

立法會
Legislative Council

LC Paper No. CB(1)570/03-04

(These minutes have been seen
by the Administration)

Ref : CB1/BC/12/02/2

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

**Minutes of sixth meeting held on
Thursday, 20 November 2003, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Hon Andrew WONG Wang-fat, JP
Hon LAU Wong-fat, GBS, JP
Hon Emily LAU Wai-hing, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon WONG Sing-chi
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon Albert CHAN Wai-yip
Hon IP Kwok-him, JP

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

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

Mr Jimmy LEUNG
Assistant Director of Planning (Technical Services)

Ms Jacinta WOO
Senior Town Planner/Ordinance Review
Planning Department

Ms Sherman CHAN
Senior Assistant Law Draftsman
Department of Justice

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

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

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

Mr S C TSANG
Senior Assistant Secretary (1)7

Action

I. Confirmation of minutes

(LC Paper No. CB(1)361/03-04 -- Minutes of fifth meeting on
4 November 2003)

The minutes of the fifth meeting held on 4 November 2003 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)358/03-04(01) -- List of follow-up actions
arising from discussion at the
meeting on 4 November 2003

LC Paper No. CB(1)358/03-04(02) -- Information paper provided by
the Administration on
legislative intent of s. 9 of the
Town Planning Ordinance
with regard to the role of the
Chief Executive in Council

LC Paper No. CB(1)358/03-04(03) -- Supplementary information
provided by the
Administration on major
issues raised at the meeting on

Action

	23 October 2003
LC Paper No. CB(1)54/03-04(01)	-- Consolidated response of the Administration to concerns/ views raised by organizations
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 LegCo Members on 10 June 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)2456/02-03(02)	-- Summary of concerns/views raised by organizations (as at 19 November 2003)
LC Paper No. CB(1)269/03-04	-- Submission from dated 3 November 2003 The Real Estate Developers Association of Hong Kong
LC Paper No. CB(1)271/03-04	-- Submissions from ten "tsos/t'ongs" in Tsuen Wan area
LC Paper No. CB(1)307/03-04(01)	-- Submissions from 12 "tsos/t'ongs" in Tsuen Wan area
LC Paper No. CB(1)307/03-04(02)	-- Submission dated 7 November 2003 from a tso/t'ong in Pat Heung area
LC Paper No. CB(1)307/03-04(03)	-- Submission dated 7 November 2003 from "上水鄉門口村廖新全祖"
LC Paper No. CB(1)336/03-04(01)	-- Submissions dated 10 and 11 November 2003 from two "tsos/t'ongs" in Tsuen Wan area
LC Paper No. CB(1)336/03-04(02)	-- A joint submission dated 12 November 2003 from five "tsos/t'ongs" in Pat Heung area
LC Paper No. CB(1)347/03-04(01)	-- Submissions dated 11 November 2003 from San Tin Rural Committee
LC Paper No. CB(1)347/03-04(02)	-- A joint submission dated 13 November 2003 from five

Action

	"tsos/t'ongs" in Pat Heung area
LC Paper No. CB(1)347/03-04(03)	-- Submissions dated 6 November 2003 from five "tsos/t'ongs" in Pat Heung area
LC Paper No. CB(1)347/03-04(04)	-- Submissions from four "tsos/t'ongs" in Tsuen Wan area
LC Paper No. CB(1)360/03-04(01)	-- Submissions from four "tsos/t'ongs" in Pat Heung area
LC Paper No. CB(1)360/03-04(02)	-- Submissions from six "tsos/t'ongs" in Tsuen Wan area)

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

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

- (a) to review the proposal under clause 11 to allow the Chief Executive in Council (CE in C) to approve some of the amendments proposed by the Town Planning Board (TPB). Members raised the following concerns:
 - (i) although the decision made by the CE in C were subject to judicial review, it might be limited to the procedure for the making of the decision instead of its merit and it would be difficult to call into question the decision itself if the CE in C refused to disclose its deliberations under its confidentiality rule;
 - (ii) unlike Government officials who might attend meetings of the Executive Council, representers were not provided with the opportunity to be heard by the CE in C before the latter made its decision on draft plans. The proposal would deviate further from the principle of natural justice;
 - (iii) in exercising its power under section 9 of the Town Planning Ordinance (TPO), whether the CE in C was bound by section 3 of TPO in that the draft plan should be made "with a view to the promotion of the health, safety, convenience and general welfare of the community" and whether TPB was bound by this objective in the plan making process.

Action

- (b) to advise if there were any precedent cases of judicial review on the decision of the CE in C;
- (c) to advise if there were any precedent cases of judicial review on draft new plans made by TPB;
- (d) to review the proposal in clause 12 to confer the power on the Chief Executive (CE) instead of CE in C to refer an approved plan to TPB for replacement or amendment; and
 - (i) some members considered that the power might be delegated to TPB; and
 - (ii) some members considered that the CE in C should remain the authority to exercise such power which should not rest with the CE.
- (e) to provide a paper to explain the proposal under clauses 13 (section 12A(3)(a)) and 16 (section 16(2)(a)), and to address the following concerns:
 - (i) whether the policy intention was to require an applicant to obtain the consent, or to notify the landowner for amendment of plan and planning permission if the applicant was not the owner of the site concerned;
 - (ii) whether TPB would verify the claim of the applicant that the consent of the landowner had been obtained or the landowner has been notified. If the answer was in the affirmative, please advise how the claim would be verified;
 - (iii) if the answer to (ii) was in the negative, whether TPB would be held liable if the claim was found out to be false;
 - (iv) the circumstances under which prior notice would and would not be given to the landowner concerned in making a draft plan and/or amendment to plan by TPB; and
 - (v) the merit for providing an exemption clause to proposed sections 12A(3) and 16(2)(a) to address cases such as where the application for amendment of plan or planning permission was made by a non-profit making body in the public interest and where the application involved sensitive information.

