

**Bills Committee on Town Planning (Amendment) Bill 2003**  
**List of follow-up actions arising from previous meetings (as at 30 March 2004)**  
**The Administration's Response**

Section [Clause]	Outstanding follow-up actions by the Administration	The Administration's response
s.2(5)(b) [Cl. 3]	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. (raised at the meeting on 18 March 2004)	Suggestion agreed. <b>A Committee Stage Amendment (CSA) will be put forth</b> to effect the revised proposal.
s.2A(1) [Cl. 4]	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. (raised at the meeting on 8 March 2004)	The intention of the proposal is to improve efficiency of the TPB's operation and to allow the TPB to focus on issues of wider implications. In 2003, about 140 review applications were considered by the TPB, and 13 out of 22 TPB meetings needed to be extended to the afternoon for considering review applications.  In view of the concerns of the Members and the deputations, <b>we will propose a CSA</b> to drop the proposal at this stage. The proposal will be revisited together with the review of the quorum of meetings of the TPB and its committees in Stage Two.
s.2B [Cl. 5]	Consider expressly providing in clause 5 (section 2B) : (i) the type of businesses which could be transacted by circulation of papers, such as procedural and administrative matters; (ii) the statutory provisions which contained matters which should not be transacted by circulation of papers; and (iii) the transaction of business by circulation of papers should be subject to the objection being raised.	The term "procedural and administrative matters" can be ambiguous and is likely to be subject to interpretation if stipulated in law. It is also impracticable to expressly spell out which statutory provisions should not be covered by section 2B as some of these provisions may also involve procedural and administrative matters. According to legal advice, s.2B cannot override other provisions which require the TPB to hold a

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	(raised at the meeting on 8 March 2004)	meeting, for example, for considering planning applications or hearing representations. On balance, <b>we will propose a CSA</b> to provide that any member of the Board may request the TPB Chairman to hold a meeting to consider any business being transacted by circulation of papers. Upon receipt of such a notice of request, any resolution approved in writing shall be void.
<b>s.5 and s.7</b>	(a) 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. (raised at the meeting on 8 March 2004)	The Administration considers the suggestion worth pursuing. The Administration will liaise with the relevant parties on the arrangement.
	(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 (raised at the meeting on 28 November 2003)	Apart from the statutory measures to publish draft plans or amendments to plans, the Administration is considering other administrative measures to further improve the effectiveness of notification, such as posting notices at the relevant District Office and Rural Committee office, in a prominent location on or near the site where the amendment relates, and carrying out public consultation during the planning study stage, etc. Please refer to the paper on "Existing and Proposed Measures for Publication of Plans and Planning Application (LC Paper No. CB(1)1022/03-04(02)) for details of the administrative measures.
<b>s.6 to s.6D [Cl. 7 and 8]</b>	(a) Provide the names of organizations consulted on its proposed amendments to the plan-making system under the Bill. (raised at the meeting on 6 January 2004)	We have consulted the following organizations on the proposed amendments to the plan-making system – <ul style="list-style-type: none"> <li>• Hong Kong Institute of Landscape Architects</li> <li>• Hong Kong Institute of Planners</li> </ul>

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		<ul style="list-style-type: none"> <li>• Hong Kong Institute of Architects</li> <li>• Hong Kong Institute of Surveyors</li> <li>• Hong Kong Institution of Engineers</li> <li>• World Wide Fund for Nature Hong Kong</li> <li>• The Conservancy Association</li> <li>• Urban Design Alliance</li> <li>• The Association of Architectural Practices</li> <li>• Civic Exchange</li> <li>• The Association of Planning Consultants of HK</li> <li>• Hong Kong Institute of Real Estate Administration</li> <li>• The Real Estate Developers Association of Hong Kong</li> <li>• Urban Watch</li> <li>• The Law Society of Hong Kong</li> <li>• Heung Yee Kuk</li> <li>• 新界露天倉經營者協會</li> </ul> <p>Most of the above organizations are supportive to the proposed two-stage plan-making system. Their views have been submitted to the Bills Committee.</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>(raised at the meeting on 6 January 2004)</p>	<p>To further enhance the scope of public participation, <b>we will propose a Committee Stage Amendment</b> (CSA) to allow any person to make representation to the amendment proposed by the TPB after the first hearing.</p>
<p><b>s.12(1A)</b> <b>[Cl. 12]</b></p>	<p>Review the proposal in clause 12 to confer the Chief Executive (CE) instead of the Chief Executive in Council (CE in C) to refer an approved plan to the TPB for replacement or amendment. Members expressed different views on the proposal as follows –</p>	<p>The main objective of the proposal is to streamline the plan-making procedures. As planning is a continuous process, it is not uncommon for an approved plan to be amended to meet changing needs and circumstances. In 2003, a total of 70</p>

