

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

**List of follow-up actions arising from previous meetings  
(as at 30 March 2004)**

Date of meeting	List of follow-up actions	Administration's response
18 September 2003	<p>The Administration agreed to address each point raised by the deputations in its written response, in particular the following major issues:</p> <ul style="list-style-type: none"> <li>(a) Independence and impartiality of the Town Planning Board (TPB) - should the Chairmen, Vice-Chairmen and secretaries of TPB and of its committees be public officers?</li> <li>(b) Power of the Chief Executive (CE) - what is the difference between Town Planning (Amendment) Bill 2003 (the Bill) and Town Planning Bill 2000 (2000 Bill) in terms of the power of CE in the planning process?</li> <li>(c) Availability of judicial review - whether decisions made by the Chief Executive in Council (CE in C) under the Bill are subject to judicial review and what are the implications of the provisions in the Bill in this respect?</li> <li>(d) Application of the Bill - why is there a disparity of treatment between Government and the private sector in the plan making and plan amendment process? It has been said that over 95% of amendments of plans are initiated by Government; and</li> <li>(e) Stages of amendment to the Town Planning Ordinance (TPO) - should amendments to TPO be expedited and fundamental issues such as independence and transparency of TPB be included in the present stage of amendments?</li> </ul> <p>The Administration was requested to provide a paper to compare the powers given to CE and CE in C under the Bill and 2000 Bill and the implications of the relevant provisions in the Bill on the transparency of the town planning process.</p>	<p>Consolidated response of the Administration to concerns/views raised by organizations (LC Paper No. CB(1)1022/03-04(03))</p> <p>Information paper on "Powers of the Chief Executive in Council and the Chief Executive in the planning process" (LC Paper No. CB(1)2527/02-03)</p>

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24 September 2003	<p>The Administration was requested to:</p> <ul style="list-style-type: none"> <li>(a) provide a breakdown of the number of members attending TPB meetings over the past three years;</li> <li>(b) advise whether all TPB members receive agendas and papers for all TPB meetings irrespective of whether they would attend the meetings; and</li> <li>(c) advise the circumstances under which the Government would or would not notify the owner(s) of the land which is the subject of application or amendment of plans or planning permission under the existing arrangement/practice.</li> </ul>	<p>Information paper on "Attendance of Town Planning Board Meetings and Notification to Land Owners" (LC Paper No. CB(1)52/03-04)</p>
23 October 2003	<p>The Administration was requested to:</p> <ul style="list-style-type: none"> <li>(a) provide a breakdown of the number of official and non-officials members attending each meeting of TPB in 2002/03;</li> <li>(b) advise on the number of items on which voting by TPB members was held in 2002/03 and the number of members who voted for and against and abstained on each occasion;</li> <li>(c) advise on the sanctions, if any, on TPB members for breaching rules concerning declaration of interests;</li> <li>(d) advise on the liability of and sanctions on TPB members, if any, for disclosing contents of restricted or confidential documents;</li> <li>(e) in connection with (d) above, to advise whether TPB members were required to sign an undertaking for non-disclosure of restricted or confidential information obtained in the course of performing functions of the TPB;</li> <li>(f) provide a copy of the practice and procedure governing the operation of the TPB;</li> </ul>	<p>Supplementary information on major issues raised at the meeting on 23.10.2003 (LC Paper No. CB(1)358/03-04(03))</p>

