

**Views of the Hong Kong Institute of Surveyors on
Town Planning (Amendment) Bill 2003**

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1. SUMMARY

The Bill entails changes aimed to streamlining the planning procedures, enhance public involvement in the planning process, and strengthening enforcement control against unauthorized developments. Amongst other things, it is in the interest of the public that planning will enable the more efficient use of land resources to their general welfare and has the support of the Institute.

We hereunder would address from the experience gained in the existing planning process, from the point of view of certainty of the Plan, recognition of private interests/ rights, involvement of the community to see if the proposed changes meet the ends.

The Bill has widened the power of the authorities in implementing the removal of unauthorized developments and restoration of land in the New Territories. At the same time it extends the periods for display of plans, objections and appeal with the time for bureaucratic procedures being shortened. Public are kept informed of the proposed development by notices and the authorities are required to print out the changes on newspaper. However, more resources should be allocated to encourage public participation rather than promote public awareness at large.

The Bills Committee in the year of 2000 had identified issues such as the chairmanship, openness and public accountability of the Town Planning Board, compensation for planning blight and the Board's role in strategic planning especially road and railway planning. However, these fundamental issues are either not addressed or considered at greater depth in the Bill this time.

2. THE PROPOSED AMENDMENTS

The Bill proposes amendments to Section 1, Section 2, 2A, Section 2B, Section 5, Section 6, 6A-D, Section 8, Section 12, 12A-D, Section 16, 16A-D, Section 17, Section 22, 23 which will be discussed in more details under paragraphs 4 below.

The amendments mainly deal with the following:

- a. redefine land owners and introduce the prescribed fees;
- b. delegate powers to committees and public officers;
- c. transaction of business by circulation of papers;
- d. plan making procedures reduced to one meeting;
- e. exhibition of draft plan and representation reduced to 1 month;
- f. submission of plan approval to Chief Executive shortened to 6 months;
- g. obtain consent of current land owners for s.16 applications;
- h. s.16 applications available for public inspection and the posting of notices;
- i. s.17 applications available for public inspection and the posting of notices; and
- j. unauthorized development.

3. MEETING THE OBJECTIVES

The amendments as proposed are said to be

- expediting the plan-making process;
- streamlining the planning approval process;
- further delegation of the Board's powers and functions to its committees and public officer;
- enhancing the transparency of the planning system; and
- strengthening enforcement control against unauthorized developments in the New Territories rural areas.

Expediting the plan-making process

Prima facie, the proposed amendment to reduce the exhibition period to 1 month and to change the representation hearing to one meeting in the plan making process will expedite the process. However, it is at the expense of community interest, limits the opportunity of public participation which would otherwise be essential in the plan making process. There simply not enough consideration time for the affected land owners and the public at large to apprehend the contents of the Plan and the implications, to make representations. Without thorough public consultations, the objective of promoting general welfare of the community through efficient use of land resources is largely defeated.

We will discuss more on plan making process in later part of this submission.

Streamlining the planning approval process

The Bill intends to streamline the planning procedures. There is a perception that approval by circulating papers can reduce meetings for efficiency and this is proposed in s.2B. There are exceptions for this and town planning is one of these. Meetings are needed for comprehensive study of the planning issues, interplay of ideas and comments for efficient and effective planning. For those planning concerns which have wider implications and affect the interests of a particular group or community, they should be allowed to meet members at meetings and air their concerns so that decisions will be made with due respects to all relevant facts and issues.

After all, planning is not planning on the drawing board. Factors including social, physical and economic need to be considered and taken on board and paper circulations would not serve the purpose.

Further delegation of the Board's powers and functions to its committees and public officers

This will defeat openness and accountability of a good planning system when public participation is encouraged and landowners' rights are looked after in the efficient use of available land resources. If certainty is ensured in the plan during the plan making process, further delegation should not be required.

Enhancing the transparency of the planning system

By enhancing transparency, planning applications should be made by landowners or someone with his consent so that the concerned landowner will be aware of the applications. This requirement is considered unrelated to town planning, may deter investment for more efficient use of available land resources.

We consider that transparency should be enhanced in the plan making process by allowing longer period of exhibition for public participation. With the benefit of thorough consultations, the plan will be so drawn up with a reasonable degree of certainty for guiding future developments. The number of further planning applications would be much reduced.

Strengthening enforcement control

We support this proposal on the condition that any enforcement action should be taken discriminately in the interests of the local community where private interests or rights are respected and wastage of investment is minimized. Also, further investments are guided through more efficient planning. If the plan has reflected all the local views with due respect to the existing land use and developments and the future planning statement for the area, the number of unauthorized developments should not be large.

4. COMMENTS ON THE RESPECTIVE SECTIONS

Section 1

This appears for the land use control purpose particularly in the rural New Territories. We consider that existing community life should be maintained as far as possible and indiscriminately control of land use would jeopardize economic activities and prohibit rejuvenation of rural areas bearing in mind that some of these activities are acceptable to the villagers, the local community.

The introduction of the prescribed fee will add costs to any development proposal, thus discouraging investment by relative small developers.

Section 2, 2A

This bill has not tried to resolve the concerns raised for time-consuming process of planning applications. If the TPB delegates its duties to committees and public officers in particular consideration of representations and the right of review under s.17, this will bring about bureaucracy, against openness as well as certainty. The TPB is set up to promote the general welfare of the community under the Town Planning Ordinance. To delegate power and functions to public officers is contrary to more openness and accountability when compared with consideration by the Board. This becomes apparent for small-scale developments contemplated by the small developers and or investors as for comprehensive developments or large scale ones, developers would have available resources to go for planning applications which should be considered by the Board driving through the consultation process.

