

**Extract from the minutes of the meeting between
Legislative Council Members and Councillors of Heung Yee Kuk
on 10 June 2003**

Members Present : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP (Convenor)
Dr Hon David CHU Yu-lin, JP
Hon NG Leung-sing, JP
Hon CHAN Kwok-keung, JP
Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Hon Howard YOUNG, SBS, JP
Hon YEUNG Yiu-chung, BBS
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon LI Fung-ying, JP
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP
Hon IP Kwok-him, JP
Hon MA Fung-kwok, JP

By Invitation : **Councillors of Heung Yee Kuk**
Hon LAU Wong-fat, GBS, JP (Chairman)
Mr PANG Hang-yin (Vice-Chairman)
Mr CHAU How-chen
Mr POON Chin-hung
Mr CHUNG Wai-ping
Mr MAN Fu-wan
Mr TSANG Ching-lun
Mr YIP Moon-wah, Stephen
Mr SIT Ho-yin, Kingsley
Mr KAN Chung-nin
Mr WONG Ho-ming
Mr LI Kwok-ying
Ms LIAO Su-lan

In attendance : Miss LAU Fung-ye
Senior Secretary to Heung Yee Kuk

Mr LEE Ho
Secretary to Heung Yee Kuk

Clerk in : Mrs Justina LAM

Attendance Assistance Secretary General 2

Staff in Attendance : Miss Betty MA
Senior Assistance Secretary (2)1

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I Town Planning (Amendment) Bill 2003

2. Mr YIP Moon-wah informed Members that the Deputy Director of Planning had explained to Heung Yee Kuk on 9 June 2003 proposals in the Town Planning (Amendment) Bill 2003. Mr YIP said that Councillors of Heung Yee Kuk were concerned about a few fundamental issues.

3. Mr YIP said that under the Bill, the managers of "tso/tong" would be regarded as land owners and were liable to offences in relation to unauthorized developments. Mr YIP pointed out that the managers of "tso/tong" in the New Territories (NT), very often, only acted as agents and did not have full control over the use of the land in question. It was therefore inappropriate to render managers of "tso/tong" liable to the same obligations and responsibilities of land owners in the urban areas.

4. Mr YIP further pointed out that the Bill also sought to require an applicant for planning permission or amendment to statutory plan who was not the owner of the application site to obtain the consent of or notify the owner. This requirement could pose practical difficulties to an applicant as it might not be possible to obtain the consent of all the owners in the situation where a large number of owners were involved. Heung Yee Kuk considered that flexibility should be allowed in this respect in order that development in NT would not be stifled.

5. Mr YIP said that under the Town Planning Ordinance, when an unauthorized development came to the notice of the Administration, it would serve an enforcement notice on the land owner or occupier concerned to discontinue the unauthorized development by a specified date. The person could apply for planning permission to continue with the development or request for a review by lodging an appeal to the Town Planning Board (TPB). There was no need to discontinue the development pending the decision of TPB.

6. Mr YIP pointed out that the Bill proposed to amend the Town Planning

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Ordinance to the effect that compliance with an enforcement notice meant discontinuing an unauthorized development at once. The purpose of making the proposal, according to the Administration, was to prevent an unauthorized development from making the site irrecoverable to its original state, if TPB eventually decided that the development should be discontinued. Mr YIP further said that Heung Yee Kuk fully understood the rationale for the proposal. However, past experience had shown that upon the owner applying for planning permission, he might be given approval to proceed with the development.

7. Mr YIP added that private development had attributed to the overall development in NT. To prevent private developers from wasting time and money, Heung Yee Kuk considered that the Administration should exercise discretion when issuing an enforcement notice. In other words, if the unauthorized development would not render the site irrecoverable, it should be allowed to continue, pending the grant of planning permission or the appeal outcome.

8. Mr YIP said that the Bill also empowered TPB to consider and approve applications by circulation of papers. Mr YIP questioned whether the arrangement would contravene the principle of enhancing transparency of TPB's work. Moreover, members of TPB would be deprived of the opportunity to better understand the background of individual applications, if no meetings were to be held.

9. Mr YIP pointed out that the Bill proposed to recover the cost involved in processing applications for amendment to a plan, planning permission and amendment to planning permission. However, the Bill did not provide details of how the cost was to be calculated. Mr YIP expressed reservation about applying the concept of full cost recovery, and hoped that Members would consider the proposal in detail.