III. Any other business

Action

4. Members agreed to hold the next meeting on **Tuesday, 2 December 2003, at 10:45 am.**

*(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, two meetings had been scheduled for **Friday, 28 November 2003, at 3:30 pm** (immediately after the House Committee meeting) and **Wednesday, 3 December 2003, at 10:45 am** to continue deliberation of the Bill.)*

5. The meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
11 December 2003

**Proceedings of the sixth meeting of the
Bills Committee on Town Planning (Amendment) Bill 2003
on Thursday, 20 November 2003, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000156	Chairman	Confirmation of minutes of the fifth meeting held on 4 November 2003 (LC Paper No. CB(1)361/03-04)	
000157 - 000529	Administration	Briefing on the consolidated response of the Administration to concerns/views raised by organizations (LC Paper No. CB(1) 54/03-04(01))	
000530 - 000613	Chairman Administration	<u>Consideration of representations</u> Item 8 – Justification for proposal under clause 11 to confer Chief Executive in Council (CE in C) with discretion to accept some amendments to a draft plan proposed by the Town Planning Board (TPB)	
000614 - 003109	Mr Albert HO Ms Emily LAU Mr Abraham SHEK SALA2 Clerk Chairman Administration	Clarification of whether decisions made by the CE in C were subject to judicial review. The following concerns were raised: <ul style="list-style-type: none"> the judicial review might be limited to procedure for making the decision by the CE in C instead of its merits. It would be difficult to call into question the decision itself if the CE in C refused to disclose its deliberations under its confidentiality rule. unlike Government officials who might attend meetings of the Executive Council, representatives were not provided with the opportunity to be heard by the CE in C before the latter made its decision on draft plans. The 	The Clerk to invite the Civic Exchange and the Association of Planning Consultants of Hong Kong to provide further submission on issues/concerns related to judicial review of decisions made by the CE in C

Time marker	Speaker	Subject(s)	Action Required
		proposal in clause 11 would further deviate from the principle of natural justice.	
003110 - 003454	Ms Emily LAU Mr Abraham SHEK Administration Chairman	Precedent cases of judicial review on the decision of the CE in C	The Administration to take action under paragraph 3(b) of the minutes
003455 - 005229	Mr Andrew WONG Dr TANG Siu-tong SALA2 Administration Chairman	Precedent cases of judicial review on draft new plans made by TPB Concern on whether the CE in C, in exercising its power under section 9 of the Town Planning Ordinance (TPO), was bound by section 3 of TPO in that the draft plan should be made "with a view to the promotion of the health, safety, convenience and general welfare of the community" and whether TPB was bound by this objective in the plan making process.	The Administration to take action under paragraph 3(c) of the minutes The Administration to take action under paragraph 3(a) of the minutes
005230 - 005548	Administration	Briefing by the Administration on the legislative intent of section 9 of TPO with regard to the role of CE in C (LC Paper No. CB(1)358/03-04(02))	
005549 - 005705	SALA2 Mr Andrew WONG Ms Cyd HO Chairman Administration	Clarification of the meaning of the sentence "When the plans are finally approved, they will be submitted to this Council for consideration." on page 1 of Annex I to LC Paper No. CB(1)358/03-04(02) Location of documents reflecting the legislative intent of section 9 of TPO with regard to the role of CE in C	
005706 - 005833	Administration	Item 9 – Justification for proposal under clause 12 to confer power on the Chief Executive (CE) instead of CE in C to refer an approved plan to	

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Time marker	Speaker	Subject(s)	Action Required
		TPB for replacement or amendment	
005834 - 011702	Ms Emily LAU Dr TANG Siu-tong Mr Andrew WONG Administration Chairman	Diverse views on whether the power might be delegated to TPB or should continue to rest with the CE in C.	The Administration to take action under paragraph 3(d) of the minutes
011703 - 012235	Administration	Item 10 – Justification for the proposal under clauses 13 and 16 to obtain the consent of or notify the land owner if the applicant for amendment of plan and planning permission was not the land owner of the application site	
012236 - 012252	Dr TANG Siu-tong	Clarification of policy intention to require an applicant to obtain the consent of or to notify the landowner	
012253 - 012746	Mr Andrew WONG Ms Audrey EU Chairman Administration	Concern on whether TPB would verify the claim of the applicant that the consent of the landowner had been obtained or the landowner had been notified Concern on how the claim would be verified and whether TPB would be held liable if the claim was found out to be false	
012747 - 013236	Ms Cyd HO Administration	Implications of the requirement of consent or notification of landowner on amendment of land plan with conservation value	
013237 - 015736	Mr Andrew WONG Administration Chairman	Circumstances under which prior notice would or would not be given to the landowner concerned in making a draft plan and/or amendment to plan by TPB	
015737 - 020136	Mr LAU Ping-cheung Administration Chairman	Feasibility and merit of providing an exemption clause to proposed sections 12A(3) and 16(2)(a) to address cases	The Administration to take action under paragraph

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Time marker	Speaker	Subject(s)	Action Required
		such as the following: (a) where the application for amendment of plan or planning permission was made by a non-profit making body in the public interest; and (b) where the application involved sensitive information.	3(e) of the minutes
020137 - 020156	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
11 December 2003