultation. The intention was to seek public views on the proposed amendments made to the Ordinance to enhance the efficiency, transparency and effectiveness of the statutory planning process. The consultation exercise had drawn diversified views from the community, in particular, professional institutes, real estate developers, and green groups on the need for a more open system which would involve the public more extensively in the entire planning process. In 1998, an interim amendment was made to the Ordinance to provide a limit to the time in processing objections to draft town plans so as to improve the efficiency of the plan-making process.

3. After years of review on the subject, the Town Planning Bill was introduced to the Legislative Council on 16 February 2000, containing a comprehensive package of changes to the planning procedure, consultation process and planning controls.

The Bill

4. The Bill seeks to repeal and replace the existing Town Planning Ordinance (Cap. 131). The Bill contains changes to the set-up and powers of the Town Planning Board (TPB), procedures for the preparation of draft town plans, statutory framework for exercising planning control, planning control on building development, enforcement actions against unauthorized development and powers of the Appeal Board.

The Bills Committee

5. At the House Committee meeting on 18 February 2000, it was decided that a Bills Committee should be formed to scrutinize the Bill. Hon James TO Kun-sun was elected Chairman at the first meeting of the Bills Committee on 1 March 2000. A membership list of the Bills Committee is at **Appendix I**.

6. As the Bill proposes changes to the control on the planning and development of Hong Kong, the Bills Committee has found it necessary to invite views from professional institutes, green groups, real estate developers, and government advisory bodies. Between 1 March 2000 and 4 May 2000, nine meetings were held including three to receive representations by deputations. The Administration was invited to each of its meetings to discuss with members on the details of the Bill and to respond to the views of the deputations. A list of deputations received by the Bills Committee is at **Appendix II**.

7. At its meeting on 4 May 2000, in response to the request of the House Committee, the Bills Committee critically assessed the possibility of completing the scrutiny of the Bill within the current term. The Bills Committee noted that during the nine weeks of scrutiny, members have only been able to examine Parts I, II and the early part of Part III of the Bill regarding the appointment of TPB members and the preparation of draft plans. Other major issues such as Interim Development Control, planning control on building development, enforcement against unauthorized development and the powers of the Appeal Board which are included under Parts III to VII have not been examined in detail. The Bills Committee therefore sought the Administration's views on the matter.

8. The Administration's response was that if consensus could be reached with the Bills Committee on some of the more major issues, other issues such as compensation, the appointment of full-time paid members to the Board, the interface between TPB and the Country and Marine Parks Board in the preparation of draft plans could be taken up after the passage of the Bill. The Administration considered that the latter issues need not be dealt with in the context of the current Bill, the early passage of which would be beneficial to the development of Hong Kong.

9. Members however did not agree. They considered that issues such as compensation was an integral part of the Bill and therefore could not be dealt with separately. Moreover, they were concerned that quite a number of major issues such as the planning control on building development and the enforcement against unauthorized development had not been fully deliberated, let alone the reaching of consensus. The Administration had taken years to draw up this Bill after considering the diversified views of the community, but only introduced the Bill on 16 February 2000, four months before the end of the LegCo term. It would not be fair to expect or require LegCo to complete the scrutiny of the Bill within such a short period, amid other also very important bills.

10. Given the complexity of the Bill and its far reaching implications on the community at large, the Bills Committee decided that it should not rush through the scrutiny of the Bill without going into the details of the various issues that may affect the planning and development of Hong Kong in the years to come. Members also took note that some professional institutes and real estate developers had indicated their support for adhering to the existing legislation rather than putting in place a new Bill hastily passed without careful scrutiny. In view of the foregoing, the Bills Committee decided to curtail its work.

11. On 5 May 2000, with the agreement of the Bills Committee, the Chairman of the Bills Committee reported to the House Committee that it would be unrealistic to complete the scrutiny of the Bill within the current LegCo session in view of the extent of outstanding issues to be resolved. The House Committee agreed that the work of the Bills Committee should be curtailed and the Bills Committee dissolved.

Deliberations of the Bills Committee

12. To facilitate future reference to the points raised by the Bills Committee and follow-up by future LegCo when the Bill is re-introduced, a table setting out the major concerns raised by the Bills Committee, the response from the Administration and the follow-up actions to be taken is at **Appendix III**.