10. Mr YIP said that Councillors of Heung Yee Kuk wished to take the opportunity to raise two issues, i.e. voting result and compensation, which were not covered in the Bill. Regarding voting result, Mr YIP considered that TPB should make public how its members voted on individual applications. Mr YIP further said that the issue of compensation had been outstanding for more than 13 years, since the passage of the Town Planning (Amendment) Ordinance in 1991. As the Administration had undertaken to study the issue of compensation after the enactment of the Amendment Ordinance, Heung Yee Kuk held a strong view that the Administration should not proceed with other amendments to the Ordinance without first addressing the issue of compensation. Mr YIP added that the Administration should, at the least, make a commitment as to when a comprehensive review of the issue of compensation would be conducted.

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11. Mr YIP hoped that Members would take into account Heung Yee Kuk's views in the course of scrutinizing the Bill.

12. Mr POON Chin-hung said that Councillors of Heung Yee Kuk did not have dissenting views about the objects of the Bill, i.e. to streamline the town planning process with a view to enhancing public involvement, and to strengthen the enforcement powers against unauthorized developments. However, Heung Yee Kuk considered that the proposals should be studied in detail. Mr POON pointed out that the court had previously ruled that in the event of disputes over the administration of a "tso/tong", consent of all the members of the "tso/tong" should be obtained. In the light of the ruling, the Administration's proposal of making managers of "tso/tong" liable to offences in relation to unauthorized developments would be imposing too heavy a responsibility on the managers of "tso/tong". He further pointed out that in NT, it was not uncommon for a small piece of land to be owned by a number of land owners. It might not be possible for the managers of "tso/tong" to obtain the consent of all the owners in the event of disputes.

13. Mr POON remarked that Heung Yee Kuk had made its stance very clear that where a planning proposal imposed restriction(s) on the use of a piece of land, the affected land owner(s) should be compensated. The Administration should strike a proper balance between environmental protection and safeguarding the interests of land owners. Mr POON pointed out that when the Town Planning (Amendment) Ordinance was passed by LegCo in 1991, most LegCo Members agreed that the issue of compensation should be studied separately, but so far the Administration had not addressed the issue.

14. Mr SIT Ho-yin said that land owners in NT did not object in principle to resumption of land on the ground of public interests, but considered that it should not be achieved at the expense of the private property rights of land owners. Mr SIT further said that it was the Government's responsibility to honour its commitment to address the issue of compensation which was made more than 10 years ago. He hoped that LegCo Members would attach greater importance to the matter and urged the Administration to address the issue of compensation to affected land owners, resulting from planning restrictions imposed by the Town Planning (Amendment) Ordinance which was passed in 1991.

15. Regarding the Town Planning (Amendment) Bill 2003, Mr SIT said that as pointed out by Mr YIP Moon-wah, the Bill proposed, among other things, to permit TPB to make decisions by circulation of papers. Mr SIT expressed disagreement with the proposed arrangement. He pointed out that this was not the proper way to achieve the purpose of streamlining town planning process. Given the statutory powers of TPB, there was in fact a need to enhance transparency of its work. Mr SIT further said that at present, a total of eight

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official and 32 non-official members served on TPB, and the quorum was only five members. In his view, the quorum should be enlarged, given that TPB made very important decisions on land use.

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16. Mr MAN Fu-wan said that he shared the views expressed by other Councillors of Heung Yee Kuk that the Town Planning (Amendment) Bill 2003 should have covered the issue of compensation to affected land owners. Mr MAN further said that the development of wetland in NT had been frozen since the enactment of the Town Planning (Amendment) Ordinance in 1991. As the land owners had left their land deserted, the environmental hygiene of these areas was unsatisfactory. Mr MAN expressed concern that the land owners concerned would be held responsible for meeting the expenses for cleaning up these hygiene blackspots.

17. Mr MAN pointed out that approval had been given to change the land use of some wetland for railway development. He considered it unfair to the owners as they themselves were restricted from applying to change the use of their land.

18. Mr PANG Hang-yin said that he was disappointed with the performance of the Planning Department. He pointed out that according to the Administration, the Town Planning (Amendment) Bill 2003 sought to streamline and shorten the town planning process. A new procedure for approval of draft plans was provided under the Bill whereby the period of exhibition of draft plans was shortened from two to one month. There would be a single hearing process to consider the representations received by TPB, and the period for considering representations was shortened from nine to six months. Mr PANG commented that the new procedure could not streamline the planning process, but would deprive the right of applicants to lodge complaints against decisions of TPB within the legitimate period. Mr PANG wondered whether the underlying motive of the introduction of the Bill was to cover up the fact that the Administration had no intention to address the issue of compensation. Mr PANG considered that if the object of the Bill was to streamline town planning process, the Administration should also propose a reduction of manpower in the Planning Department. Mr PANG urged that Members should not be deceived by the Administration when scrutinizing the Bill.

