

立法會
Legislative Council

LC Paper No. CB(1)1550 /03-04

(These minutes have been seen
by the Administration)

Ref : CB1/BC/12/02/2

**Bills Committee on
Town Planning (Amendment) Bill 2003**

**Minutes of thirteenth meeting held on
Thursday, 18 March 2004, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi
Hon IP Kwok-him, JP

Members absent : Hon Albert HO Chun-yan
Hon Andrew WONG Wang-fat, JP
Hon LAU Wong-fat, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP

**Public officers
attending** : Miss Christine CHOW
Principal Assistant Secretary for Housing, Planning
and Lands (Planning and Lands)2

Mr Jimmy LEUNG
Assistant Director of Planning (Technical Services)

Ms Sherman CHAN
Senior Assistant Law Draftsman
Department of Justice

Ms Vicki LEE Yuet-ming
Senior Government Counsel
Department of Justice

Ms Betty HO
Assistant Secretary for Housing, Planning and Lands
(Planning and Lands) (Planning)3

Ms Jacinta WOO
Senior Town Planner/Ordinance Review
Planning Department

Mr Anthony KWAN
Chief Town Planner/Central Enforcement and Prosecution
Planning Department

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (1)4

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr S C TSANG
Senior Council Secretary (1)7

Action

I. Meeting with the Administration

- (LC Paper No. CB(1)1298/03-04(01) -- List of follow-up actions arising from discussion at the meeting on 8 March 2004
- LC Paper No. CB(1)1022/03-04(03) -- Consolidated response of the Administration to concerns/ views raised by organizations (as at 28 January 2004)
- LC Paper No. CB(1)1209/03-04(02) -- Views of Heung Yee Kuk Councillors raised at meeting with Legislative Council Members on 2 March 2004
- LC Paper No. CB(1)2520/02-03(01) -- Administration's response to the issue of compensation raised by Heung Yee Kuk at its meeting with Legislative Council Members on 10 June

Action

- 2003
- LC Paper No. CB(1)2520/02-03(02) -- Case law in 1996 concerning the ruling of the Court of Appeal that managers of "tso/t'ong were regarded as land owners"
- LC Paper No. CB(1)678/03-04(05) -- Summary of concerns/views raised by organizations (as at 2 January 2004)
- LC Paper No. CB(1)678/03-04(02) -- Concerns/views raised by organizations on liability of managers of a clan, family, or "tsos/tongs" for offences in relation to unauthorized developments (as at 2 January 2004)
- LC Paper No. CB(1)1022/03-04(04) -- Summary of views raised by organizations on the Administration's proposed amendments to the plan-making system under the Town Planning (Amendment) Bill 2003 (as at 16 February 2004)
- LC Paper No. CB(1)1209/03-04(03) -- List of follow-up actions arising from previous meetings (as at 18 February 2004))

The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

2. Members requested the Administration to take the following actions:

Item 19 in CB(1) 1022/03-04(03)

- (a) to amend proposed section 2(5)(b) to allow Town Planning Board (TPB) to delegate its power to the Secretary of TPB or its committee(s) to determine acceptance of further information in relation to applications for amendment of plan, planning permission, amendment to planning permission and review of applications;

Action

Item 21 in CB(1) 1022/03-04(03)

- (b) to compile a table setting out the respective planning and land matters on which enforcement actions could be taken by the Planning Authority under the Town Planning Ordinance and/or other land authorities under other ordinances; and

Item 22 in CB(1) 1022/03-04(03)

- (c) to provide a paper to explain why proposed section 23(9A) was necessary to deter proliferation of unauthorized developments. The Administration should illustrate with examples the difficulties encountered by the prosecution, if any, in proving the constitution or existence of unauthorized developments. Some members were concerned that the proposed section did not accord with the common law principle that the burden of proof rested on the prosecution.

II. Any other business

- 3. Members agreed to hold the next meeting on **Friday, 2 April 2004, at 2:30 pm.**
- 4. The meeting ended at 12:35 pm.

Council Business Division 1
Legislative Council Secretariat
19 April 2004

**Proceedings of the thirteenth meeting of the
Bills Committee on Town Planning (Amendment) Bill 2003
on Thursday, 18 March 2004, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000149	Chairman	Opening remarks	
000149 - 000339	Administration	Briefing on consolidated response of the Administration to concerns/views raised by organizations (as at 28 January 2004) (LC Paper No. CB(1)1022/03-04(03))	
000340 - 001447	Mr Abraham SHEK Mr Albert CHAN Chairman Administration	<p><u>Item 19</u></p> <p>Objection by a member against delegation of power by the Town Planning Board (TPB) to public officers to determine acceptance of further information in relation to applications for amendment of plan, planning permission, amendment to planning permission and review applications under section 17 of the Town Planning Ordinance (TPO) because of lack of independence of TPB and its secretariat</p> <p>The Administration's explanation:</p> <ul style="list-style-type: none"> • under existing administrative arrangement, public officers determined acceptance of further information in relation to planning applications; and • without the delegated power, even minor matters would need to be determined by TPB, causing delay in processing applications. <p>Members' suggestion that TPB could delegate its power to either the Secretary of TPB or its committee(s)</p>	The Administration to take action under paragraph 2(a) of the minutes
001448 - 002103	Mr WONG Sing-chi	Availability of guidelines and practice	

Time marker	Speaker	Subject(s)	Action Required
	Administration Chairman	notes on acceptance of further information and provision of appeal against decision of public officers	
002104 - 002728	Chairman Administration	Concern on whether there was a need to expressly provide in the law the scope of delegation	
002729 - 004641	Dr TANG Siu-tong Mr Abraham SHEK Chairman Administration	<p><u>Item 20</u> Administration's clarification that normally three months would be given for discontinuance of unauthorized developments (UD)</p> <p>A member requested that the period for discontinuance of unauthorized developments be extended until completion of review applications under section 17 of TPO</p> <p>Administration's advice that due consideration should be given to environmental protection and persons adversely affected by UD and not just the interest of the persons responsible for the UD</p>	
004642 - 004739	Administration	<p><u>Item 21</u> Justification for the proposal to allow the Planning Authority to enter private land other than domestic premises to ascertain whether there were matters constituting unauthorized developments, and to serve notice to obtain information, with failure to comply with the notice constituting an offence</p>	
004740 - 011545	Mr Abraham SHEK Mr WONG Sing-chi Mr Albert CHAN Chairman Administration	<p>Concern about permissible actions that could be taken by the Planning Authority to ascertain UD and the adequacy of proposed power</p> <p>Concern about differentiation of scope of enforcement powers between the</p>	The Administration to take action

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Time marker	Speaker	Subject(s)	Action Required
		Planning Authority and other relevant land authorities in relation to planning and land matters	under paragraph 2(b) of the minutes
011546 - 012656	Dr TANG Siu-tong Administration SALA Chairman	<u>Item 22</u> Concern that the proposed section 23(9A) which expressly did not require the prosecution to prove beyond reasonable doubt the constitution or existence of UD did not accord with the common law principle on onus of proof and might violate the principle of fairness	The Administration to take action under paragraph 2(c) of the minutes
012657 - 013309	Mr Albert CHAN Administration Chairman	Difficulties encountered by the prosecution in proving the constitution or existence of unauthorized developments and relevant defence provisions A member was concerned about the difficulties faced by elderly owners in discontinuing UD on land which had been leased	
013310 - 013807	Chairman Administration	Date of next meeting	