Bills Committee on Town Planning (Amendment) Bill 2003
Summary of concerns/views raised by organizations[1] – the Administration's Response
(as at 28 January 2004)

	Subject	Organization	Concern / view	Administration's response
	Plan-making process			
	Exhibition of plans			
1.	Proposal to standardize the plan exhibition period for submitting representations, by changing the period for raising objection to amendment to draft plans from three weeks to one month, and to new plans or amendments to approved plans from two months to one month Clauses 6 and 9(b)(i) Sections 5 and 7(2)	HKIA AAP APC HKIS REDA LSHK WWF HKIREA HYK KFBG CA Mr. Edwin Tsang	Object the proposal. Suggest to retain the existing two-month exhibition period for new plans or amendments to approved plans to allow parties concerned sufficient time to make representations or raise objections.	To address the concerns of the deputations, we have proposed to extend the plan exhibition period for both new plans and amendments to plans from one month to two months. Please refer to the paper on "Proposed amendments to the plan-making system under the Bill" (LC Paper No. CB(1)700/03-04(01)) for details. In addition to the statutory requirements under the Ordinance, it has been the established practice to post notice on gazette of statutory plans at various locations including the concerned District Office, Planning Department and the TPB Secretariat. Notices will also be sent to concerned parties such as the Rural Committee and uploaded onto the TPB's Website for public inspection. See response to item 11 in respect of public consultation on amendments to plan made by TPB.

[1] The list of organizations/individuals who have made a submission is at Annex.

	Subject	Organization	Concern / view	Administration's response
		AAP	Appropriate measures should be taken to fast-track administrative procedures for handling representations or objections with a view to expediting the process.	
		LSHK	Suggest to put up more public notices about gazettal of plans and to give direct notification to the affected land owner in appropriate cases.	
		Mr Ruy BARRETTO S.C.	Time reduction accepted only if quality of information and consultation process is significantly improved.	
	Making of representations			
2.	Proposal to accept both supportive and adverse representations relating to draft plans and amendments to draft plans Clauses 7 and 9 Sections 6 and 7	APC WWF CA	Support the proposal to enable Town Planning Board (TPB) to consider broader public views.	Support noted.

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3.	Proposal to make available representations for public inspection and comments for three weeks after expiry of exhibition period Clauses 7 and 8 Sections 6 and 6A	HKIS APC	Consider the proposed time limit too short.	Please refer to the paper on "Proposed amendments to the plan-making system under the Bill" (LC Paper No. CB(1)700/03-04(01)). As the public will have opportunity to study the draft plan or amendment to plan during the two-month publication period, the provision of a three-week period for commenting on the representations made on the plan or amendment is considered reasonable. Apart from the 3-week period allowed for submission of comments, "commenters" will be invited to the TPB hearing where they can substantiate their cases.
		KFBG	Notices with a description of the plan or amendments should be prominently posted on or near the site and in the Gazette and the TPB's website. Representations and comments received should be made available for public inspection until the planning process is completed.	The Bill provides that notice to invite public comments on representations received by TPB shall be published in newspaper as there may be a large number of representations received in respect of a draft plan and representations may not necessarily relate to one specific site/location. As an administrative measure, the notice will also be uploaded onto the TPB's website and posted at the Planning Department and the concerned District Office. A general description on the subject of representations and the amendments proposed by the "representers" will also be included in the Notice for public inspection. Representations and comments received shall be available for public inspection upon

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4.	Proposal to allow "representers" to furnish TPB with further information to supplement representations within four weeks upon expiry of the plan exhibition period Clause 8 Section 6B	REDA	Consider the proposed period too short. Suggest to set the time limit at four weeks before the date of hearing by TPB.	To allow sufficient time for the "representers" to prepare for the representations and further information to supplement the representations, we have proposed to increase the plan exhibition period from one month to two months. Please refer to the paper on "Proposed amendments to the plan-making system under the Bill" (LC Paper No. CB(1)700/03-04(01)) for details.
		TPB	No explicit provision for allowing comment on further information and for "representers" to respond to comment before hearing. Reasonable time be allowed for "representers" and "commenters" to respond to each other.	
		KFBG	Further information to supplement representations should be made available for public inspection until the planning process is completed.	

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	Consideration of representations			
5.	Proposal to adopt a single hearing process to consider representations received by TPB Clause 8 Section 6D	HKIA HKIS APC HKIP REDA LSHK HYK LBAC CA	Object the proposal which will deprive affected parties from raising objection to amendments made by TPB to meet another objections.	To address the concerns of the deputations, we have proposed a two-stage plan-making system in which a second hearing will be held to consider objections to any amendment proposed by the TPB after the first hearing to meet representations. Please refer to the paper on "Proposed amendments to the plan-making system under the Bill" (LC Paper No. CB(1)700/03-04(01)) for details.
		APC HKIA REDA LSHK	Suggest to retain the present preliminary consideration of objections by TPB in the absence of objectors and procedures for further objection to proposed amendments to draft plans to meet objections.	
		HKIP	Suggest to retain the preliminary consideration of objections by TPB.	
		REDA LSHK	Suggest to hear representations in public.	The Bill provides for any person to attend the TPB meeting and to be heard as a "representer" or "commenter". This provides scope for more public participation in the plan-making process. In order to further enhance transparency, we are considering to open up the TPB meetings. In gist, the TPB is considering to open meetings (except for confidential items) for consideration of new plans or amendments to plans, for hearing of

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				representations and comments, for consideration of applications for amendments of plans, planning permission and reviews of planning applications. While the presentation/hearing part of the meetings will be opened, the deliberation part of the meeting will continue to be held in private. But in order to keep the public well informed of the deliberations of the TPB in arriving at a decision, the TPB has agreed that minutes of its meetings can be released for public information. Please refer to the Panel paper on "Stage two amendments to the Town Planning Ordinance" (LC Paper No. CB(1)813/03-04(10)) for details.
		KFBG	All the decisions made and representations or comments withdrawn should be accurately reflected in the minutes of TPB's meetings. Decision should be communicated to relevant parties. Minutes should be circulated for approval by all in attendance.	All relevant materials including representations made during the hearing will be taken into consideration by the TPB before it makes a decision on the representations. The minutes of meeting, which serve as a summary record of the salient points made during the meeting, will be circulated to TPB members for comments before confirmation. The decision of the TPB on representations together with the relevant minutes of meeting will be sent to concerned parties (i.e. "representers" and "commenters").

