

**Bills Committee on Town Planning (Amendment) Bill 2003
Powers of the Chief Executive in Council
and the Chief Executive in the Planning Process**

Purpose

At the Bills Committee meeting held on 18 September 2003, Members requested the Administration to provide information on the powers of the Chief Executive in Council (CE in C) and the Chief Executive (CE) in the planning process under the Town Planning Bill 2000 (2000 Bill) and the Town Planning (Amendment) Bill 2003 (2003 Amendment Bill). This paper provides the supplementary information.

Powers of the CE in C in the Planning Process

Powers under the existing Town Planning Ordinance

2. The existing Ordinance provides that the CE in C is the final plan approving authority while the Town Planning Board (TPB) is the plan-making authority. The TPB only prepares plan upon directive given by the CE. Upon completion of the objection consideration process, the TPB may make amendment to meet the objections under s.6(9) of the Ordinance. The draft plan incorporating the amendments together with the unwithdrawn objections will be submitted to the CE in C for approval. The CE in C may, under s.9(1) of the Ordinance, approve, refuse to approve or refer the draft plan to the TPB for further consideration and amendment.

3. A major problem under the present arrangement is that if the CE in C does not agree to any of the amendments made by the TPB, it would have no choice but refer the whole plan to the TPB for further consideration and amendment.

The 2000 Bill

4. Under the 2000 Bill, the TPB may amend the draft plan to meet the representations. The draft plan incorporating the amendments together with a schedule of representations and related comments will be submitted to the CE in C for consideration. Whilst the existing powers to approve or refuse to approve the draft plan and similar power to refer the draft plan to the TPB for further consideration and amendment are retained, the CE in C is further empowered to -

- (i) approve the draft plan in part and refer the remaining part to the TPB for further consideration and amendment, subject to any directions made by the CE in C; and
- (ii) approve the draft plan subject to such amendment in respect of any unwithdrawn adverse representation as the CE in C shall specify, provided that the amendment relates to a particular provision on the draft plan which is the subject of the representation.

The 2003 Amendment Bill

5. The 2003 Amendment Bill provides that the TPB shall submit a draft plan, together with any representations and comments and any amendments proposed by the TPB to meet the representations, to the CE in C for consideration. In addition to the powers in the existing Ordinance, the CE in C may, under the new s.9(1A), approve the draft plan subject to any of the amendments proposed by the TPB.

6. The 2003 Amendment Bill has not changed the role of the CE in C in the town planning process. The provisions in the 2003 Amendment Bill are to clarify the role of the CE in C as the final authority for approving a draft plan. The CE in C is therefore given the power to approve the draft plan subject to some or all of the amendments proposed by the TPB to meet representations. To ensure that the CE in C would not be unduly involved in the formulation of detailed planning proposals, or

take a decision that would bypass the representation consideration process, the CE in C is not empowered to make any amendment to the draft plan other than those proposed by the TPB.

7. The provision to allow flexibility for the CE in C to approve some of the amendments proposed by the TPB instead of referring the whole plan to the TPB for further consideration and amendment would avoid delay in development in relation to those objections sites for which the CE in C has agreed to the amendments proposed by the TPB.

8. To ensure transparency, the approved plan incorporating the amendments made by the CE in C will be published for public inspection under s.9(5) of the Ordinance.

Comparison between the 2000 Bill and the 2003 Amendment Bill

9. The CE in C's power under the 2000 Bill is wider than the 2003 Amendment Bill in that the former allows the CE in C to amend the draft plan to meet any unwithdrawn adverse representation provided that the amendment relates to a particular provision on the draft plan which is the subject of a representation. The 2003 Amendment Bill does not allow the CE in C to make any amendment other than to accept or not to accept those proposed by the TPB. Compared to the 2000 Bill, the new s.9(1A) of the 2003 Amendment Bill has two major improvements. First, it would overcome the untidiness of approving a draft plan in part and the confusion caused to the public. Second, it restrains the CE in C's power to amend a draft plan, so that the CE in C would not be unduly involved in the formulation of detailed planning proposals or take a decision that would bypass the representation consideration process.

10. The relevant extracts of the existing Ordinance, the 2000 Bill and the 2003 Amendment Bill concerning the powers of the CE in C upon submission of a draft plan by the TPB are at Annex I. A comparison table showing the powers of the CE in C under the existing Ordinance, the 2000 Bill and the 2003 Amendment Bill is at Annex II.

Powers of the CE in the Plan-Making Process

11. Under s.12(1)(b)(ii) of the existing Ordinance, the CE in C is empowered to refer an approved plan to the TPB for replacement by a new plan or amendment. Since this is only a procedural step to allow the TPB to amend an approved plan or to prepare a replacement plan, we propose to transfer the power from the CE in C to the CE as provided in the new s.12(1A) of the 2003 Amendment Bill. The legislative intent is to expedite the plan-making process by simplifying procedures. The same amendment was proposed in the 2000 Bill.