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	<p>(g) provide the report of the review on guidelines for declaration of interests by TPB members carried out in 2001;</p> <p>(h) advise on the legislative intent of section 9 of TPO when the TPO was enacted. Members were concerned whether the proposed amendment to section 9 would change the role of the CE in C in the town planning process and the legislative intent of the existing section; and</p> <p>(i) review the proposed section 9(1A) to confine the power of the CE in C to amend the draft plan in minor technical aspects only.</p>	<p>Supplementary information on major issues raised at the meeting on 23.10.2003 (LC Paper No. CB(1)358/03-04(03))</p> <p>Information paper on "Legislative intent of Section 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(02))</p> <p>Information paper on "Proposed amendments to the plan-making system under the Bill" (LC Paper No. CB(1)700/03-04(01))</p>
4 November 2003	<p>The Administration was requested to:</p> <p>(a) reconsider the proposal to standardize the plan exhibition period to one month for amendment to draft plans, new plans and amendments to approved plans. The Administration should provide justification for the proposal if it decided to propose Committee Stage Amendment (CSA) to the plan exhibition period;</p> <p>(b) reconsider the proposal to make available representations for public inspection and comments for three weeks after expiry of the plan exhibition period. The Administration should provide justification for the proposal if it decided to propose CSA to the period of three weeks;</p> <p>(c) consider how to address the concern about the absence of any further opportunity to respond to important/substantial information not disclosed until at the hearing of TPB to consider representations if the single hearing mode was adopted;</p>	<p>Information paper on "Proposed amendments to the plan-making system under the Bill" (LC Paper No. CB(1)700/03-04(01))</p>

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	<p>(d) provide the rationale for reducing the processing time of objections by TPB to six months, after expiry of the plan exhibition period, and the extension period that might be granted by CE to three months;</p> <p>(e) advise on the consequences and liability in the event that TPB could not complete consideration of all representations within the statutory period; and</p> <p>(f) provide a written response to the submission dated 3 November 2003 from the Real Estate Developers Association of Hong Kong tabled at the meeting.</p>	<p>Information paper on "Proposed amendments to the plan-making system under the Bill" (LC Paper No. CB(1)700/03-04(01))</p> <p>Updated Administration's response to LC Paper No. CB(1)54/03-04(01) (LC Paper No. CB(1)449/03-04(03))</p>
20 November 2003	<p>The Administration was requested to:</p> <p>(a) review the proposal under clause 11 to allow the CE in C to approve some of the amendments proposed by TPB. Members raised the following concerns -</p> <p>(i) although the decision made by the CE in C is subject to judicial review, it may be limited to the procedure for the making of the decision instead of its merit and it is difficult to call into question the decision itself if the CE in C refuses to disclose its deliberations under its confidentiality rule;</p> <p>(ii) unlike Government officials who may attend meetings of the Executive Council, representers are not provided with the opportunity to be heard by the CE in C before the latter makes its decision on draft plans. The proposal will deviate further from the principle of natural justice; and</p> <p>(iii) in exercising its power under section 9 of TPO, whether the CE in C is 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</p>	<p>Information paper on "Proposed amendments to the plan-making system under the Bill" (LC Paper No. CB(1)700/03-04(01))</p>

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	<p>community" and whether TPB is bound by this objective in the plan making process.</p> <p>(b) advise if there are any precedent cases of judicial review on the decision of the CE in C;</p> <p>(c) advise if there are any precedent cases of judicial review on draft new plans made by TPB;</p> <p>(d) review the proposal in clause 12 to confer the power on CE instead of CE in C to refer an approved plan to TPB for replacement or amendment. Members expressed different views on the proposal as follows -</p> <p>(i) some members consider that the power may be delegated to TPB; and</p> <p>(ii) some members consider that the CE in C should remain the authority to exercise such power which should not rest with the CE.</p> <p>(e) 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:</p> <p>(i) whether the policy intention is to require an applicant to obtain the consent, or to notify the landowner for amendment of plan and planning permission if the applicant is not the owner of the site concerned;</p> <p>(ii) whether TPB will verify the claim of the applicant that the consent of the landowner has been obtained or the landowner has been notified. If the answer is in the affirmative, please advise how the claim will be verified;</p> <p>(iii) if the answer to (ii) is in the negative, whether TPB will be held liable if the claim is found out to be false;</p> <p>(iv) the circumstances under which prior notice will and will not be given to the</p>	<p>Information paper on "Administration's response to issues raised at the meeting on 20 November 2003" (LC Paper No. CB(1)678/03-04(03))</p> <p>Outstanding</p> <p>Information paper on "Administration's response to issues raised at the meeting on 20 November 2003" (LC Paper No. CB(1)678/03-04(03))</p>