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6.	Proposal to reduce the processing time of objections by TPB from nine to six months, after expiry of plan exhibition period Clause 10 Section 8(2)	HKIS	Support the proposal on condition that the two-month exhibition period for draft plans or amendments to draft plans be retained.	To address the concerns of the deputations, we have proposed a 2-stage plan-making system in which the processing time of representations will be retained as nine months. Please refer to the paper on "Proposed amendments to the plan-making system under the Bill" (LC Paper No. CB(1)700/03-04(01)) for details.
		HKIA REDA APC	Object the proposal as it would allow less time to prepare and make comments and to be heard by TPB.	
		AAP LSHK UW	Reduction of processing time should be achieved by streamlining existing administrative procedures and not at the expense of the time for making comments or hearing of representations.	
		CEx	Query whether the proposal would enhance openness, transparency, independence and public participation.	
		Mr Ruy BARRETTO S.C.	Time reduction accepted only if quality of information and consultation process is significantly improved	
7.	Proposal to reduce the extension period from six months to three months for considering representations by TPB that may be granted by the Chief Executive (CE) Clause 10(b)(vi) Section 8(2)	WWF	Support the proposal as it will expedite the plan-making process	In the newly proposed 2-stage plan-making system, the extension period will be remained as six months. Please refer to the paper on "Proposed amendments to the plan-making system under the Bill" (LC Paper No. CB(1)700/03-04(01)) for details.
		REDA CA	Object the proposal as it would allow less time to prepare and make comments and to be heard by TPB	

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		KFBG	See no material advantage	
8.	Proposal to confer CE in C with discretion to accept or discard proposed amendments by TPB Clause 11 Section 9(1A)	TPB	Consider it important for CE in C to take into account planning implications of partially accepting any of the proposed amendments by TPB.	Please refer to the paper on "Proposed amendments to the plan-making system under the Bill" (LC Paper No. CB(1)700/03-04(01)). The decision of the CE in C is judicially reviewable (please refer to the paper on "Follow-up actions arising from discussion at the meeting on 20 November 2003" (LC Paper No. CB(1)678/03-04(03))).

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		CEx APC	Concern on the rationale for the proposal and whether decisions made by CE in Council are subject to judicial review (JR) In response to the Administration's advice that the CE in Council's decision is judicially reviewable, the following points are raised: - in JR, only the decision-making process could be challenged but not the merits of the decision; - even if matters of substance could be challenged, it is futile because meetings of CE in Council are held in camera and discovery of documents are not allowed as discussions are privileged; and - TPB should be the only body to make a decision on objections because it is the only body to hear objections.	
		LBAC	Concern that no time limit has been set for the CE in Council to consider plan or amendments of plans.	The CE in C will normally consider the plans within a short period of time. The inclusion of a statutory time limit for CE in C to consider the plans is not preferred because it would limit flexibility to deal with exceptional cases.

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		REDA (in response to LC Paper No. CB(1)2527/02-03 provided by the Administration)	Consider the Administration's response misleading. The following concerns are raised: - the proposal provides CE in C with a power to arbitrarily over-ride TPB's decision, bypassing the public consultation process; - the proposal provides the CE in C with a function in the plan making process which is currently the TPB's responsibility; and - the proposal may cause delay and uncertainty in the plan making process as there is no time limit for CE in C to make a decision on the draft plan.	Please refer to the paper on "Proposed amendments to the plan-making system under the Bill" (LC Paper No. CB(1)700/03-04(01)).
9.	Proposal to empower CE instead of CE in Council to refer an approved plan to TPB for replacement or amendment Clause 12(a) Section 12(1A)	WWF	Support the proposal	Support noted.

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		CA	Concern that CE is given too much power and the proposal may weaken the independence and impartiality of TPB	Reference back of approved plan is only a procedural step to allow the TPB to make amendments to an approved plan or to prepare a new plan to replace the approved plan. As planning is an on-going process, it is not uncommon for the TPB to initiate amendments to an approved plan to meet changing needs. The transfer of power from CE in C to CE is to expedite the plan-making process. It is a step to streamline the process only. The final plan approval authority remains to rest with the CE in C.
		KFBG	Prior notice to the parties concerned and consultation should be made before the CE in Council exercises its power to revoke any new plan upon the request of TPB	The intention of this provision is not to revoke an approved plan to render the planning area concerned not subject to any planning control. The revocation power is exercised very sparingly. When a new plan is prepared to replace the one being revoked, public consultation will be conducted in accordance with established procedures.

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	Planning approval process			
10.	Proposal to obtain the consent of or notify the land owner if the applicant for amendment of plan and planning permission is not the land owner of the application site Clauses 13 and 16 Sections 12A(3) and 16(2)(a)	HKIP LBAC	Support the proposal	The intention of the proposal is to ensure that affected owner would be made aware of any proposed development on his land so that he can comment on the application if he so wishes. The Bill requires the applicant to either obtain the owner's consent or notify the owner. On the other hand, publication of the application by the TPB serves the purpose of notifying the neighbourhood who are likely to be affected by the proposed development such that affected persons can submit comments on the application for the TPB's consideration together with the application. A description of the particulars of the application and a location plan showing the application site will be attached to the notice of application for public inspection. The full application including all supporting documents shall be made available for public inspection until the application is considered by the TPB. It is noted that there would be difficulties in identifying and notifying owners in some cases due to multiple ownership or absentee owners. The requirement would have been met if the applicant can prove that he has taken reasonable steps to notify the owners. This could be clarified/elaborated and promulgated in the form of TPB guidelines.
		HKIA	Support the proposal but acknowledge problem of multiple land ownership. Concern whether Government will notify landowners anyway and if so, notification will be duplicated.	
		HYK	Support the proposal. Where the land is owned by Tso/tong, consent of manager of tso/tong must be obtained. Suggest to include in application and notice information about the land and applicant's particulars. A mechanism should be in place to give land owners a right to appeal in the event that an application with long term planning effect has not been brought to their attention.	