We believe that if during the plan-making process, the plan is drawn up with a reasonable degree of certainty, fewer planning applications will be required hence further delegations are unnecessary.

It will be time consuming and costly, even if functions are delegated to public officers, when such could have been avoided by more thoughtful and specific planning at the plan-making process.

In the interests of the public full consultation should be available and heard for the welfare of the community at large.

Section 2B

We consider that transaction of business by circulation of papers is not appropriate. It is a general perception that approval by papers is for urgent cases and when meetings cannot be organized within the time frame.

But for town planning which concerns the welfare of people, the issue should be well presented, fully argued and discussed. It is not clear and should not be the case if rejections are to be by circulation of papers as well.

Section 5

The bill has proposed to change the exhibition time of draft plans from 2 months to 1 month. This is contrary to openness of the process because the community, the professionals and private institutes would require longer time to study the effect of the draft plans. The result will stimulate by on-going objections in the planning application, causing unnecessary conflicts and delays to development projects which is likely to have an adverse impact on the market.

Exhibition of plans should be as long as practicable and reasonable. Such a short period of one month would greatly limit public participation. Further landowners, the general public and, most importantly, the people affected may not apprehend fully the changes proposed and the impact.

Initially, the plan making process might be speeded up due to a shorter exhibition time for plan. However, the proposed arrangement would have the undesirable effect of prolonging the whole development process as a result. Numerous unnecessary objections and appeals may be generated for further planning proposals due to lack of sufficient time for consultations in the plan making process.

Public consultation with ample time will allow full discussion at the plan making stage so that a plan will be drawn up for the community to make the best use of available land resources acceptable to the community. A high degree of certainty will be attained.

Section 6, 6A-D

Representation within 1 month of the plan exhibition is too short for public awareness and the making of representation (s.6). Within 3 weeks of public inspection, the public may make comments to the representation which again is

too short for public involvement. The purpose of allowing objections in the plan-making process is to hear the community's concerns if any. Should there be any change to this process it must be primarily targeted at improving efficiency in the process, not by reducing the time for public involvement. Landowners and all people affected from the modifications need time to acknowledge the issue concerned in details and produce reasonable feedback. To encourage public participation, the statement should not create technical barriers free views by the community. It will be against the spirit of planning if issues are not thoroughly discussed and presented. Withdrawal of further objections in the plan making process is not only against the objective of planning serving the community, but also exposes the intention to not hearing any opposed views from the community.

Section 8

We support submission to Chief Executive within 6 months in place of the original 9 months. Such amendment will streamline the plan making process. However, the 2-month period for objection (representation) should be maintained for public consultation as mentioned under s.5 and s.6 above.

Section 12, 12A-D

Whilst requiring landowner's consent in making planning applications may deter investment opportunities, we support the suggestion in the angle of openness and transparency. Similarly, posting of notices encourages public participation.

Section 16, 16A-D

Similar arguments as under application on amendment of approved plans above in terms of applications submitted by owners or with his consent and the posting of notices. On the one hand the public should be involved in an s.16 applications by the posting of notices to maintain openness and transparency. On the other hand it will add to uncertainties at the expense of public resources.

It is within the spirit of Town Planning Ordinance for posting of notices inviting public participation. However if full consultation is carried out at the plan-making stage designating land use with certainty, s.16 applications should therefore be few. This will no doubt help in the investment opportunities and the economy as a whole.

We believed that plan making process should be as long as possible for thorough and thoughtful considerations. An optimal plan and layout will be developed at last, so that the column one and two users for each zoned uses on plans are carefully adopted to guide future developments/redevelopments without loss of efficacy of existing developments in the same layout plan. The number of planning applications for non-conforming uses would be much reduced after the plans for the area are devised in this manner and adopted.

All land use applications should be simplified for the good of community. It is already a myth for column II to include so many alternatives for the public to apply. If these uses are not intended to be implemented in the locality, why bother to allow others apply for it? And if there is the possibility to include such land uses,

why not straight ahead to put them in Column I? The plan-making process should already eliminate those unwelcome neighbors, if sufficient time has been provided for all people to consider, their involvement in the plan making stage. Application should be few in front of a comprehensive, concise and sustainable plan with high degree of certainties. Unnecessary remedial actions are just tedious and a waste of resources to both the government and to the general public. Consultation should be as long as possible to achieve a common goal for all parties in the plan-making stage. Column II should be well shortened, because there is less justification for assigning those categories of "unwanted uses" to be feasible through applications if they are really undesirable in nature.

Section 17

Right of review is an important element in the planning process. We do not support the same procedures of a s.16 applications as representations have been made during the s.16 consideration. Open for discussion is who should bear the review responsibilities, the Town Planning Board, an independent board, or other relevant panels. We consider it appropriate for an independent review board to avoid possible conflict of interests.

Section 22, 23

Widening the power of the authority is a good step to strengthen the actions on combating unauthorized developments in the rural New Territories.

5. THE IMPORTANT ISSUES

We would reiterate the fundamental issues discussed and raised by the Bills Committee last time, which were then considered by the Government as outside the scope of the Bill and these issues are

- the chairmanship;
- openness and public accountability of the Town Planning Board;
- compensation for planning blight; and
- the Board's role in strategic planning especially road and railway planning.

The Bill and the proposed changes are regarded as piecemeal as the important issues of previous Bills Committee as stated above have not been addressed this time. If the important issues were taken on board and considered together with the proposed changes in one-go, streamlining the planning procedures and participation by the public would follow logically. It will be to the benefit of the society for the more efficient use of available land resources.

-The End-