Housing, Planning and Lands Bureau
September 2003

TOWN PLANNING ORDINANCE (CAP. 131)
城市規劃條例 (第 131 章)

9. Powers of Governor in Council upon submission

- (1) Upon submission of a draft plan the Governor in Council may—
 - (a) approve it;
 - (b) refuse to approve it;
 - (c) refer it to the Board for further consideration and amendment.
- (2) The Governor in Council may approve a draft plan notwithstanding that any requirements of this Ordinance applicable thereto have not been complied with.
- (3) A draft plan approved as aforesaid is hereinafter referred to as an "approved plan".
- (4) The Governor in Council may by notification in the Gazette correct any omission from or error in any approved plan.
- (5) On such approval being given the approved plan shall be printed and exhibited for public inspection at such place as the Board may consider suitable and the fact of such approval and exhibition shall be notified in the Gazette.
- (6) The Board shall supply a copy of any approved plan to any person on payment of such fee as the Board may determine.

9. 總督會同行政局於呈交後的權力

- (1) 於任何草圖呈交後，總督會同行政局可——
 - (a) 核准該草圖；
 - (b) 拒絕核准該草圖；
 - (c) 將該草圖發還規劃委員會再作考慮和修訂。
- (2) 即使本條例適用於某草圖的任何規定未予符合，總督會同行政局仍可核准該草圖。
- (3) 一如上文而獲核准的草圖在下文提述為“核准圖”。
- (4) 總督會同行政局可藉憲報公告，更正核准圖內任何遺漏或錯誤之處。
- (5) 於上述核准發給後，核准圖須予以付印，並須在規劃委員會認為適宜的地點展示，供公眾查閱，而上述核准和展示的事實，須在憲報公布。
- (6) 規劃委員會須向任何繳付規劃委員會所釐定費用的人提供核准圖的複本。

TOWN PLANNING (AMENDMENT) BILL 2003
《2003 年城市規劃(修訂)條例草案》

**11. Powers of Chief Executive in Council
upon submission**

Section 9 is amended by adding—

“(1A) Where the Board has under section 8(1A)(a)(ii) or (b)(ii) submitted with a draft plan a schedule of amendments, the Chief Executive in Council may under subsection (1)(a) also approve the draft plan subject to any of the amendments, whereupon the amendments subject to which the draft plan is so approved shall be regarded as having been made to the draft plan when it is so approved.”.

11. 行政長官會同行政會議於呈交後的權力

第9條現予修訂，加入——

“(1A) 如規劃委員會已根據第8(1A)(a)(ii)或(b)(ii)條連同草圖呈交一份列出修訂的附表，行政長官會同行政會議亦可根據第(1)(a)款在任何該等修訂規限下核准該草圖，而在此情形下，規限核准該草圖的任何該等修訂，須視為已在該草圖如此被核准時在該草圖上作出。”。

TOWN PLANNING BILL (2000)
《城市規劃條例草案》(2000)

**26. Procedure on submission of draft plan to
Chief Executive in Council**

(1) On the submission to the Chief Executive in Council of a draft plan under section 25, the Chief Executive in Council shall consider the draft plan together with any material submitted to it under that section and may—

- (a) refuse to approve the draft plan;
- (b) approve the draft plan—
 - (i) in part only and order that the remaining part of the draft plan not so approved be dealt with in the manner provided in paragraph (d);
 - (ii) subject to such amendment in respect of any unwithdrawn adverse representation as the Chief Executive in Council shall specify;
- (c) approve the whole of the draft plan; or
- (d) order that the draft plan or any part thereof be referred back to the Board together with such directions relating to the amendment or the further consideration of the draft plan or any part thereof by the Board as the Chief Executive in Council thinks fit.

(2) The Chief Executive in Council may approve a draft plan under subsection (1)(b) or (c) notwithstanding that any requirement of this Ordinance applicable to that draft plan has not been complied with.

(3) The Chief Executive in Council may, in relation to any adverse representation, amend a draft plan under subsection (1)(b)(ii) to the extent only that the amendment relates to a particular provision on the draft plan which is the subject of the representation.

26. 向行政長官會同行政會議呈交草圖的程序

(1) 在任何草圖根據第 25 條呈交後，行政長官會同行政會議須將該草圖連同根據該條呈交的任何材料一併考慮，並可——

- (a) 拒絕核准該草圖；
- (b)
 - (i) 核准該草圖的某部分，並命令將未核准的餘下部分，按 (d) 段規定的方式處理；
 - (ii) 在該草圖須經行政長官會同行政會議就任何沒有撤回的異議申述而指明的修訂的前提下，核准該草圖；
- (c) 核准整份草圖；或
- (d) 命令將該草圖或其任何部分，連同行政長官會同行政會議認為合適的關於由城規會對該草圖或該部分作出修訂或進一步考慮的指示，發還城規會。

(2) 即使本條例有任何適用於某草圖的規定未獲遵守，行政長官會同行政會議仍可根據第 (1)(b) 或 (c) 款核准該草圖。

(3) 行政長官會同行政會議可就任何異議申述而根據第 (1)(b)(ii) 款修訂任何草圖，但修訂範圍只限於關乎該草圖上屬該申述的標的之有關規定。

TOWN PLANNING BILL (2000)

《城市規劃條例草案》(2000)

(4) No representation or comment made in respect of a draft plan amended by the Chief Executive in Council under subsection (1)(b)(ii) shall be considered or entertained.