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		CA	Support the proposal but concern that non-governmental organizations may lack resources in conducting land searches and identifying the relevant land owners.	
		APC REDA	Object the proposal. Problems identified include multiply ownership, absentee owners and deceased owners and the possibility of corruption. Adequate opportunities for public consultation have been provided under the Bill.	
		HKIS	Object the proposal as it will be costly and time-consuming and TPO mainly deals with land use	
		ANTOSO	Object the proposal due to problem of multiple ownership. Consider that posting notices near the site or publishing notices in newspapers is sufficient	
		WWF AAP	No need to obtain consent of land owners of the application site. Notification of land owners suffices.	

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		AAP	Need to clearly specify the meaning of "all reasonable steps" taken to notify land owners (sections 12A(5)(ii) and 16(2B)(b)(iii))	
		KFBG	Consider notification of land owners suffices. Propose that notice to the land owners must be accompanied by a description of the application and the plan together with an offer to make available any relevant surveys and reports upon request. Also need to specify "all reasonable steps" have been taken to notify the land owners and what constitutes "all reasonable steps"	
		LSHK	Suggest to give notice by TPB where the applicant other than the land owner applies for amendment	
		LSHK REDA APC ANTOSO	All procedures in clause 13 should apply to applications by Government.	Planning applications and applications for amendment of plan submitted by Government departments would be subject to the same statutory requirements.

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		Mr Ruy BARRETTO S.C.	Suggest to give advance notice to all persons who are obviously likely to be affected by development permission before formal application is lodged; to issue immediate direct notice after the application is made; to specify impact of the application; and to make available relevant supporting documents upon request	We have proposed a two-stage notification system in the Bill. Whilst the applicant is required to obtain the consent of or notify the owner of the site before the submission of the application, the TPB is required to publish the applications for public comments. See also response to item 14 on publication of application by TPB.
11.	Proposal to make available applications for amendment of plans for public inspection and comments Clause 13 Sections 12A(6) to (11)	CA Mr. Edwin Tsang	Support the proposal	Support noted.
		REDA LSHK	Proposed provisions should apply to amendments proposed by TPB which will have significant negative impact on private land ownership.	For amendments of plans or new plans initiated by TPB, they are usually preceded by planning studies and associated public consultation. It is also the current practice to consult the relevant District Council and others such as Rural Committees and local residents prior to the publication of a draft plan or before major amendments to a plan are proposed. Under the Ordinance, TPB has a statutory duty to prepare plans to promote health, safety, convenience and general welfare of the community (please also refer to the paper on "Follow-up actions arising from discussion at the meeting on 20 November 2003" (LC Paper No. CB(1)678/03-04(03))).

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				At present, there is no provision in the Ordinance that caters for amendment of plans initiated by members of the public. Our proposal to make an express provision for application for amendment of statutory plan is to facilitate amendment of plan initiated by members of the public other than by TPB. Hence, it is necessary to inform the affected land owners and the public of such amendment so that TPB can take into account the public's view in considering whether to amend the plan.
		HKIREA	Suggest to require public notice procedures only on proposed uses which may be offensive and affect neighbours	See response to item 14 on publication of all planning applications.
		KFBG	Representations and comments received should be made available for public inspection until the planning process is completed	Submissions made by the applicant and comments, if any, shall be made available for public inspection until the application is considered by the TPB.
12.	Proposal to allow applicants to attend TPB meetings and be heard at the meetings Clause 13 Section 12A(16)	HKIA WWF	Support the proposal	Support noted.

	Subject	Organization	Concern / view	Administration's response
		HKIP KFBG Mr Ruy BARRETTO S.C.	Suggest to allow members of the public who have submitted comments other than the applicants to present view to TPB	The provision to invite public comment on applications and that the TPB shall take into account comments received are steps to enhance openness of the planning system. The "commenters" would not be invited to attend the TPB meeting at this stage. However, if the proposed amendment to plan is subsequently accepted and published according to the statutory provisions, the public will have the opportunity to submit representations/comments to the TPB and attend the TPB hearing.
		REDA LSHK	Applicants should be allowed to present applications for planning permission to TPB (section 16(3))	The s.16 submission should be adequate for the TPB to make an informed decision in the absence of the applicant. The review process under section 17 has allowed a reconsideration of the decision taking into account representation made by an applicant at the hearing. Besides, in view of the long agenda of TPB meetings and that over 70% of the applications made under section 16 in year 2002 were approved in the first instance, allowing all applicants to make representation to the TPB would affect the efficiency of the TPB's operation.

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				Please also refer to the paper on "Statistics on planning applications and impacts on meeting time if the applicants or the applicants and "commenters" are allowed to attend Town Planning Board meetings" (LC Paper No. CB(1)858/03-04).
		HKIP	Landowners whose properties are within the boundary of development proposals should be allowed to be heard by TPB	If land owners have any comment on the application, they can submit them to the TPB. The comments shall be taken into account by the TPB in considering the application. Please also refer to the paper on "Statistics on planning applications and impacts on meeting time if the applicants or the applicants and "commenters" are allowed to attend Town Planning Board meetings" (LC Paper No. CB(1)858/03-04).
13.	Proposal to allow provision of further information relating to applications for amendment of plans and planning permission Clauses 13 and 16 Sections 12A(12), (13), 16(2I) and (2J)	APC REDA LSHK ANTOSO	Concern about delay caused by new restrictions on provision of further information as the application shall be regarded as received when the further information is received.	The intention of the requirement to publish the application again if further information is submitted is to allow the public to have the chance to inspect and give comments on the further submission.

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				In view of the concern about possible delay due to the submission of further information, we are prepared to consider a more pragmatic approach of exempting some of the further information submitted to the TPB which does not have a significant impact on the substance of the planning applications from the requirement for publication and hence will not have the effect of "re-starting theclock". Please refer to the paper on "Submission of further information relating to applications for amendments of plans and planning permissions" for details (LC Paper No. CB(1)809/03-04).
		KFBG	Consider late addition of information unacceptable if it avoids timely public consultation. Any material changes should lead to the withdrawal of the application and the submission of a new application. Same comments apply to amendments to permissions in respect of plans (section 16A) and review applications (section 17)	The provision allows flexibility for an applicant to submit further information to substantiate or clarify particulars included in the application. Under the Bill, the further information received, if accepted by the TPB, shall be published for public inspection and the public can forward comments within three weeks after the publication of the further information. Also, the Bill requires that the further information should not result in a material change of the nature of the application.