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	<p>landowner concerned in making a draft plan and/or amendment to plan by TPB; and</p> <p>(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 is made by a non-profit making body in the public interest and where the application involves sensitive information.</p> <p>Members agreed to invite Civic Exchange (CEX) and the Association of Planning Consultants of Hong Kong (APC) to provide further submissions on issues/concerns related to judicial review of decisions made by the CE in C. The submissions of CEX (LC Paper No. CB(1)557/03-04) and APC (LC Paper No. CB(1)608/03-04) were issued on 17 December 2003 for Administration's comments.</p>	<p>Information paper on "Administration's response to issues raised at the meeting on 20 November 2003" (LC Paper No. CB(1)678/03-04(03))</p> <p>In the light of proposed amendments to the plan-making system, Administration's response is not required.</p>
28 November 2003	<p>The Administration was requested to:</p> <p><u>Item 10 in LC Paper No. CB(1) 54/03-04(01)</u></p> <p>(a) consider the merits and practicality of requiring applicants for amendments of plans and planning permission to seek the consent of manager of tso/tong where the land is owned by tso/tong;</p> <p><u>Item 11 in LC Paper No. CB(1) 54/03-04(01)</u></p> <p>(b) consider providing administrative measures to make available for public inspection and comments amendments of plans or new plans initiated by TPB which do not contain sensitive information;</p> <p><u>Item 12 in LC Paper No. CB(1) 54/03-04(01)</u></p> <p>(c) assess the qualitative and quantitative impact if applicants and commenters are given the opportunity to be heard by TPB concerning applications for amendments of plans; and</p>	<p>Outstanding</p> <p>Information paper on " Statistics on planning applications and impacts</p>

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	<p><u>Item 13 in LC Paper No. CB(1) 54/03-04(01)</u></p> <p>(d) advise whether similar overseas legislation adopt the same criteria of "material change" in considering acceptance or otherwise of further information relating to applications for amendments of plans and planning permission and whether many cases arise on its interpretation. Please provide case law on the interpretation of "material change", if any.</p> <p>At members' request, the Clerk invited further view from the Hong Kong Institute of Planners (HKIP) on 2 December 2003 regarding the Administration's response to HKIP's proposal to allow commenters and landowners whose properties are within the boundary of development proposals to be heard by TPB concerning applications for amendments of plans. The Secretariat is still awaiting reply from HKIP.</p>	<p>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)</p> <p>Information paper on "Submission of Further Information Relating to Applications for Amendments of Plans and Planning Permissions" (LC Paper No. CB(1)809/03-04(01))</p>
3 December 2003	<p>The Administration was requested to:</p> <p><u>Item 13 in LC Paper No. CB(1) 54/03-04(01)</u></p> <p>(a) consider the need for proposing amendments to the Bill to provide discretion to TPB to decide whether the statutory time for processing applications for amendment of plans or planning permission should be extended because of the submission of further information by the applicants. Members requested that the following factors be considered:</p> <p>(i) the meaning of "further information" should be clearly defined; and</p> <p>(ii) the opportunity for public inspection and comment on further information, except</p>	<p>Information paper on "Submission of Further Information Relating to Applications for Amendments of Plans and Planning Permissions" (LC Paper No. CB(1)809/03-04(01))</p>

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	<p>those which are editorial in nature, should not be compromised;</p> <p>(b) provide a breakdown by nature of further information submitted by applicants to TPB to supplement applications for amendment of plans or planning permission under the present mechanism;</p> <p><u>Item 14 in LC Paper No. CB(1) 54/03-04(01)</u></p> <p>(c) assess the impact in terms of the processing/meeting time that may be increased and the resources required -</p> <p>(i) if applicants for planning permission are provided with a right to be heard by TPB;</p> <p>(ii) if applicants for planning permission are allowed to attend TPB meeting at which their applications are considered; and</p> <p>(iii) if objectors are provided with a right of review of planning permission approved by TPB;</p> <p>(d) compile statistics on the number and percentage of applications for planning permission which were approved by TPB with conditions and of which a review was lodged under section 17 of TPO in 2002; and</p> <p>(e) provide information on the town planning system in the United States (US) and the United Kingdom (UK) in respect of planning permission and third party review.</p>	<p>Information paper on "Submission of Further Information Relating to Applications for Amendments of Plans and Planning Permissions" (LC Paper No. CB(1)809/03-04(01))</p> <p>Information 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))</p> <p>Information paper on "Planning Applications Systems in the United States and the United Kingdom" (LC Paper No. CB (1)678/03-04(04))</p>
6 January 2004	<p>The Administration was requested to:</p> <p>(a) provide the names of organizations consulted on its proposed amendments to the plan-</p>	Outstanding



