

The Town Planning (Amendment) Bill
Submission to the Bills Committee

The Association of Planning Consultants of Hong Kong

August 2003

**Submission to the Bills Committee by the
Association of Planning Consultants of Hong Kong in relation to the
Town Planning Amendment Bill**

1. Introduction

- 1.1 The Association of Planning Consultants of Hong Kong (APC) membership consists of professional Town Planners who individually act as advocates for members of the public in relation to the functions of the Town Planning Board. The members of APC have vast experience in dealing with the existing Town Planning Ordinance and are in a unique position to be able to comment on the proposed changes contained in the Bill.
- 1.2 The existing Ordinance is relatively simple to use and clear in the way it operates. It is generally an effective basis for the control of land use but has limited provision for public involvement in the town planning process. A few of the provisions contained in the Bill will facilitate additional public involvement. However, the provisions of the Bill do little, or nothing, towards having the Board operate in a more open way. Generally it is considered that the Ordinance needs little change to remain effective and efficient.

2 Main Issues

2.1 Relationship of the Board to Government

- 2.1.1 The present operation of the Board is as an extension of Planning Department and the Housing, Planning and Lands Bureau. However, the Board is intended to have a semi-judicial role in hearing public objections to Government proposals. Under the present arrangements it is so closely interwoven with the Government system and bureaucracy, that it is not perceived as an independent body which can effectively mediate between the Government's proposals and their effect on private rights and interests. The proposed changes included in the Bill do nothing to distance the Board from the administration nor to open its processes to the public.
- 2.1.2 There is currently confusion in the planning process, in that any public consultation undertaken by Government is seen by Government as being consultation in relation to the Town Planning Board. Informal public consultation by Government cannot be a substitute for the provision of statutory opportunities for the public to make representations directly to the Board, and to be heard by the Board.
- 2.1.3 Public consultation on Government planning proposals should be carried out by the Board prior to these proposals becoming statutory. This is not possible under the existing Ordinance. The "Planning Study" proposed for preliminary consultation included in the previous White Bill has not been included in the amendments in the new Bill and this is seen as a short-coming.

2.1.4 The following suggestions to distance the Board from Government have been made many times before, by many bodies. They have been neglected by the Government and excluded from the Bill. These important changes are considered basic requirements if the Town Planning Board is to become more open and more independent from the Government.

- (a) The Town Planning Board Chairman and Vice-Chairman, and Chairmen of Sub-committees should not be public officers and this should be stipulated in the Ordinance;
- (b) The Board should have a Secretariat which is independent from the Planning Department;
- (c) The Board should be provided with independent legal advice rather than from the Department of Justice.

2.2 Effect of the Changes included in the Bill

Plan Making

2.2.1 The intention is stated as being "to streamline the town planning procedures" and to "enhance public involvement". However, the actual effect is to strengthen Government's control over the process, limit opportunities for public views to be properly considered and to make the process more complex and less "business friendly": -

- (a) There is an unnecessary reduction in the period for consideration of objections from 9 months to 6 months, severely limiting the opportunity for the public to be properly prepared and properly heard. We considered it more important to have a "good" decision based on the proper consideration of sufficient information, rather than a quick decision;
- (b) Removal of the "Preliminary Consideration" stage prevents the Board from forming a preliminary view on the objections and removes an important stage which assists the public in preparing their presentation;
- (c) The removal of the "Further Objection" process takes away the opportunity for affected land owners to have a final chance to be heard, should the Board decide to amend a plan so that it adversely affects them. The importance of this stage is evident by the number of "Further Objection" hearings held by the Board and the fact that on occasions the Board changes its original decision. We consider that this provision should be retained.
- (d) There is no requirement for the Board to carry out hearings in public;
- (e) Unnecessarily restrictive time limits on the submission of information by the public.

- 2.2.2 The proposal to invite both "representations" and "comments" rather than "objections" is welcomed as it widens the opportunity for the Board to obtain a broader public view.

Applications to Amend Plans

- 2.2.3 The proposed new system for considering applications from the public to amend plans (sc 12A) is unnecessarily complex compared with the existing administrative process (See attached Town Planning Board Procedure and Practice paragraphs 98 to 100). The new system requires excessive notification for public comment and the need to obtain the owner's consent before submitting the proposal to the Board. The need to obtain owners consent should be removed as there is ample opportunity provided for public comment. Notification of owners would be impractical in many situations and is unnecessary. It is noted that if the Government is to propose changes it does not have to notify anyone and is not required to make their proposals available for public comment before being considered by the Board. This is considered inequitable.
- 2.2.4 The new system is useful in that it enables the Board to obtain public comment before any change has statutory effect, and provides an additional right for the public to make submissions and be heard once it has been gazetted. However, the same process should apply to Government when it proposes a new plan to the Board, or proposes to amend an existing plan. Government should be bound by the same procedures as the public. Appropriate amendments should be made to Sections 5 and 7 to include these procedures.
- 2.2.5 The existing administrative system used for considering proposed amendments to plans from the public is considered effective. When transferring this to legislation, the only important change which is required is the inclusion of the right for the proponent to appear before the Board and to present his proposal.