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14.	Proposal to make available applications for planning permission for public inspection and comments Clause 16 Sections 16(2C) and (2F)	HKIP WWF HKIA APC CA Mr. Edwin Tsang	Support the proposal	Support noted. In addition to the statutory requirement of posting site notice or advertising in newspaper, the notice will also be uploaded to TPB's Website for inspection by the general public. Information related to a site such as any previous applications and objections in relation to the site can be found in the TPB's website. Submissions made by the applicant and comments, if any, shall be made available for public inspection until the application is considered by the TPB. Notwithstanding the new publication requirement, the TPB will still be required under the Ordinance to process planning applications within 2 months i.e. same as present.
		WWF KFBG	Suggest to upload all applications for planning permission and amendments of plans on the website of TPB for public inspection	
		KFBG Mr Ruy BARRETTO S.C.	Suggest to make available previous applications, representations and decisions in respect of the same site for public inspection	
		Mr Ruy BARRETTO S.C	All relevant information should be available for inspection until the while process is completed	
		HKIA HKIS	Support the proposal but concern about possible delay and uncertainty to development	
		REDA LSHK	Only contentious applications for planning permission should be publicly notified for comments. TPB should specify classes of uses which would and would not require public notification.	The planning application system allows great flexibility to cater for the changing economic and market situations. The Column 2 uses in land use zones capture a very wide range of uses. The compatibility and suitability of a particular Column 2 use at a particular locality need to be considered on a case-by-case basis taking into account local views.

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		HKIREA	Suggest to require public notice procedures only on proposed uses which may be offensive and affect neighbours	Due regard has also to be given to the increasing demand for a more open and transparent planning application system. It is not appropriate nor practical to define "bad neighbour" or "contentious" uses.
		ANTOSO	Concern about the extent of information to be disclosed, in particular about commercially sensitive information. Proposal may generate unjustified objections from competitors and provide a loophole for corruption. Doubt whether consent of the applicants will be sought before disclosure of information.	Under the Bill, all information submitted by an applicant would be made available for public inspection. The requirement will be clearly stated in the application form and guidance notes. The information material to the consideration of an application by the TPB is the nature of use, the broad development parameters and the assessment of the impacts arising from the proposed development. Such information should not involve high commercial sensitivity.
15.	Proposal to exempt certain minor amendments to planning permission from application Clause 17 Section 16A	HKIA	Support the proposal but a clear definition of minor amendments is required. Practice Notes may be issued in this regard	Class A and Class B amendments will be determined by the TPB and promulgated by notice in the Gazette. The lists of minor amendments will also be uploaded onto TPB's Website. General public will be well aware of the list of amendments to be processed under this new provision. The amendments concerned will be minor in nature and will not be substantially different from the application for which planning permission has been given.
		WWF	Have reservation on the proposal unless it can be shown that the proposed exemption will not compromise the right of the public to make comments on planning applications	

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		KFBG Mr Ruy BARRETTO S.C.	All proposed minor amendments to planning permission should be subject to notice, consultation, comment and hearing	
		APC REDA	The clause is badly worded. The proposal may be more complex and time-consuming than the existing arrangement	The provision is intended to further streamline the planning application system by exempting certain minor amendments to permission previously granted (Class A amendments) from further application. Applications for minor amendments (Class B amendments) under this new provision would continue to be processed by a public officer under delegated authority. The process involved will not be more complicated than the existing arrangement.
		REDA	The right to apply for minor amendments should be applied to anyone as approval runs with the land and not the owner (Section 16A(2)) Further information should be permitted at any time without delaying the consideration of the application (Section 16A(6)) Applicant should have a right to review as TPB may impose new conditions (Section 16A(10))	It is agreed that planning permission runs with land. Any person who has the right to develop a particular piece of land may effect the development in accordance with a permission granted for the development. Approval for amendments to a previous permission will supersede that previous permission. If a person who is not the original applicant wishes to model his application on a development proposal covered by a previous permission, he should submit a fresh application under section 16 for consideration by the TPB.

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			"Commenters" should be notified of any changes (section 16A(10))	Further information submitted is required to be circulated to concerned departments for comments. However, as the provision only involves the processing of minor change to a previous permission, it is expected that further information is generally not required. The Bill has already included a provision (under s.17) for review of decision made under s.16A. The provision of s.16A aims at streamlining applications for minor amendments to approved scheme. The scope of minor amendments will be limited to the list determined by the TPB and promulgated by notice in the Gazette. The list will also be uploaded onto TPB's Website. As such, applications for minor amendments will not be published again for public comments and thus there will not be any "commenter".
	Review of applications			
16.	Proposal to make available applications of review for public inspection and comments Clause 18 Sections 17(2C) and (2D)	APC HKIS REDA LSHK	Object the proposal as the proposed section 16 has provided opportunity for public comment on applications for planning permission	The intention of this provision is to allow the public to have the chance to inspect and give comments to the submission made by the applicant to substantiate his case. Since the review will still be considered by the TPB within 3 months, the publication requirement would not delay the consideration process, but would help enhance public participation in the process.

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		REDA	Consider section 17(2H)(c) prevent submission of further information without delaying consideration of review Suggest to allow submission of additional information up to four weeks before hearing by TPB	The intention of the requirement to publish the application again if further information is submitted is to allow the public to have the chance to inspect and give comments on the further submission. But in view of the concern about possible delay due to the submission of further information, we are prepared to consider a more pragmatic approach of exempting some of the further information submitted to the TPB which does not have a significant impact on the substance of the review from the requirement for publication and hence will not have the effect of "re-starting theclock". Please refer to the paper on "Submission of further information relating to applications for amendments of plans and planning permissions" (LC Paper No. CB(1)809/03-04) for details.
		HKIS	Suggest to set up independent review board to consider review applications to avoid possible conflict of interests	The review mechanism under the existing Ordinance is to provide for a review of the decision on the planning application after hearing the representation made by the applicant. An applicant can further appeal to the independent Town Planning Appeal Board if he is aggrieved by the decision of the TPB upon review.
		KFBG	Suggest that both the applicants and	The proposal in the Bill to allow the

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			"representers" should have equal right of hearing by TPB and appeal to the Town Planning appeal Board	submission of comments on planning application and that TPB shall take into account comments received is a big step forward to enhance openness and public participation in the planning application system.

