

The Town Planning (Amendment) Bill 2003
Submission to the Bills Committee

The Real Estate Developers Association of Hong Kong
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**Submission to the Bills Committee by
The Real Estate Developers Association of Hong Kong in relation to the
Town Planning Amendment Bill 2003**

Introduction

This submission on the Town Planning (Amendment) Bill consists of two parts. The first part, Section A, is a general statement of the main points and problems REDA sees with the Bill. The second part, Section B, consists of specific comments on the provisions of the Bill and proposals to amend the sections of the Bill to meet REDA's concerns.

The existing Town Planning Ordinance is generally considered to be effective and efficient. It is simple and clear in its wording, its requirements and its operation. The proposals introduced in this Amendment Bill are complex, bureaucratic and written in a style which is unnecessarily complex and difficult to understand.

Section A. General Statement

1. Key Messages

- 1.1 Phased implementation of the changes is ill-conceived and those changes generally acceptable to the community have not been included in Phase 1.
- 1.2 The proposals are contrary to promoting the openness of the Board's processes.
- 1.3 Equal treatment should be given to all who come before the Board and Government should be no different than a member of the Public.

2. Background

- 2.1. Government presented their outline of proposals to REDA in November 2002. REDA was concerned that some of the fundamental issues were not being addressed – particularly that of the openness of the Board.
- 2.2. REDA made a detailed written submission to the Housing, Planning and Lands Bureau in April 2003 expressing grave reservations over the proposals, particularly the removal of public rights while increasing government control
- 2.3. The Bureau met with REDA on 2 May 2003 and they did not accept that there was broad consensus in the community that the process of the Board should be more transparent. In particular they would not accept that the Chairman should be independent, and an independent secretariat established, even when referred to Hansard records relating to the submissions on the previous White Bill.

- 2.4 The Bureau provided a written response on the 7 May 2003 when they advised that the Bill would proceed to LegCo on the 21 May. Everything that is important has been postponed to the Second Stage of amendments.

3. REDA's Fundamental Points

- 3.1. REDA supports the objective of making the Town Planning Board more open to the public and more transparent in the way it operates. REDA believes there is public consensus on these matters. Without these fundamental changes the other proposed changes are of little benefit to the public.
- 3.2 The Board should have a Non-official Chairman and Non-official Chairmen for Sub-committees to enhance openness of the Planning System.
- 3.3 The Government views the Board as being part of the Administration rather than an independent body which has a semi-judicial role in mediating between the Government and the public.
- 3.4. Public consultation is fully supported at the right time in the Planning Process, particularly at the Plan making stage, so that it does not result in unnecessary delays to development projects;
- 3.5. Consultation by the Government on planning studies does not constitute and cannot be a substitute for proper public consultation by the Town Planning Board in relation to proposals which will have statutory effect.
- 3.6. With an independent and more open Board, procedures should be equally binding on both Government and the private sector, particularly those relating to the way amendments are made to Plans.
- 3.7 Changes to the Town Planning Ordinance should be consolidated into two stages not three, to ensure consistency of approach. The fundamental changes to the structure of the Board should be in Stage 1.

4. Problems with the Bill

- 4.1. 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".

Plan Making

- 4.2. The reduction of the objection period, and reduction of processing of objections from 9 months to 6 months, reduces the opportunity for the public to prepare proper objections and reduces the time for the Board to properly consider submissions and comments. (sc 6, sc 9, sc 10) REDA considers it better to have adequate time to enable the Board to make a well considered decision rather than a quick decision - REDA sees no need to reduce the time as proposed from 9 months to 6 months.
- 4.3. Only minor changes are needed to the existing objection process to allow comments to be made on representations (objections). The existing process is thorough and fair to the public and land owners, and could be improved by a simple change allowing comments to be made on objections. The hearing of submissions should also be open to the public

Applications to Amend Plans

- 4.4 The proposed new system for considering applications from the public to amend plans (sc 12A) is unnecessarily complex compared with the existing administrative process, requiring triple notification for objections. The new system should also apply to proposed amendments to plans made by the Board before they have statutory effect. It should also be simplified by removing the need to notify land owners prior to submission to the Board as there are more than adequate opportunities provided for public consultation