Advice sought

13. Members are invited to note the report of the Bills Committee and the issues of concern as given in Appendix III.

《城市規劃條例草案》委員會
Bills Committee on Town Planning Bill

委員名單
Membership list

涂謹申議員(主席)	Hon James TO Kun-sun (Chairman)
何世柱議員	Hon HO Sai-chu, SBS, JP
何承天議員	Hon Edward HO Sing-tin, SBS, JP
李永達議員	Hon LEE Wing-tat
夏佳理議員	Hon Ronald ARCULLI, JP
陸恭蕙議員	Hon Christine LOH
陳婉嫻議員	Hon CHAN Yuen-han
黃容根議員	Hon WONG Yung-kan
劉慧卿議員	Hon Emily LAU Wai-hing, JP
鄧兆棠議員	Dr Hon TANG Siu-tong, JP

合共： 10 位議員
Total: 10 Members

日期：2000 年 3 月 3 日
Date: 3 March 2000

**List of organizations/individuals
received by the Bills Committee on Town Planning Bill**

Meeting on 14 March 2000

Hong Kong Institute of Architects
Hong Kong Institution of Engineers
Hong Kong Institute of Planners
Hong Kong Institute of Surveyors
The Association of Architectural Practices

Meeting on 28 March 2000

Real Estate Developers Association of Hong Kong
Hong Kong Institute of Real Estate Administration
Hong Kong Real Estate Agencies Association
Town Planning Board members
Heung Yee Kuk
Land and Building Advisory Committee

Meeting on 6 April 2000

Friends of the Earth
The Conservancy Association
Hong Kong Marine Conservation Society
World Wide Fund for Nature Hong Kong

Written submissions

Advisory Council on the Environment
Law Society of Hong Kong
Sir David AKER-JONES
Mr F K AU
The Green Lantau Association
The Planning Subcommittee of the Land and Building Advisory Committee
The Association of Planning Consultants of Hong Kong
The Hong Kong Institute of Landscape Architects

Appendix III

Bills Committee on Town Planning Bill

Summary of major concerns raised by the Bills Committee

Issue	Concern	Administration's response and follow-up actions
Composition of Town Planning Board (TPB)	Members are concerned about the composition of TPB, the criteria of appointment and termination of appointment.	<ul style="list-style-type: none"> - Information paper on the work of TPB and its Subcommittees circulated under LC Paper No. CB(1) 1252/99-00(01). - Information paper on composition of TPB, criteria for appointment and termination of appointment circulated under LC paper No. CB(1) 1252/99-00(03).
	Members have requested the Administration to consider the appointment of non-public officers as Chairman and Vice-Chairman, in view of general support from deputations.	<ul style="list-style-type: none"> - To be considered by the Administration.
	Members have requested the Administration to consider designating in the Bill the number of members and public officers to be appointed to the TPB.	
	Members have asked the Administration to review the honoraria for appointed TPB members and also consider the appointment of full-time paid members.	

Issue	Concern	Administration's response and follow-up actions
<p>Conduct of TPB meetings</p>	<p>Members are concerned that due to unstable attendance at meetings, TPB members who examine planning applications may not necessarily be the same group of members who voted on the applications.</p>	<p>- Information paper on existing TPB procedures on conduct of meetings circulated under LC Paper No. CB(1) 1252/99-00(04).</p>
	<p>Members have asked the Administration to consider extending the quorum of TPB meetings.</p>	<p>- To be considered by the Administration.</p>
	<p>Members have requested the Administration to consider including in Clauses 3(2) and 4(3) provisions similar to section 2A(5) of the existing Town Planning Ordinance (TPO) regarding the requirement of a majority of non-public officers to be present throughout the meeting.</p>	<p>- A review on TPB practices and procedures is being conducted by the Administration.</p>
<p>TPB meetings to be open</p>	<p>While some members are of the view that all TPB meetings should be open unless the contrary is justified, others have expressed reservations about the opening of all TPB meetings. A member has asked the Administration to consider introducing an enabling provision in the Bill allowing TPB to exercise discretion on whether a meeting should be open or closed to the public.</p>	<p>- To be considered by the Administration.</p> <p>- Information paper on the meeting arrangements of local and overseas statutory bodies circulated under LC Paper No. CB(1) 1252/99-00(02).</p>
	<p>Members have requested information on the circumstances under which a TPB meeting should be closed to the public.</p>	<p>- Information to be provided by the Administration.</p>

