

立法會

Legislative Council

LC Paper No. CB(1) 2390/02-03(01)

Ref: CB1/BC/12/02

Bills Committee on Town Planning (Amendment) Bill 2003

Background Brief

Purpose

This paper sets out the background of the Town Planning (Amendment) Bill 2003 (the Bill), and summarizes the legislative proposals therein and views of Members on the proposals and related issues.

Background

2. The existing Town Planning Ordinance (TPO) was first enacted in 1939 and has remained largely in its original form. With the increasing complexity of the social economic and political environment in Hong Kong, there is a need to fundamentally review and update the TPO to provide guidance for and control over the planning and development in Hong Kong to meet the prevailing needs of the community. In 1996, the Administration published the Town Planning White Bill for public consultation. The intention then was to seek public views on the proposed legislative amendments to enhance the efficiency, transparency and effectiveness of the statutory planning process. On 18 December 1996 the Council passed a motion urging the Administration to expedite the introduction of a new comprehensive Town Planning Bill into the Council. In 1998, an interim amendment was made to the TPO to limit the time in processing objections to draft town plans within a period of nine months so as to improve the efficiency of the plan-making process.

3. After years of review on the subject, the Town Planning Bill (the 2000 Bill) was introduced into the Legislative Council on 16 February 2000. The 2000 Bill contained a comprehensive package of changes to the planning procedure, consultation process and planning controls. A Bills Committee was formed to scrutinize the 2000 Bill and commenced its work in March 2000. Having critically assessed the complexity of the issues involved in the 2000 Bill, the Bills Committee was of the view that it was unrealistic to complete the scrutiny work before the expiry of the then legislative term by end of June 2000.

The Bills Committee therefore decided to curtail its work after nine meetings and reported its decision to the House Committee on 2 June 2000. The Bills Committee was then dissolved.

4. Based on the experience of the Bills Committee on the 2000 Bill, the Administration considers that there is a general consensus on the need for a new piece of town planning legislation, particularly to streamline the planning procedures and to promote public participation. However, there are a number of issues which are unlikely to be resolved without going through a lengthy consultation process. These issues include, inter alia, membership and operation of the Town Planning Board (TPB), compensation for planning blight, interim development control and planning control on building development. The Administration therefore decides to amend the TPO in stages as follows -

- (a) Stage One - to include amendments that would streamline and shorten the town planning process, enhance openness of the planning system, and strengthen enforcement control on unauthorized developments;
- (b) Stage Two - to include those amendments that require further consideration within the Administration and/or consultation with the stakeholders such as the operation of TPB, designation of Special Design Area, Environmentally Sensitive Area and Designated Development; and
- (c) Stage Three - to review the highly controversial proposals such as interim development control and planning control on building development.

The Bill

5. The present Bill is the stage one amendments to the TPO with the objective to -

- (a) streamline the planning procedures;
- (b) enhance public involvement in and transparency of the planning procedures;
- (c) strengthen enforcement control against unauthorized developments not permitted under the TPO; and
- (d) recover costs for processing planning applications.

Streamlining the planning procedures

Expediting the plan-making process

6. The Bill proposes to expedite the plan-making process through the following ways -

- (a) standardizing the exhibition period of new plans or amendment to draft or approved plans to one month;
- (b) adopting a single hearing process to consider representations received by TPB in order to shorten the period for considering representations from nine months to six months; and
- (c) reducing the extension period for considering representations that may be granted by the Chief Executive from six months to three months.

Streamlining the planning approval process

7. The Bill allows certain minor amendments to planning permission to be exempted from the requirement of submitting further application.

8. To increase the efficiency of TPB, the Bill provides TPB with the power to -

- (a) enable its existing committees to consider applications for amendment of plan and amendment to planning permission;
- (b) set up committees to consider applications for review of decisions concerning planning permission and amendments to planning permission; and
- (c) delegate its power to a public officer to determine acceptance of further information relating to review applications and applications for amendment to a plan or planning permission.

Enhancing public involvement and transparency of the planning system

9. The Bill proposes to enhance public involvement in and transparency of the plan-making process by the following ways -

- (a) allowing both supportive and adverse representations, instead of objections only, to be lodged on draft plans;

- (b) making express provisions for allowing applications for amendment of plans and applicants to attend and be heard at TPB meetings;
- (c) requiring TPB to make available for public inspection all applications for amendment of plan and planning permission; and
- (d) requiring the applicant for amendment of plan or planning permission to obtain the consent of or notify the land owner(s) concerned where the applicant is not the owner of the site.