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	<p>making system under the Bill (CB(1)700/03-04(01));</p> <p>(b) consider relaxing the types of persons who could lodge objections to proposed amendments made by TPB at the second stage of plan-making. Some members are of the view that if any person could make comments at the first stage of plan-making, the same rule should apply to the second stage as the proposed amendments made by the TPB could be material;</p> <p>(c) provide a paper to explain existing measures and measures contemplated by the Administration to publicize draft plans, amendments to draft plans and approved plans and planning applications after enactment of the Bill. Members have quoted many cases which show inadequacy of the existing measures;</p> <p>(d) provide information on the plan-making systems in the US and UK;</p> <p>(e) reconsider the merits of third party appeal in respect of planning applications. The Chairman considers it inappropriate to perceive development as beneficial or detrimental to the community. An applicant for planning permission is not necessarily the owner of the land concerned or even a local resident but he is entitled to a right of appeal. On the same basis, the right of appeal should be extended to third party. To minimize frivolous and vexatious appeals, some conditions may be set to restrict the right of third party appeal as in the case of the US; and</p> <p>(f) keep the Bills Committee informed of the discussion by the Panel on Planning, Lands and Works on the second stage amendment to the Town Planning Ordinance. In this connection, some members have called for opening up of TPB meetings and enhanced representation in the composition of the TPB such as by allocating a certain number of seats to directly elected Legislative Council (LegCo) members.</p>	<p>Outstanding</p> <p>Information paper on "Existing and Proposed Measures for Publication of Plans and Planning Applications" (LC Paper No. CB(1)1022/03-04(02))</p> <p>Outstanding</p> <p>Information paper on "Stage Two Amendments to the Town Planning Ordinance" (LC Paper No. CB(1)813/03-04(10))</p> <p>Report of outcome of discussion outstanding</p>

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3 February 2004	<p>The Administration was requested to:</p> <p><u>CB(1) 678/03-04(03)</u></p> <p>(a) consider the need and the practicality of expressly providing in the law the size and format of a notice to be posted in the relevant site or published in a local newspaper concerning draft plans, amendments of plans and planning applications. Members considered it important to prescribe effective means to draw the attention of the relevant persons to the draft plans, amendments of plans and planning applications;</p> <p>(b) clarify whether there is any administrative or legal mechanism to enable TPB to revoke its decision where material information provided by applicants or commenters is subsequently found to be false. If the answer is negative, the Administration should consider the merits of providing such a mechanism. Members were concerned about the absence of safeguards under the present provisions of the Bill to deter the provision of false information by applicants or commenters and nullify the relevant decisions made by TPB;</p> <p>(c) provide a paper to explain the principles underlying the local town planning system. Whether land use or land ownership is the primary consideration in town planning. Whether planning permission runs with the land, the landowners or the applicants. What the order of priority is in so far as the different interests of landowners, applicants and members of the public are concerned. In this connection, the Administration was requested to compare the rights of applicants, landowners and third parties in plan making and planning applications under the existing TPO and the Bill;</p> <p>(d) advise from the policy and legal points of view whether it is in order to enact retrospective provisions to make past planning applications available for public inspection; and</p> <p><u>CB(1) 678/03-04(04)</u></p> <p>review the merits of providing for third party review concerning planning applications.</p>	<p>Information paper on "Existing and Proposed Measures for Publication of Plans and Planning Applications" (LC Paper No. CB(1)1022/03-04(02))</p> <p>Outstanding</p>