Applications for Planning Permission

- 2.2.6 The proposal for all applications for Planning Permission to be publicly notified for comment is supported as it provides residents an opportunity to comment on proposals in their neighbourhood. This system would be much fairer and more open than the current arbitrary assessment of public comment carried out by the District Office.
- 2.2.7 The provisions of sc 16(2) regarding consent of owners to an application is too complex and opens up opportunities for corruption, owners could unreasonably with-hold their consent, particularly if they are in dispute with the applicant. This provision should be removed. The new proposal to have public notification of these applications should provide an adequate opportunity for other owners to express their view to the Board.
- 2.2.8 The process relating to Sc 16 applications has been made extremely complex and difficult to administer e.g. new restrictions on submission of additional information after the application is made, will result in delays

(Sc 16 ss.21 ss 2J(c)) The existing system is flexible and works effectively, while the proposed changes only facilitate Government and provide reasons for them to delay processing of the application. The same restrictions have been introduced to the Sc 17 process and should be removed.

Minor Amendments to Approved Developments

- 2.2.9 The new proposals for minor amendments to approved applications proposed in sc 16A are badly worded and likely to be more complex and time consuming than the existing system of delegated authority. There is no real need to introduce these changes as the existing process can be managed quite efficiently and effectively.

Right of Review (Sc 17)

- 2.2.10 All of the proposed changes to Sc 17 appear to be unnecessary and are more bureaucratic. The only amendment necessary to make the existing process more open, is to require the Board to make Sc 17 review hearings open to the public.
- 2.2.11 The new proposal provides for public comment to be obtained on the Sc 16 stage of submission of an application. Sc 17 provides for an application for a Review of the Board's decision, and has been amended so as to make the application for Review available for public inspection and comment again (sc 17 2(c)). As the Board can only consider the application as previously submitted there is no reason why further public comment should be obtained at the Sc 17 stage.
- 2.2.12 The Bill proposes that Sc17 Reviews could be delegated to a committee. This is considered not acceptable. These Reviews should be heard by the full Board, as the body carrying out the review should be at a level higher than the original decision-making committee. A review by the same administrative body is generally considered to be in breach of natural justice.

3. Conclusion

- 3.1 There are virtually no changes proposed which really enhance the openness of the Board's practices and processes. Fundamental is the need to make the Board appear independent from Government and show that it is capable of operating as a body which can sit in judgement on the balance between the control of the private use of land for the public good, and private rights of land ownership and use. It's most important function is to consider whether the actions of the Government are reasonable and legitimate in this respect.
- 3.2 There must therefore be a separation of the Board from the Bureau and the Planning Department to ensure that this is done and can be seen to be done. Public officers must be excluded from the positions of Chairman, Vice-Chairman and Chairmen of Committees, similar to the way that the Ordinance already excludes all public officers from sitting on the Town Planning Appeal Board.

- 3.3 All of the proposals in the Bill for openness relate to making private sector actions, such as applications and objections, open to public scrutiny. The proposals to streamline the planning process actually remove opportunities for the public to be heard and to be able to prepare properly for such hearings. A good balance between public notification and streamlining has not been achieved and the provisions of the Bill need to be seriously reconsidered in this respect.
- 3.4 The wording of the Bill is unnecessarily complex and difficult to understand and significant portions should be re-written for these reasons alone.

ATTACHMENT : EXISTING PROCEDURE

:: Town Planning Board Procedure and Practice ::

:: OTHER REQUESTS ADDRESSED TO THE BOARD

Request for Rezoning or Amendment to Statutory Plans

98. Under the existing Ordinance, there is no provision for application to the Board to rezone a particular site or to amend any draft or approved plan. Nevertheless, a proponent may lodge to the Board a request for amendment to statutory plan or its Notes to facilitate a proposed development.
99. The current practice is that any request for rezoning or amendment which is addressed to the Board will be submitted to the relevant PC for consideration. Planning Department will circulate the request to relevant government departments for comments. After departmental consultation, the proposed rezoning proposal will be presented to the relevant PC for consideration. If the PC supports the request, the relevant statutory plan will be amended under the provisions (s.7 or s.5) of the Ordinance. The amendment is subject to the same objection procedure under s.6 of the Ordinance. If the PC does not agree to the requested rezoning, the Secy/TPB will inform the proponent accordingly. As a practice, a rezoning request, depending on its complexity, would be submitted to the relevant PC for consideration in about 3 months after receipt of such request. The party requesting the amendment to the statutory plan will not be invited to the meeting to make representations.
100. After a decision has been made by a PC, the Secy/TPB will notify the party requesting the amendment in writing about the decision of the Board upon confirmation of the minutes of the meeting. The relevant paper and minutes of meeting would be attached to the written notification to the proponent or his/her representative. If the proponent requests for an immediate notification on the decision, an informal reply on the result could be conveyed verbally by the Secy/TPB. However, it will be subject to subsequent written confirmation. The gist of decision is also available on TPB's Homepage shortly after the meeting.

Request for Board's Ruling

101. There are occasions in which the Board is requested by the land owners/developers to give rulings on issues in relation to statutory planning matters. These include the interpretation of provisions and restrictions under statutory plans. An example is the interpretation of the building height of a proposed building on a sloping site with regard to the building height restrictions as imposed under the Notes of the relevant statutory plan. If considered necessary, the Board may also be requested to consider whether building proposal would be in contravention of the provision under the relevant statutory plan.