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				Under the Bill, application for review shall be published again for public comments for three weeks and comments received (if any) shall be taken into account by the TPB in consideration of the review. Besides, to enhance transparency, we are considering to open up the TPB meetings. Please refer to our response in item 5 above. Please also refer to the papers on "Statistics on planning applications and impacts on meeting time if the applicants or the applicants and "commenters" are allowed to attend Town Planning Board meetings" (LC Paper No. CB(1)858/03-04) and "Planning application systems in the United States of America and the United Kingdom" (LC Paper No. CB(1)678/03-04(04)).
		APC KFBG Mr. Ruy BARRETTO S.C.	Suggest to open TPB meetings for considering review applications to the public	To enhance transparency, we are considering to open up the TPB meetings. Please refer to the Panel paper on "Stage two amendments to the Town Planning Ordinance" (LC Paper No. CB(1)813/03-04(10)) for details.
		Mr Ruy BARRETTO S.C.	To prevent abuse of process, an applicant should be prohibited from pursuing two similar applications at the same time	There is no overriding reason not to allow an applicant to submit two similar applications at the same time if an applicant wishes to provide an alternative to the TPB for consideration. Each application will be considered on its own merits.

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	Operation of TPB			
17.	Proposal to allow TPB to transact any of its business by circulation of papers Clause 5 Section 2B	HKIS HYK Mr. Edwin Tsang	Object the proposal since issues relating to town planning and land uses have impact on welfare of people and should be fully deliberated at TPB meetings	We have no intention for TPB to decide on planning applications or representations to draft plans merely by circulation of papers. TPB is subject to the provisions of the Ordinance in conducting hearings for representations and reviews and in considering planning applications. The proposal is only to allow TPB to transact its business by circulation of papers when it is desirable to do so, such as for those routine and procedural matters.
		KFBG	Support the proposal	Support noted.
18.	Proposal to allow TPB to delegate to its committees powers and functions relating to consideration of applications for amendment of plan, amendment to planning permission and review applications under section 17 of the Town Planning Ordinance (TPO) Clauses 3 and 4 Sections 2(5)(a) and 2A	HKIA AAP WWF	Support the proposal but stress on the need for a reasonable size and representation of committees.	Further delegation of authority to the committees under the TPB will improve efficiency of the TPB's operation and allow the TPB to focus on issues of wider implications. Formation and operation of committees under the TPB will be determined by the TPB and promulgated in the TPB Procedure and Practice.
		WWF	Suggest to establish a "Conservation Land Use Committee" to consider applications and matters relating to land use conflict between conservation and development	Under the current practice, the TPB has been setting up ad hoc working groups to study special issues such as the Bill, Urban Design Guidelines etc. If considered necessary, the TPB can also set up working groups to discuss conservation issues. There is no need for legislative amendment.

	Subject	Organization	Concern / view	Administration's response
		HKIS	Object the proposal, in particular in relation to consideration of representations and review applications under section 17	See other response to the same item on delegation of authority to committee to improve efficiency. In respect of consideration of applications for amendment of plan and planning permission and representations, the Bill makes no change to the existing delegation of TPB's power in that planning applications will continue to be processed by the Planning Committees and representations will be heard by the Objection Hearing Committee. For application for minor amendments under the new s.16A, the scope of minor amendments will be clearly confined within the list of amendments (Class A and Class B amendments) agreed by the TPB and promulgated by Notice in the Gazette. General public will be well aware of the list of amendments to be processed under this provision. Same as the existing Ordinance, Planning Committees or public officer under the delegated authority of the TPB may process such applications in accordance with TPB's guidelines.
		KFBG	Object the proposal, in particular in relation to amendment of plans (section 12A) and amendments to permissions (section 16A)	
		APC REDA LSHK Mr Ruy BARRETTO S.C.	Object that committees have delegated authority to consider review applications under section 17, which should be considered by the full TPB	
		HKIA	Committee members must attend meetings to reach a decision. Written decision of absented members should not be accepted.	There is no provision in the existing Ordinance or the Bill that allows written decision of absented TPB members.

	Subject	Organization	Concern / view	Administration's response
19.	Proposal to allow TPB to delegate its power to a public officer 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 TPO Clause 3 Section 2(5)(b)	HKIA	Support the proposal but need to issue Practice Notes or guidelines on acceptance of further information and provision of appeal against decision of public officers.	The intention of delegation to public officer is to further streamline internal procedures. The Director of Planning will be empowered to determine acceptance of further information in support of applications and continue to consider application for minor amendments to permission previously granted by the Board. TPB Guidelines or practice notes will be promulgated to set out the scope of delegation and detailed guidelines to be followed by the public officer in making a decision under the delegated authority.
		HKIS WWF KFBG Mr Ruy BARRETTO S.C.	Object the proposal as it may give rise to conflict of interest and violate the principle of openness. Public officers should not have power to permit minor amendments	
	Enforcement control against unauthorized developments not permitted under TPO			
20.	Proposal to confine terms requiring compliance under an enforcement notice to discontinuance of an unauthorized development Clause 20 Section 23	HKIA WWF KFBG	Support the proposal to stop possible abuse of the provisions under the existing law by submission of a planning application and instituting the associated review and appeal process to delay the prosecution proceedings	Support noted.
		KFBG Mr Ruy BARRETTO S.C.	Suggest to include provisions to strengthen enforcement against unauthorized development on agricultural land	One of the key objectives of the Bill is to strengthen enforcement action against unauthorized developments in the rural New Territories.

	Subject	Organization	Concern / view	Administration's response
		HKIREA	Support the proposal but suggest to allow temporary uses to meet local needs.	Under the existing statutory plans, application for temporary developments can be submitted under s.16 of TPO for consideration by the TPB.
		HKIS	Support the proposal on condition that private rights are respected and wastage of investment is minimized.	Support noted.
		CA	Support the proposal but consider that it should be extended to cover statutory plans outside development permission area	Land uses in the urban areas and new towns are much more mixed and complicated due to the high density development and the highly intermixed uses of buildings. There are technical difficulties yet to be resolved if enforcement power is to be extended to cover these areas. Moreover, the demand on staff resources would be enormous. This issue would be examined in Stage three amendment. Meanwhile, we would continue to rely on the lease conditions, the building plan system and the various licensing systems to exercise enforcement control.