Strengthening enforcement control against unauthorized development not permitted under the TPO

10. To address the current technical deficiencies in the TPO, the Bills proposes to -

- (a) include managers of a clan, family or tong within the definition of land owners under the TPO, so that they are liable to offences in relation to unauthorized developments;
- (b) confine the compliance under an enforcement notice only to the discontinuance of an unauthorized development in order to stop possible abuse of the existing provisions by submission of a planning application; and
- (c) allow the Planning Authority to enter private land other than domestic premises and to serve notice to obtain information to facilitate investigation of suspected unauthorized developments.

Recovering costs for processing planning applications

11. The Bill proposes to allow the Secretary for Housing, Planning and Lands to make regulations to prescribe fees to recover the Administration's costs for processing applications for amendment of plan, planning permission and amendment to planning permission.

Consultation with the Panel on Planning, Lands and Works

12. During the 2002-03 legislative session, the Panel on Planning, Lands and Works had discussed the legislative proposals in the Bill and the operation of TPB thrice, at the meetings on 6 December 2002 and 6 June and 4 July 2003. Members agreed that there should be an overhaul of the planning system. Some members however had reservations about the adoption of a phased approach to introduce legislative changes. They considered that the scope of

the Bill did not cover major aspects of the planning system which include the following -

- (a) composition of TPB;
- (b) criteria for appointment and tenure of TPB members;
- (c) operation of TPB in particular the opening up of meetings and quorum for meetings; and
- (d) the role of District Councils in the plan-making process.

These aspects, according to the Administration, would be dealt with in the Stage Two amendments.

13. Members' views on the legislative proposals in the Bill are set out below.

Proposals to expedite the plan-making process

14. On the proposal to shorten the exhibition period of plan from two months to one month, a member raised concern on whether the public would have sufficient time to study the voluminous documents relating to draft plans in order to raise objection. The Administration clarified that the proposed provisions allowed representers to furnish additional information to TPB within four weeks upon expiry of the plan exhibition period.

Proposals to streamline the planning approval process

15. There had been concern about the meaning of minor amendments to planning permission which would be exempted under the Bill from the requirement to submit further application to TPB. In this respect, members took note that certain amendments are currently processed by the Planning Department under the delegated authority of TPB under the existing TPO. The scope of these amendments was stipulated in the TPB Guidelines.

Proposals to enhance public involvement and transparency of the planning system

Notification of land owner of planning application

16. Members welcomed the proposal to require the applicant to obtain the consent of or to notify the land owner concerned of any development proposal on the land. Members made two points on implementation of the proposal. First, a written consent of the land owner should be obtained. Second, a practical means should be devised to resolve multiple land ownership.

17. To address the issue of multiple land ownership, the Administration had advised that publication of a notice in the newspaper would suffice for the purpose of notifying the land owners concerned. As some members considered that this means could not entirely allay their concern, the Administration was requested to further explore ways to resolve the matter.

Publication of planning application for public comment

18. The proposal to require TPB to make available planning applications for public inspection was supported by members. Members requested the Administration to work out the arrangement concerning the posting of notice in respect of the planning application on the land concerned, such as the form and size of notice. Two suggestions were made by members to enhance public involvement in the plan-making process, namely consultation with DCs on planning applications and notification of local organizations like Mutual Aid Committee and Owners' Corporation of planning applications. A member suggested to make it a statutory requirement or stipulate in the TPB Guidelines that DCs should be consulted on planning application and amendments to plans.

Proposals to strengthen planning enforcement control

Discontinuance of unauthorized development

19. Members noted that the proposal to confine compliance with an enforcement notice to discontinuing the unauthorized development was aimed to plug a loophole in the TPO. At present the land owner/occupier served with an enforcement notice often resorted to applying for planning permission as a means of compliance with the enforcement notice. A member considered the proposal unreasonable.

Definition of land owner

20. Members expressed different views on the proposal to regard managers of "Tso/Tong" as land owners to be liable to offences in relation to unauthorized development. A member supported the proposal. Another two members however considered the proposal unreasonable on the grounds that managers of "Tso/Tong" might not be fully aware of unauthorized development on the land under their management and that the land boundary in rural area was unclear.

21. In this connection, members noted that managers of "Tso/Tong" were regarded as land owners under the New Territories Ordinance (Cap. 97) and the Court of Appeal made a ruling in a case in 1996 that managers of "Tso/Tong" were land owners who should be liable to planning enforcement action.

Proposal to recover costs for processing planning applications

22. Members had different views on the proposal to recover full administrative costs for processing applications for planning permission and amendment to statutory plan. A member considered it unfair to recover full administrative costs as the remuneration for the civil service was higher than in the private sector. Another member supported the cost recovery principle but suggested that the Administration consider waiving the fees for planning applications which were made solely for the benefits of the community.

Council Business Division 1
Legislative Council Secretariat
29 August 2003