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	<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>(raised at the meeting on 20 November 2003)</p>	<p>approved plans had been referred back to TPB for amendment. Considering that reference back of an approved plan for amendment is essentially a <u>procedural</u> step, the Administration has therefore proposed to delegate the power to the CE. Any amendments to the plan subsequently exhibited for public inspection will have to go through the statutory hearing process, and be submitted to the CE in C for final approval.</p> <p>The proposal is in line with the legislative intent of s.3 of the existing Ordinance which provides that CE directs TPB to prepare plans.</p>
<p><b>s.12A, s.16 and s.17</b> <b>[Cl. 13, 16 and 18]</b></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>(raised at the meeting on 28 November 2003)</p>	<p>The Bill requires an applicant for amendment of plan or for planning permission to either obtain the consent of or notify the land owner of the application site. The intention of the proposal is to ensure that the affected owner would be aware of any proposed development on his land so that he can comment on the application if he so wishes. Upon receipt of the application, the TPB will publish the application for public inspection and comments.</p> <p>In the light of the above policy intention, it is not justifiable to make owner's consent a mandatory requirement whenever tso/tong land is concerned. In any case, the tso/tong can forward its comments on the application to the TPB during the statutory 3-week period when the application is published for public comments.</p> <p>Please also refer to the papers on "Follow-up Actions Arising from Discussion at the Meeting on 20 November 2003" (LC Paper No. CB(1)678/03-04(03)) and "Existing and Proposed Measures for Publication of Plans and Planning Applications"</p>

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		(LC Paper No. CB(1)1022/03-04(02)) for details.
	<p>(b) Clarify whether the failure of the 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. (raised at the meeting on 8 March 2004)</p>	<p>According to the Administration's legal advisor, procedural safeguards, which are imposed for the benefit of persons affected by the exercise of administrative powers, are normally regarded as mandatory. Non-compliance with such a procedural safeguard would render the administrative decision void. The statutory requirement under s.16(2D) is an important one. Non-compliance with this would render the planning decision void for ultra vires. The TPB is capable of withdrawing a planning permission under s.40(2)(c) of Cap 1.</p> <p>Regarding the consequence of non-compliance with some other statutory requirements, we need to consider the legislative intention against the nature and extent of the irregularity occurred at the procedural step, whether the requirement can be fulfilled by substantial compliance with it, whether there has been substantial compliance and whether non-compliance is capable of being waived.</p> <p>In view of the above, it is considered unnecessary and inappropriate to add an express provision to the effect that the TPB decision shall be void for non-compliance with any statutory requirement in the process.</p>
	<p>(c) 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 it 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. (raised at the meeting on 19 February 2004)</p>	<p>The statutory requirement of posting a notice on or near the land to which the application relates, or on any premises or structure on the land is only one of the means to notify the public of the application. There will be other administrative measures (such as posting large notices near the application site or at the relevant District Office, sending notice to owners' corporations of adjoining buildings and uploading the notice to the TPB's</p>

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		<p>website, etc.) to alert the public (please refer to the paper on “Existing and Proposed Measures for Publication of Plans and Planning Applications” (LC Paper No. CB(1)1022/03-04(02) for details).</p> <p>According to the Administration's legal advisor, the present wording may also be construed as imposing a duty on the TPB to ensure that the notice will continue to be kept posted for three weeks. To avoid any possible allegation of non-compliance with the statutory requirement in future, <b>the Administration will propose a CSA</b> to put it beyond doubt the policy intention that the TPB is only required to effect the posting of the notice on the first day of the 3-week publication period. The proposed CSA is also in line with overseas practices, such as those in England, New South Wales and San Francisco.</p> <p>While it would not be necessary to require the TPB to ensure that the notice is being kept continuously posted for three weeks, a person who removes or who destroys or damages a notice may be liable to prosecution for the offence of theft under s.9 of the Theft Ordinance and for the offence of criminal damage under s.60 of the Crimes Ordinance respectively.</p>
	<p>(d) Consider sending a notice to the Legislative Council (LegCo) members and District Council (DC) members of the relevant geographical area. (raised at the meeting on 19 February 2004)</p>	<p>Suggestion agreed. The Administration will work out the arrangement with the LegCo Secretariat and the Home Affairs Department.</p>
	<p>(e) 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</p>	<p>Members' views will be taken into account in working out the detailed arrangement.</p>