	Subject	Organization	Concern / view	Administration's response
		HYK	Have reservation on the proposal. As applications may be approved, suggest to provide a grace period or impose fines to deal with unauthorized developments, pending decision of TPB on planning applications and to set performance pledge on the time to process applications for change of land use.	The provision is to plug a loophole in the existing Ordinance whereby some notice recipients are using submission of application to abuse the enforcement system. Based on a High Court's judgment [SJ v. Lain Fung Transportation Co. Ltd.] in 1998, to apply for planning approval by the notice recipient is regarded as a reasonable step to comply with the notice issued under s.23(1) and hence is a statutory defence under s.23(9)(a). As a result of the above judgment, no prosecution could be instituted even if the notice has not been complied with after its expiry. This results in continuation of unauthorized developments leading to prolonged environmental problems and nuisance in the rural New Territories. Under the Bill, there is no change to the existing practice that there would still be time allowance for compliance with the notice before prosecution action is instituted.
		ANTOSO	Proposal will drive open storage operators out of business. Suggest to provide a grace period for discontinuance of unauthorized developments	

	Subject	Organization	Concern / view	Administration's response
21.	Proposal to allow the Planning Authority to enter private land other than domestic premises to ascertain whether there are matters constituting unauthorized developments, and to serve notice to obtain information, with failure to comply with the notice constituting an offence Clause 19 Section 22	HKIA HKIS	Support the proposal	Support noted.
		KFBG	Support the proposal but suggest to require landowners to install and maintain some monitoring devices for evidence collection and to ensure compliance	We have already included a new provision in the Bill for obtaining information by notice. Non-compliance of the notice requiring provision of information would constitute an offence.
22.	Proposal to allow the prosecution not necessary to prove certain matters in relation to offences concerning unauthorized developments Clause 20 Section 23(9A)	HYK	Strongly object to the proposal as it violates the principle of fairness	The offence in question is non-compliance of notice, i.e. the alleged matters constituting the unauthorized development (UD) have not been discontinued by the specified date. In order to combat the proliferation of UD effectively, the burden of proof on the part of the prosecution in prosecuting an offence of non-compliance of notice should not be unduly onerous. The new s.23(9A) is to expressly spell out the legislative intent that it is not the burden of the prosecution to prove beyond reasonable doubt that the relevant matters in question constitute an UD. Notwithstanding the new s.23(9A), it remains the responsibility of the prosecution to prove beyond reasonable doubt the following elements of the offence:

	Subject	Organization	Concern / view	Administration's response
				(a) the opinion of the Planning Authority that there is/was UD was formed reasonably and in good faith; (b) the notice was validly served; and (c) the requirement specified in the notice had not been fulfilled by the date specified. The defendant is, on the other hand, provided with a statutory defence under the existing s.23(9) to prove on a balance of probabilities the contrary, i.e. the matters specified in the notice are not UD. Besides, it is difficult for the prosecution to prove an UD beyond reasonable doubt in some cases, especially for UD in covered structures. On the other hand, it is reasonable to expect the defendant to prove otherwise as the relevant facts should be within the knowledge of the defendant. This is a true defence provided to the defendant under the Ordinance.

	Subject	Organization	Concern / view	Administration's response
23.	Proposal to expressly provide that managers of a clan, family or t'ong shall be regarded as land owners to be liable to offences in relation to unauthorized developments Clause 2(a) Section 1A	Please see LC Paper No. CB(1)678/03-04(02).		This is to clarify the existing legal position. According to the New Territories Ordinance, the manager of "Tso/Tong" has full power to dispose of or in any way deal with the land as if he were the sole owner. On this basis, the Court of Appeal ruled on a planning enforcement case [AG v. Lam Mei Chai] in 1996 that managers of "Tso/Tong" should be regarded as land owners and responsible for the unauthorized use of land. Under both the Town Planning Ordinance and the Bill, prosecution against "Tso/Tong" managers would only be instituted after they have failed to take all reasonable steps to comply with a statutory notice. The Authority is not empowered to take direct prosecution action against any manager unless his "Tso/Tong" is also the concerned UD operator.

	Subject	Organization	Concern / view	Administration's response
	Recovering costs for processing planning applications			
24.	Proposal to enable the Secretary for Housing, Planning and Lands to prescribe fees by regulation to recover the costs for processing applications for amendment of plan, planning permission and amendment of planning permission Clause 14(c) Section 14(2)	HKIA REDA LSHK	Support the proposal in principle but concern about the level of fees	The proposal is in line with the Government's user-pay principle to charge all public services on a full cost recovery basis. Fee schedule will be set out in subsidiary legislation subject to negative vetting by LegCo. Cost of services will be worked out based on streamlined procedures. Under the Bill, many proposals (involving Class A amendments to approved schemes) will be exempted from further planning applications. In parallel, the TPB is gradually amending all statutory plans to the effect that some minor applications and change of use within a broad use term will be exempted from planning applications.
		WWF HYK	Need to justify cost recovery principle. Fees should be reasonable and accepted by the public.	
		HKIS	Concern about additional cost to development proposal which may discourage investment by small developers. Suggest to fix fees at different rates depending on scale and complexity of applications.	
		HKIA KFBG CA	Suggest to exempt payment of fees for non-profit-making or charitable organizations and where the proposed land use is for public benefit. HKIA should be consulted on details of fees.	We may consider adding a provision in the subsidiary legislation for waiver of fee on a case-by-case basis.

	Subject	Organization	Concern / view	Administration's response
		ANTOSO	Suggest to exempt open storage operators from payment of fees as they run small businesses and planning permission is often for a short period of time	See other response to the same item on level of fee.
		REDA	Query why Government departments should be exempted from payment of fees (section 14(5))	The intention of the provision is to recover the administrative costs arising from processing applications. As the cost and revenue involved come from and go to the same account, it is not necessary for Government departments to pay for the application fee.
	Others			
25.	Statutory effect of draft plans	TPB	Developers could proceed immediately with a development provided that it conforms to the zoning of the site, thus pre-empting decision of TPB and Chief Executive in Council on objections.	The statutory effect of a draft plan is necessary to ensure effective planning control. If a draft plan does not take immediate effect, developments which can take place during the period between publication and approval of the draft plan will easily nullify the proposals of the draft plan. Under the existing practice, the TPB would normally defer decision on a planning application if the site is subject to an unresolved objection in order to avoid pre-empting its consideration of the objection and ExCo's decision on the draft plan.