(5) Where the Chief Executive in Council approves a draft plan under subsection (1)(b) or (c) the Board shall—

(a) as soon as reasonably practicable after that approval, make a copy of the approved plan available for public inspection for a period of not less than 14 days, free of charge at such offices of the Government as the Secretary may direct, during the hours when those offices are open to the public; and

(b) cause notice of that approved plan to be published in the Gazette and in at least 2 Chinese and 1 English newspapers.

(6) A draft plan that is refused the approval of the Chief Executive in Council under subsection (1)(a) shall, on the publication under subsection (9) of notice of the revival mentioned in subsection (8), cease to have effect.

(7) The refusal of the Chief Executive in Council under subsection (1)(a) to approve a draft plan shall not affect the ability of the Board to carry out the functions assigned to it under section 6.

(8) Unless the Chief Executive in Council orders to the contrary, the refusal of the Chief Executive in Council under subsection (1)(a) to approve a draft plan in respect of any area shall revive any published outline zoning plan or development permission area plan in respect of the same area in existence immediately before the day that the draft plan in respect of that area was first published under section 16 until—

(a) the expiration of a period of 1 year after that refusal or such further period being not more than 6 months as the Chief Executive may, on application made by the Board, allow in any particular case; or

(b) the publication under section 16 of a further draft plan in respect of that area,

whichever is the earlier.

(9) The Board shall cause notice of the refusal of the Chief Executive in Council under subsection (1)(a) to approve a draft plan and, unless the Chief Executive in Council has ordered to the contrary, of the revival mentioned in subsection (8) and of any such further period under subsection (8)(a) to be published in the Gazette and in at least 2 Chinese and 1 English newspapers.

(4) 就根據第(1)(b)(ii)款修訂的草圖而提出的任何申述或評論，不得獲考慮或受理。

(5) 凡行政長官會同行政會議根據第(1)(b)或(c)款核准任何草圖，城規會須——

(a) 於該項核准作出後，在合理地切實可行的範圍內盡快在局長所指示的政府辦事處備有該核准圖則的副本，免費供公眾在該等辦事處對公眾開放的時間內查閱，為期最少14天；及

(b) 安排將該核准圖則的公告在憲報以及最少2份中文報章及1份英文報章公布。

(6) 行政長官會同行政會議根據第(1)(a)款拒絕核准的草圖，須在第(8)款所提述的恢復效力的公告根據第(9)款公布後停止有效。

(7) 行政長官會同行政會議根據第(1)(a)款拒絕核准任何草圖，並不影響城規會執行第6條委予的職能的能力。

(8) 除非行政長官會同行政會議作出相反的命令，否則行政長官會同行政會議如根據第(1)(a)款拒絕核准關乎任何地區的草圖，則在緊接該草圖首次根據第16條公布當日之前已存在並關乎同一地區的任何已公布分區計劃大綱圖或發展審批地區圖，即恢復有效，直至——

(a) 該項拒絕後的1年期間屆滿為止，或行政長官應城規會的申請在個別個案中容許的不超過6個月的較後限期屆滿為止；或

(b) 關乎該地區的另一草圖根據第16條公布為止。

上述兩個時限以較早者為準。

(9) 城規會須安排將行政長官會同行政會議根據第(1)(a)款拒絕核准草圖的公告，及(除行政長官會同行政會議已作出相反的命令外)第(8)款所提述的恢復效力的公告，以及第(8)(a)款所指的任何較後限期的公告，在憲報以及最少2份中文報章及1份英文報章公布。

The Powers of the CE in C upon Submission of a Draft Plan by the TPB

	Powers of CE in C
Town Planning Ordinance	(a) approve the draft plan as submitted (b) refuse to approve the draft plan (c) refer the draft plan to the TPB for further consideration and amendment
Town Planning Bill 2000	(a)(i) approve the draft plan in whole (a)(ii) approve the draft plan in part and order that the remaining part to be dealt with in the manner provided in (c) below (a)(iii) approve the draft plan subject to such amendment in respect of any unwithdrawn adverse representation as the CE in C shall specify provided that the amendment relates to a particular provision on the draft plan which is the subject of the representation (b) refuse to approve the draft plan (c) order that the draft plan or any part thereof be referred back to the TPB together with such directions relating to the amendment or the further consideration of the draft plan or any part thereof by the TPB as the CE in C thinks fit
Town Planning (Amendment) Bill 2003	(a) approve the draft plan subject to any of the amendments proposed by the TPB (b) refuse to approve (c) refer the draft plan to the TPB for further consideration and amendment