Issue	Concern	Administration's response and follow-up actions
<p>Declaration of interests by TPB members (Schedule)</p>	<p>Members have requested for clearer guidelines on declaration of interests. There is also a need to specify the time limit for reporting changes.</p>	<ul style="list-style-type: none"> - Information paper on existing TPB administrative procedures on declaration of interests circulated under LC Paper No. CB(1) 1116/99-00. - A review on TPB practices and procedures is being conducted by the Administration.
	<p>Members have requested that consideration should be given to including provisions for sanctions for failure to declare interests.</p>	<ul style="list-style-type: none"> - The Administration advises that the Chief Executive could terminate the appointment of TPB members in case of serious misconduct.
<p>Role of TPB in overall planning (Clause 6(1)(h))</p>	<p>Members support TPB members' request that they should be involved in the overall planning for Hong Kong.</p>	<ul style="list-style-type: none"> - The Administration agrees to consider amending the word "may" in Clause 6(1)(h) to "shall" such that TPB shall give advice to the Government relating to overall planning for Hong Kong including major infrastructure projects.
<p>Compensation (Clauses 6(3) and (4))</p>	<p>The Bills Committee notes that the Bill does not allow for compensation except in the case of resumption under the Land Resumption Ordinance. Members are concerned whether the Bill is consistent with the Basic Law. They are also concerned that affected landowners whose development rights have been diminished due to planning actions would not be entitled to compensation under the Bill. Furthermore, owners of land which has been designated as special design areas (SDA) would need to shoulder responsibilities in preserving historical, archeological, architectural or cultural interest which are in the public interest.</p>	<ul style="list-style-type: none"> - In its paper on common law principles on compensation for planning actions circulated under LC Paper No. CB(1) 1392/99-00(02), the Administration advises that where statute law merely regulates the use of private land, common law principle is that compensation is not payable unless there is a clear statutory provision. - A response to the Administration's paper is provided by the Legal Service Division under LC Paper No. LS 130/99-00. - The Administration will provide information papers setting out the legal basis in determining that clause 6(3) and (4) have not contravened the Basic Law and the background to the Planning and Compensation Act and the Town and Country Planning Act enacted in the United Kingdom.

Issue	Concern	Administration's response and follow-up actions
Compensation (Clauses 6(3) and (4)) (continued)		<ul style="list-style-type: none"> - The Administration will submit a paper on the details and justifications for SDA and environmentally sensitive areas. - A Working Group has been formed to review the statutory compensation and ex gratia allowance relating to implementation of development projects and planning blight.
Interface mechanism between TPB and Country and Marine Parks Board and the drafting of Clause 7(g)	<p>Members consider that TPB should also be responsible for the designation of Country Parks.</p> <p>Members are concerned that provisions of Clause 7(g) which allows TPB to show or make provisions in a draft plan for country and marine parks may give rise to conflict with the Country and Marine Parks Board.</p>	<ul style="list-style-type: none"> - The Administration advises that TPB is consulted on the designation of country parks in the context of strategic and sub-regional planning. There is no need to transfer the powers of the Country and Marine Parks Board to TPB. - The Administration advises that TPB will only show areas which have been designated under Country Parks Ordinance and Marine Parks Ordinance in its draft plans but will not designate these areas.
Contents of draft plans (Clause 9(1))	Members are concerned about the extent of power conferred upon TPB under Clause 9(1), in particular Clause 9(1)(d) and (e) which allow for the control of traffic and drainage impact.	<ul style="list-style-type: none"> - The Administration will consider reviewing the drafting of Clause 9(1).
Planning control on building development (Clauses 45 to 48)	Members have raised concerns about the planning control on building development. They have requested for clearer provisions on the grounds under which Building Authority shall approve or refuse plans of building works.	<ul style="list-style-type: none"> - A comparison on the planning control on building development under existing legislation and the Town Planning Bill to be provided by the Administration. - Members' concerns to be considered by the Administration.

Issue	Concern	Administration's response and follow-up actions
Deeming provisions under Clauses 82 and 83 and TPB's involvement in road and railway projects	Members are concerned about the deeming provisions under Clauses 82 and 83 which provide that any works or use authorised under Roads (Works, Use and Compensation) Ordinance or any scheme authorised under the Railways Ordinance will be deemed to be approved under TPO. Members support TPB's request for more involvement in road and railway projects and the need for sustainable development.	<ul style="list-style-type: none"> - The Administration advises that TPO, Roads (Work, Use and Compensation) Ordinance and the Railways Ordinance each has its own statutory process and that all developments would ultimately be submitted to the Executive Council for approval. As an administrative practice, TPB is consulted on major road and railway projects on an interactive basis.
Deputations' views	Members note that the views received are diverse and conflicting. While the green groups are supportive of a more open process, the real estate developers and some of the professional institutes are concerned that a more open system would lead to delay in the development process. Much concern has been raised about provisions dealing with planning control on building development and the Interim Development Control system. There are also conflicting views on penalty provisions. The common view of most deputations is that the appointed Chairman and Vice-Chairman of TPB should be non-public officers.	<ul style="list-style-type: none"> - Summary of deputations' major concerns prepared by LegCo Secretariat circulated under LC paper No. CB(1) 1368/99-00(01). - Consolidated response to the deputations' concerns to be provided by the Administration.