	Subject	Organization	Concern / view	Administration's response
				In the 2000 Town Planning Bill, we have tried to introduce the concept of "interim development control" whereby the TPB and the Building Authority shall withhold approval of planning applications and building plans where the application site is covered by a new draft plan or draft amendment plan which is under exhibition or is the subject of an adverse representation and the CE in C has not yet decided on the concerned draft plan and the adverse representation. However, there are grave public concerns that it would unduly freeze development. Further consideration by the Administration and consultation with stakeholders on the issue are required in Stage Three of the amendment exercise.
26.	Scope of application of the Bill	REDA LSHK CEx	Planning procedures should be equally binding on the Government and the private sector.	Planning applications and applications for amendment of plan submitted by Government departments would be subject to the same statutory requirements. See response to item 11 in respect of amendments initiated by the TPB.

	Subject	Organization	Concern / view	Administration's response
27.	Stages of amendments to TPO	CEx APC REDA HKIA HKIS AAP HKIREA KFBG LSHK	Suggest that fundamental issues such as independent and transparent operation and composition of TPB should be dealt with first	Our intention is to commence the second stage amendments immediately after completion of Stage One amendments. The detailed scope of the Stage Two amendments would be determined upon consultation with stakeholders. As the Administration and the TPB will need more time to further deliberate on issues relating to the operation and composition of the TPB, our intention is to examine these issues in the Stage Two of the amendment exercise. Please also refer to the Panel paper on "Stage two amendments to the Town Planning Ordinance" (LC Paper No. CB(1)813/03-04(10)).
		HYK	Compensation issue which has been outstanding for many years is not covered by the Bill.	A separate paper on compensation has been submitted to LegCo (please refer to the Panel paper on "Issues raised by Councillors of Heung Yee Kuk on 10 June 2003" (LC Paper No. CB(1)2520/02-03(01))).
		HKIS	Compensation for planning blight is not addressed by the Bill.	

	Subject	Organization	Concern / view	Administration's response
		HKIP	Suggest to include designation of Special Design Area (SDA) in Stage one amendments and Stage Three amendments in Stage Two to expedite the amendment process	There were divergent views regarding the designation of SDA (an area of architectural, archaeological, cultural or historical interest), ESA (an area which is environmentally sensitive to development or adjoins existing or potential pollution sources) and DD (development which may constitute a hazard to the health or safety of the public, or result in an adverse environmental impact) during the consideration of the 2000 Town Planning Bill. The proposals would be examined in Stage Two amendments subject to further consultation with concerned parties and stakeholders. Meanwhile, TPB can incorporate design and environmental requirements in the Notes of specific zones if considered necessary. Please also refer to the Panel paper on "Stage two amendments to the Town Planning Ordinance (LC Paper No. CB(1)813/03-04(10)).
		WWF	Suggest to deal with issues relating to SDA, Environmentally Sensitive Areas (ESA) and Designated Development (DD) in the Stage Two amendments	
		CA	Suggest to urgently create ESA and SDA	

	Subject	Organization	Concern / view	Administration's response
28.	Relationship between TPB and Government	HKIA APC AAP UW	TPB should have an independent secretariat.	These are not issues to be addressed in the context of the Stage One amendments. TPB members coming from various fields of expertise (e.g. engineering, legal profession, architect, environment) can provide professional advice to the TPB. The Administration has undertaken to review issues relating to the operation of the TPB in Stage Two amendments. Please also refer to the Panel paper on "Stage two amendments to the Town Planning Ordinance (LC Paper No. CB(1)813/03-04(10)).
		HKIA APC AAP REDA LSHK CEx KFBG	TPB should be independent from Government.	
		APC	TPB should be provided with independent legal advice and not by the Department of Justice. Suggest to set up a planning council to assist CE in dealing with town planning issues at macro level	
		UW	TPB should be able to employ independent consultants to study planning issues	

	Subject	Organization	Concern / view	Administration's response
29.	Chairmanship of TPB and its subcommittees	REDA LSHK HKIA APC CEx ANTOSO	Chairman of TPB and its subcommittees should be non-official members. Vice-Chairman of TPB should also be non-official member.	The Administration has undertaken to review issues relating to the function, composition and operation of the TPB in Stage Two amendments. Please also refer to the Panel paper on "Stage two amendments to the Town Planning Ordinance (LC Paper No. CB(1)813/03-04(10)).
		CA	Composition of TPB should be well-balanced to represent interests of the entire community. Members of green groups should be included. Information on TPB members should be made known to the public.	
30.	Function and jurisdiction of TPB	CEx	Suggest that planning on infrastructural developments such as roads and railways should come under TPB's jurisdiction	Territorial and sub-regional planning is an essential part of the process of formulating public policies by the Government. The responsibility of formulating overall planning policies and development strategies should rest with the Government. Meanwhile, the TPB would continue to be consulted at an early stage on the overall planning for Hong Kong and other strategic planning matters including major infrastructure projects.
		HKIS	TPB's role in strategic planning, especially in road and railway planning should be examined	

	Subject	Organization	Concern / view	Administration's response
		KFBG Mr Ruy BARRETTO S.C.	Suggest to expressly provide that the conservation of the cultural and natural heritage of Hong Kong as one of the functions of the TPB	The existing Ordinance contains provisions for conservation of natural heritage and cultural heritage and the environment by designating the areas as relevant conservation zonings such as "Green Belt", "Conservation Area" and "Site of Special Scientific Interest" on town plans. Sites with cultural or historical value may also be designated as relevant "Other Specified Uses" zone in order to provide proper protection for the historical or cultural heritage. The TPB can also incorporate design and environmental requirements in the Notes of specific zones if considered necessary. See also response to item 27 in respect of designation of SDA, ESA and DD.
31.	TPB meetings and related matters	HKIP CA	Suggest to open up all TPB meetings for public attendance	The Bill provides for any person to attend the TPB meeting and to be heard as a "representer" or "commenter". This has provided scope for a greater level of public participation in the plan-making process. To further enhance transparency, we are considering to open up the Town Planning Board meetings. Please refer to our response in item 5 above and the Panel paper on "Stage two amendments to the Town Planning Ordinance" (LC Paper No. CB(1)813/03-04(10)) for details.