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	<p>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.</p> <p>(raised at the meeting on 19 February 2004)</p>	
	<p>(f) 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> <ul style="list-style-type: none"> <li>(i) the notice be posted near the land concerned and in areas with residential flats;</li> <li>(ii) different colours be used for the original use and proposed use; and</li> <li>(iii) access to relevant information be made known to the public in or near the site at which the notice was posted.</li> </ul> <p>(raised at the meeting on 8 March 2004)</p>	<p>Members' suggestions will be taken into account in finalizing the form and posting arrangement of the notice. The details will be promulgated in the TPB guidelines.</p>
	<p>(g) 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>(raised at the meeting on 3 February 2004)</p>	<p>TPB may withdraw a planning permission under s.40(2)(c) of Cap 1. See also the above response to item (b) on p.6 in respect of whether non-compliance with any statutory requirement would render the decision void.</p> <p>If a person requests the TPB to withdraw an approval on the ground that there is irregularity in complying with any other procedural requirements, and the TPB refuses to accede to the request, the aggrieved person can apply for the TPB's decision to be reviewed judicially.</p>
	<p>(h) 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>An express provision for copying of planning applications in the Bill is not necessary as s.56(2) of the Copyright Ordinance provides that where a material is open to public inspection</p>

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	(raised at the meeting on 19 February 2004)	<p>pursuant to a statutory requirement, copyright is not infringed by providing copies to the public of the material for the purpose of enabling the material to be inspected at a more convenient time or place. Same as existing practice in providing copies of other materials, an appropriate photocopying fee would be charged administratively.</p> <p>As for draft plans, approved plans and draft amendment plans, the existing Ordinance has already provided that copies of such are available to any person on payment of a fee.</p>
	<p>(i) 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. (raised at the meeting on 3 February 2004)</p>	<p>According to the Administration's legal advisor, retrospectivity, of whatever kind, should always be viewed as undesirable and should be avoided. Unlike applicants submitting planning applications after the commencement of the Amendment Ordinance who are fully aware that their applications are open for public inspection, those who submitted before the enactment of the Amendment Ordinance were not. The earlier applicants might have included information in the application which they did not intend to disclose to the public in detail.</p> <p>TPB is not empowered to publish planning applications under the existing Ordinance. To comply with the principles of protection of personal data and non-disclosure of confidential information, only the gist of applications is now released to the public. To maintain a record of the gist of applications, we have put in place an administrative Planning Register System. This is a user-friendly system to make available the essential information of past applications for public inspection. In view of the above, there is no overriding justification to provide for civil retrospectivity in the Ordinance.</p>



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	<p>(j) 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.</p> <p>(raised at the meeting on 6 January 2004)</p>	<p>Debate on the merits of third party appeal in respect of planning applications has been going on for years in Europe, particularly in the United Kingdom and Scotland. Yet, views on the subject are diverse. In Hong Kong, third party appeal has not been brought up for public discussion until now. Bearing in mind the complexity of the subject as demonstrated in overseas countries, the rights to third party appeal certainly require wider consultation and discussion and careful assessment on resource implications. We can discuss these issues in the subsequent stages of amendment.</p>
	<p>(k) Review the merits of providing for third party review concerning planning applications.</p> <p>(raised at the meeting on 3 February 2004)</p>	<p>Similar to third party appeal, providing for third party review is a complex and contentious issue. This certainly requires wide consultation and discussion and careful assessment on the resource implications. Meanwhile, the proposal to publish all applications for public comments is a big step forward to promote public participation in the decision making process. See also above response in respect of third party appeal.</p>
<b>s.23(9A)</b> <b>[Cl. 20]</b>	<p>Provide a paper to explain why proposed section 23(9A) is necessary to deter proliferation of unauthorized development. 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>(raised at the meeting on 18 March 2004)</p>	<p>A paper will be submitted shortly for discussion together with the relevant clause in the Bill.</p>
<b>Others</b>	<p>(a) Provide information on the plan-making systems in the US and UK.</p> <p>(raised at the meeting on 6 January 2004)</p>	<p>As the issue is not directly related to the provisions in the Bill, a separate paper will be submitted for Members' information.</p>
	<p>(b) Keep the Bills Committee informed of the discussion by the Panel</p>	<p>The Stage Two amendments were discussed at the Panel meeting</p>

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	<p>on Planning, Lands and Works on the second stage amendment to the Town Planning Ordinance. (raised at the meeting on 6 January 2004)</p>	<p>on 27 January 2004. Copies of the relevant Panel paper (CB(1)813/03-04(10)) and the minutes of meeting (CB(1)1415/03-04(03)) have been forwarded to Members of the Bills Committee for information.</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 applicant. 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 Town Planning Ordinance and the Bill. (raised at the meeting on 3 February 2004)</p>	<p>As the issue is not directly related to the provisions in the Bill, a separate paper will be submitted for Members' information.</p>
	<p>(d) 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. (raised at the meeting on 18 March 2004)</p>	<p>As the issue is not directly related to the provisions in the Bill, a separate paper will be submitted for Members' information.</p>

**Housing, Planning and Lands Bureau**

**Planning Department**

**April 2004**