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19 February 2004	<p>The Administration was requested to:</p> <p><u>CB(1) 1022/03-04(02)</u></p> <p>(a) consider specifying in the Bill the minimum size of a notice to be posted in respect of a planning application. Some members considered that the minimum size of a notice should be no less than 3' x 6'. The Administration was asked to provide a sample of notice for members' reference;</p> <p>(b) consider how effective notification could be achieved if proposed new sections 12A(7)(a) and 16(2D)(a) required the posting of notice only but not to require its being kept posted during the specified period and allowed a discretion not to post the notice outdoor on or near the land if notice had been posted indoor on any premises;</p> <p>(c) consider sending a notice to the LegCo members and District Council (DC) members of the relevant geographical area;</p> <p>(d) consider making it a standing arrangement to follow up after a notice had been sent to the LegCo members and DC member(s) of the concerned local area(s). Members had different views in this respect. Some members considered that LegCo members and DC members had a responsibility to consult the residents concerned about a planning application. A member opined that the purpose of sending a notice to the LegCo members and DC members had to be made clear. The responsibility for notifying and consulting the general public should rest with the Administration; and</p> <p>(e) consider providing in the Bill a right of any person to obtain copies of planning applications, draft plans and amendments of plans on payment of a prescribed fee.</p>	<p>Samples of notices presented for members' reference at the meeting on 8 March 2004. Members noted the Administration's intention to specify in TPB's guidelines rather than expressly provide in the law the size and format of the notice for flexibility purpose</p> <p>Outstanding</p>

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8 March 2004	<p><u>The Administration was requested to:</u></p> <p><u>CB(1) 1022/03-04(02)</u></p> <p>(a) clarify whether the failure of the Town Planning Board (TPB) to cause a notice to be posted in respect of a planning application in accordance with proposed section 16(2D) or to comply with some other statutory requirements or steps would invalidate at law the whole process and the need for a specific provision in this regard;</p> <p>(b) consider putting into place feasible administrative means to display notice about draft plans and amendments of plans in the district concerned. The Chairman was of the view that only basic information be included in the notice which served to alert members of the public. One of the suggested ways was to post such a notice within the boundary of each Area Committee and Rural Committee within the district;</p> <p>(c) consider members' views to improve the form of notices to be posted in respect of planning applications in order to attract public attention. Some members raised the following views:</p> <p>(i) the notice be posted near the land concerned and in areas with residential flats;</p> <p>(ii) different colours be used for the original use and proposed use; and</p> <p>(iii) access to relevant information be made known to the public in or near the site at which the notice was posted.</p> <p><u>Item 17 in CB(1) 1022/03-04(03)</u></p> <p>(d) consider expressly providing in clause 5 (section 2B):</p> <p>(i) the type of businesses which could be transacted by circulation of papers, such as procedural and administrative matters;</p>	<p>Outstanding</p>

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	<p>(ii) the statutory provisions which contained matters which should not be transacted by circulation of papers; and</p> <p>(iii) that transaction of business by circulation of papers should be subject to the objection being raised.</p> <p><u>Item 18 in CB(1) 1022/03-04(03)</u></p> <p>(e) review the need for introducing in the Stage One amendments the proposal to allow TPB to delegate to its committees powers and functions relating to consideration of review applications under section 17 (clause 4). The Administration was requested to advise the impact of such a proposal if implemented or not implemented. Members were concerned that many organizations had objected to the proposal and the present statutory minimum size of committees was too small.</p>	<p>Outstanding</p>
<p>18 March 2004</p>	<p>The Administration was requested to:</p> <p><u>Item 19 in CB(1) 1022/03-04(03)</u></p> <p>(a) 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;</p> <p><u>Item 21 in CB(1) 1022/03-04(03)</u></p> <p>(b) 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</p>	<p>Outstanding</p>

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	<p data-bbox="405 231 831 263"><u>Item 22 in CB(1) 1022/03-04(03)</u></p> <p data-bbox="405 308 1608 523">(c) provide a paper to explain why proposed section 23(9A) is necessary to deter proliferation of unauthorized developments. Please illustrate with examples the difficulties encountered by the prosecution, if any, in proving the constitution or existence of unauthorized developments. Some members are concerned that the proposed section does not accord with the common law principle that the burden of proof rests on the prosecution.</p>	<p data-bbox="1624 308 1787 339">Outstanding</p>

Council Business Division 1  
Legislative Council Secretariat  
 30 March 2004