

立法會
Legislative Council

LC Paper No. CB(1)2359/03-04

(These minutes have been seen
by the Administration)

Ref : CB1/BC/12/02/2

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

**Minutes of twenty-first meeting held on
Monday, 31 May 2004, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Andrew WONG Wang-fat, JP
Hon Emily LAU Wai-hing, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon Albert HO Chun-yan
Hon LAU Wong-fat, GBS, JP
Hon IP Kwok-him, JP
Hon LAU Ping-cheung

**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

Miss CHEUK Hau-kwan, Elsa
Senior Town Planner/Prosecution 2
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. Confirmation of minutes

(LC Paper No. CB(1)1967/03-04 -- Minutes of eighteenth meeting on
13 May 2004)

The minutes of the eighteenth meeting held on 13 May 2004 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)1965/03-04(01) -- List of follow-up actions
arising from discussion at the
meeting on 25 May 2004

LC Paper No. CB(1)1914/03-04(03) -- Draft Committee Stage
Amendments (CSAs) to
Clauses 19 to 28 of the Bill
proposed by the
Administration

LC Paper No. CB(1)1914/03-04(04) -- Marked-up copy of the draft

Action

- CSAs to Clauses 19 to 28 of the Bill prepared by the Legal Service Division
- LC Paper No. CB(1)1725/03-04(01) -- Draft CSAs to Clauses 13 to 18 of the Bill proposed by the Administration
- LC Paper No. CB(1)1960/03-04(01) -- Revised draft CSAs to Clause 14 of the Bill proposed by the Administration
- LC Paper No. CB(1)1781/03-04(02) -- Marked-up copy of the draft CSAs to Clauses 13 to 18 of the Bill prepared by the Legal Service Division
- LC Paper No. CB(1)1499/03-04(01) -- Draft CSAs to Clauses 1 to 12 of the Bill proposed by the Administration
- LC Paper No. CB(1)1689/03-04(01) -- Revised draft CSAs to Clause 5 of the Bill proposed by the Administration
- LC Paper No. CB(1)1541/03-04(01) -- Marked-up copy of the draft CSAs to Clauses 1 to 12 of the Bill prepared by the Legal Service Division
- LC Paper No. CB(3)626/02-03 -- The Town Planning (Amendment) Bill 2003)

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

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

Clause 20 section 23

- (a) to provide documents to show the legislative intent of the 1991 Town Planning Amendment Ordinance that it was not the burden of the prosecution to prove beyond reasonable doubt that the relevant matters in question constituted an unauthorized development (UD);
- (b) to confirm at the Second Reading debate on the Bill the existing practice of conducting freezing surveys before preparation of development permission area plans/outline zoning plans;
- (c) to provide a paper to explain the procedures adopted by the Planning Authority in determining the issue of a notice concerning discontinuance of UD under subsection (1); and

Action

- (d) to review at the Stage Two amendment subsection (2)(c). The Chairman was of the view that impracticality or non-economy to reinstate the land should not be the reason for issue of a notice concerning discontinuance of UD.

III. Any other business

4. Members agreed that the next meeting on **Friday, 4 June 2004, at 10:45 am should last until 2:00 pm.**
5. The meeting ended at 12:40 pm.

Council Business Division 1
Legislative Council Secretariat
12 July 2004

**Proceedings of the twenty-first meeting of the
Bills Committee on Town Planning (Amendment) Bill 2003
on Monday, 31 May 2004, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000019	Chairman	Confirmation of minutes of the eighteenth meeting held on 13 May 2004 (LC Paper No. CB(1)1967/03-04)	
000020 - 001147	Chairman Administration	Members' attention drawn to information papers provided by the Administration on: (a) Enforcement of Planning and Land Matters in the Rural New Territories (LC Paper No. CB(1)2016/03-04(01)) (b) Justifications for the Proposed New Section 23(9A) on Elements of Proof of the Prosecution (LC Paper No. CB(1)1914/03-04(02))	
001148 - 001503	Administration	<u>Clause 20 (section 23(9A))</u> Rationale for proposed section 23(9A) and difficulties encountered by the prosecution in proving the constitution or existence of unauthorized developments (UDs)	
001504 - 002105	Ms Audrey EU Administration	Clarification that by introducing the proposed section 23(9A), the prosecution would not need to prove beyond reasonable doubt the existence of an UD for the offence under section 23(6) Administration's advice that the proposed section 23(9A) did not arise from any court decision but from interpretation of existing section 23	
002106 - 003214	Mr Andrew WONG	Enquiry on the legislative intent of the	The Administration

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Time marker	Speaker	Subject(s)	Action Required
	Administration Chairman	1991 Town Planning Amendment Ordinance that it was not the burden of the prosecution to prove beyond reasonable doubt that the relevant matters in question constituted an UD	to take action under paragraph 3(a) of the minutes
003215 - 010304	Mr Albert CHAN Administration Dr TANG Siu-tong Ms Audrey EU Chairman	<p>Members' view that it was necessary to conduct freezing surveys before preparation of development permission area / outlining zone plans because evidence such as aerial photos might not show complete information on "existing uses"</p> <p>Administration's confirmation that the defendant could have access to relevant information including records of freezing surveys and aerial photos in respect of an UD</p>	The Administration to take action under paragraph 3(b) of the minutes
010305 - 010951	Chairman Administration	<p>Clause-by-clause examination of the Bill and examination of Committee Stage Amendments (CSAs) proposed by the Administration (LC Paper No. CB(1)1914/03-04(04))</p> <p><u>Clause 19 (section 22)</u></p> <p><i>Subsection (8)</i></p> <p>Administration's advice that a fine at level 6 was \$100,000</p> <p><u>Clause 20 (section 23)</u></p> <p><i>Subsection (1)</i></p> <p>The Chairman's view that the expression "in the opinion of the (Planning) Authority" was too broad</p> <p>Administration's explanation that in forming an opinion as to whether there was an UD, the Planning Authority might have regard to the</p>	

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Time marker	Speaker	Subject(s)	Action Required
		<p>documents and materials set out in subsection (11)</p> <p>Administration's advice that notice under subsection (1) in respect of enforcement against an UD had to be endorsed at a meeting chaired by an Assistant Director or officials of higher ranks</p>	<p>The Administration to take action under paragraph 3(c) of the minutes</p>
010952 - 013129	<p>Mr Andrew WONG Chairman Administration Ms Emily LAU</p>	<p>Coordination of enforcement actions by different departments against offences under various ordinances</p> <p>A member considered it unfair that the same matter be subject to prosecution under different ordinances</p> <p>Administration's advice that communication and co-ordination amongst departments would be done but enforcement authorities to decide whether to take action under the ambits of different ordinances</p>	
013130 - 013814	<p>Chairman Administration</p>	<p><u>Clause 20 (section 23)</u></p> <p><i>Subsection (2)</i></p> <p>The Chairman's view that impracticality or non-economy to reinstate the land should not be the reason for issue of a notice concerning discontinuance of UD</p> <p>Further revised draft CSAs to Clause 14 of the Bill proposed by the Administration (LC Paper No. CB(1)2016/03-04(03)). A member had reservation on the wording "sufficient" used in the proposed section 14(3)(a).</p> <p>Administration's explanation that the scope of "sufficient" would be narrower than "with reference to"</p>	<p>The Administration to take action under paragraph 3(d) of the minutes</p>

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Time marker	Speaker	Subject(s)	Action Required
013815 - 013957	Chairman	Date of next meeting and possible need to schedule additional meetings	

Council Business Division 1
Legislative Council Secretariat
12 July 2004