19. Mr SIT Ho-yin said that the Bill also sought to introduce changes to the enforcement provisions, under which the Director of Planning would be empowered to issue enforcement notices regarding unauthorized developments, and to impose criminal liability for failure to comply with requirements in respect of such notices. Mr SIT further said that no appeal mechanism would be available. He considered that the proposed arrangement unfair to the land owners as the Director of Planning (D of P) would assume the dual role of law making and law enforcement.

20. Mr MAN Fu-wan concurred with Mr SIT. Mr MAN added that to safeguard the impartiality of the performance of the Department, D of P should not be empowered to take actions against non-compliance with notices issued

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by him.

21. The Convenor said that a Bills Committee had been formed to study the Bill, which was currently placed on the waiting list. She believed that the Bills Committee would invite views from deputations, including Heung Yee Kuk, when it was activated.

22. Dr Hon TANG Siu-tong said that when the Town Planning (Amendment) Bill 2000 was introduced into LegCo in 2000, a Bills Committee was formed to examine the 2000 Bill. However, because of the complex issues involved, the Bills Committee was not able to complete scrutiny of the 2000 Bill within that LegCo session and the Bills Committee was dissolved. Dr TANG said that the Administration had now proposed to amend the Town Planning Ordinance in stages, and amendments in the Town Planning (Amendment) Bill 2003 constituted the first stage. Dr TANG added that when the Bills Committee commenced work, views from Heung Yee Kuk on the Bill would be invited.

23. The Convenor said that some of the issues raised by Heung Yee Kuk, including compensation to the affected land owners, were beyond the scope of the Town Planning (Amendment) Bill 2003. However, the issue had been raised at previous meetings between LegCo Members and Heung Yee Kuk, and the concerns and views of Heung Yee Kuk had already been referred to the Panel on Planning, Lands and Works (PLW Panel) for follow-up. The Convenor asked Dr Hon TANG Siu-tong, who was Chairman of the PLW Panel, whether the Panel had any specific timetable to discuss the issue.

24. Dr Hon TANG Siu-tong responded that the issue was on the list of outstanding items for discussion by the Panel. The exact timing for discussion was to be advised by the Administration. Dr TANG said that the PLW Panel discussed the statutory powers, composition and criteria for appointment of members of TPB at its meeting on 6 June 2003. Members had raised a number of concerns, and the Administration had been requested to provide a response at the next meeting of the Panel in July 2003.

25. The Convenor said that as the issue of compensation had been outstanding for almost 13 years, the PLW Panel should consider pressing the Administration to indicate clearly how it would deal with the matter.

26. Hon LAU Wong-fat said that it was stated in the report of the Special Committee on Compensation and Betterment chaired by Mr John TODD that the Administration should ensure that those who were deprived of the beneficial use of their land should be allowed to obtain redress. Mr LAU further said that as the Town Planning (Amendment) Bill 2003 did not cover the issue of compensation, Heung Yee Kuk was of the view that the Bill was incomplete. The Administration should withdraw the Bill and re-submit a

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comprehensive amendment bill to the Town Planning Ordinance.

27. The Convenor asked Dr Hon TANG Siu-tong what the view of the PLW Panel was when it was consulted on the legislative proposals in the Town Planning (Amendment) Bill 2003. Dr Hon TANG Siu-tong responded that the Panel was informed by the Administration that it would put forward amendments to the Town Planning Ordinance in stages. Dr TANG said that he saw no reasons why the Panel would object to the Administration's proposal of introducing amendments to the Ordinance in stages.

28. The Convenor said that the concerns raised by Heung Yee Kuk were beyond the scope of the Town Planning (Amendment) Bill 2003. The Convenor further said that given that the Administration had not briefed the PLW Panel on the timetable for introducing amendments in respect of the remaining stages and details of the amendments, the Convenor suggested and Members agreed that the matter should be referred to the PLW Panel for follow-up. The Convenor also suggested that views of Heung Yee Kuk should be invited when the Panel discussed the matter.

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