	Subject	Organization	Concern / view	Administration's response
				Issues relating to the operation and functions of the TPB will be examined in the second stage of amendments.
		HYK	Suggest to increase quorum for TPB meetings and disclose how TPB members vote on individual applications	Issues relating to the operation of the TPB will be examined in Stage Two amendments. Please refer to the Panel paper on "Stage two amendments to the Town Planning Ordinance" (LC Paper No. CB(1)813/03-04(10)).
		KFBG	Suggest to review the existing practice of TPB Secretariat particularly in relation to matters including accuracy of minutes, responsiveness to queries from the public, policy or guidelines for handling conflict of interests at meetings, documentation on applications and planning issues, etc.	We would continue to review and improve the existing practice of the TPB Secretariat. The concerned matters are mainly administrative matters which could be dealt with outside the context of the Bill.
32.	Improvement in planning process	HKIA	Suggest that the overall planning team should be led by planning professional and supported by other professionals including but not limited to urban designers, architects, traffic engineers and environmentalists.	Territorial and sub-regional planning is an essential part of the process of formulating public policies by the Government. The responsibility of formulating overall planning policies and development strategies should rest with the Government. Under the current practice, the TPB would be consulted on overall planning for Hong Kong and other strategic planning matters. There is no need for an additional body to deal with the matter.

	Subject	Organization	Concern / view	Administration's response
		KFBG	Suggest that environmental non-governmental organizations or conservation bodies should be consulted at the same stage as other expert groups on plan-making and applications	It has already been the administrative practice to carry out extensive consultation on major planning studies. At different stages of formulating major planning proposals, public forums are held and consultation documents are released. We will make further efforts to enhance the consultation process. Legislative amendment is not necessary. It is also an established practice to consult the relevant District Council and Rural Committee prior to the publication of a new draft plan or major amendments to a plan, except where confidential issues are involved.
		REDA LSHK HKIP	Consultation by Government on planning studies cannot be a substitute for public consultation by TPB on proposals which have statutory effect.	
		KFBG	Legislative amendment to mandate public consultation on planning studies is essential to ensure good planning decision	
		CA	Planning studies should be conducted for all levels of plans including Territorial Development Study, Regional Development Strategy, Outline Zoning Plan. Public consultation should be made and reports of studies available for public inspection	
		Mr Ruy BARRETTO S.C. KFBG	All relevant reports and evidence in support of plans and applications for development permission must be made available to the public on request throughout the plan-making process	

	Subject	Organization	Concern / view	Administration's response
		Mr Ruy BARRETTO S.C.	A proper notification system should be established to ensure that the public and those affected have the right to information on plans and amendments, to make representations and to be heard by TPB. International conservation principles should be adopted in the town planning process. Applicant for rezoning or development should be required to make appropriate restoration to the land concerned where environmental or ecological damage has been caused before such an application can be processed.	TPB is statutorily required to publish all new draft plans and draft amendment plans for public representation by publishing the notice in the newspaper and the Gazette. In addition, TPB will further make the notice available at its website and the District Office. Comments noted. Planning in the Deep Bay area is an example of abiding by the Ramsar Convention The history of the land could be one of the considerations of the TPB in deciding on an application. Where the TPB approves an application for a temporary use, it may impose a condition requiring the applicant to reinstate the land to an amenity area after the permission lapses. If the environmental or ecological damage involves a material change of land use which constitutes an unauthorized development, the Planning Authority would consider taking enforcement action.

	Subject	Organization	Concern / view	Administration's response
		ANTOSO	Existing guidelines on town planning issued by TPB should be made known to the public to facilitate compliance. Suggest that the Administration should clarify the applicability of relevant guidelines, particularly the one on "Application for Open Storage and Port Back-up Uses" (TPB PG-No. 13C), to the stakeholders concerned where appropriate. Late provision of supplementary information in support of applications should be allowed.	All TPB Guidelines are available at the TPB Secretariat and the Planning Department. They can also be viewed at the TPB's website and the Planning Department. There will also be press release to announce any new or revised Guidelines. Regarding TPB PG No. 13C, the relevant District Councils and trade operators have been briefed. We will continue to maintain a close dialogue with the trade operators and revise the Guidelines if the need arises. The concern relates to application for temporary open storage and port back-up uses. If the supplementary information submitted is not too late, the TPB would take it into account in considering the application. But it is the TPB's established practice that where the use under application is a suspected unauthorized development subject to enforcement action of the Planning Authority, no deferment (e.g. due to submission of supplementary information) would be granted except under very special circumstances. This is to avoid undue delay to the enforcement and prosecution process.

	Subject	Organization	Concern / view	Administration's response
				With the proposal in the Bill to confine the terms of compliance of the enforcement notice to discontinuing the unauthorized development, the loophole in the existing Ordinance whereby some notice recipients are using submission of application to abuse the enforcement system should be plugged.
		Mr. Edwin Tsang	Suggest to establish a system for submission of plans or amendments by professionals to ensure quality planning. reference can be made to the existing provisions in the Buildings Ordinance (Cap. 123) whereby an authorized person is statutorily required to co-ordinate matters in relation to submission of building plans.	This is not a simple suggestion. It could be considered in the later stage of amendments to the Town Planning Ordinance upon completion of the Stage one amendments and further consultation with stakeholders.

Annex

List of organizations/individuals who have made a submission

The Association of Architectural Practices Ltd. (AAP)
The Association of Planning Consultants of Hong Kong (APC)
The Hong Kong Institute of Architects (HKIA)
The Hong Kong Institute of Planners (HKIP)
The Hong Kong Institute of Surveyors (HKIS)
The Law Society of Hong Kong (LSHK)
The Real Estate Developers Association of Hong Kong (REDA)
Urban Watch (UW)
World Wide Fund for Nature Hong Kong (WWF)
Heung Yee Kuk (HYK)
Hong Kong Institute of Real Estate Administration (HKIREA)
Town Planning Board (TPB)
Civic Exchange (CEx)
Land and Building Advisory Committee (LBAC)
The Association of the New Territories Open Storage Operators Ltd (ANTOSO)
Kadoorie Farm & Botanic Garden (KFBG)
The Conservancy Association (CA)
Mr Edwin TSANG
Mr Ruy Barretto S.C. of Temple Chambers