Applications for Planning Permission

- 4.5 Only contentious applications for Planning Permission should be publicly notified for comment, not all applications, as the public has already been notified of likely permitted uses in preparation of the Outline Zoning Plan.
- 4.6 The provisions of Sc 16(2) regarding prior consent of owners to an application is too complex and introduces an unnecessary impediment to the development process as most cases in Hong Kong involve multiple ownership. There are problems which relate to identification of the owner, absentee owners and deceased owners which would make it impossible to obtain consent. Also in many cases, particularly urban renewal, the applicant is probably negotiating with the other owners and the need to obtain consent opens up opportunities for blackmail and corruption.
- 4.7 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 application is made, will result in delays (Sc 16 ss.2I ss 2J(c)).

- 4.8 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.

Right of Review

- 4.9 The new proposal provides for public comment to be obtained on the sc16 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.
- 4.10 Sc 17(2H)(c) prevents the submission of additional information without delaying the consideration of the review. This is only to the benefit of Government, will introduce delays and does not streamline the process.
- 4.11 Sc17 Reviews should be heard by the full Board and should not be able to be delegated to a committee. A review by the same judge or administrative official is generally considered to be in breach of natural justice.
- 4.12 All of the amendments to Sc 17 are unnecessary, are not business friendly and do not add to the openness and streamlining of the planning process.

5. Conclusion

- 5.1 There are no changes proposed to enhance the openness of the Board's practices and processes. All proposals relate to making private sector actions such as applications and objections open to public scrutiny. Nothing is included which makes the Government's actions subject to openness and better consultation.
- 5.2 The changes to the Ordinance should require the Board to hear matters in public, while deliberations should be private. The Chairman and the Secretariat should be independent of the Bureau and the Planning Department. Fundamentally, the Government should be treated the same as a member of the public when being part of the process, particularly when proposing changes to Plans.

Section B : Detailed Comments on the Provisions of the Town Planning (Amendment) Bill 2003

1. Appointment of the Board

Section 2 - Appointment of the Town Planning Board

- 1.1 Section 2(1) should be amended to exclude public officers from being chairman or vice chairman of the Board or its Committees

Section 2A(1)(1) - Appointment of Committees

- 1.2 The Board should not be able to appoint a Committee to hear Sc 17 Reviews. These reviews are part of a process of appeal to a higher authority, which should be the Board itself and not to another committee. A review by the same judge or administrative official is generally considered to be in breach of natural justice.

2. Plan Making and Objection Process

- 2.1 REDA considers that the proposed consultation process for any person to make applications to amend plans as proposed in **Section 12A** should apply to the preparation of new plans by the Board, and to amendments to draft and approved plans initiated by the Board.(sc.5 and sc. 7)
- 2.2 REDA considers only minor changes to the existing process need to be introduced - those relating to representations and comments as included in Sections 6 and 6A.

Section 6B - Further information to Supplement Representations

- 2.3 (ss1) The time limit of 4 weeks for submission of further information is too short. The detail required for provision of proper information for the Board to consider can take 3 to 4 months to prepare. The time limit should be set at 4 weeks before the date of hearing.

Section 6D - Consideration of Representations

- 2.4 The Board should first consider the representations and comments without the representatives being present. This will allow them to amend the plan to meet those which appear reasonable. Most importantly it allows the Board a chance to form a view before the hearing, having received the comments from the Government Departments. These comments and the Board's initial view facilitate the presentation and consideration at the hearing which would follow. In this respect the existing process is considered to be a good and efficient one.
- 2.4 Section 6D should therefore be significantly changed to include the existing provisions of S.6(7).
- 2.5 ss. (1) This section should be amended to require that the meeting to be held to consider the representations and the comments should be open to the public. This is perhaps the best way to provide a high degree of openness

and transparency for the Board's activities. The deliberations of the Board should be private.

Oppose the Deletion of S.6(7)

- 2.6 The proposed withdrawal of the further objection procedure (S.6(7) of the Town Planning Ordinance) is not supported and it is considered necessary to retain it. An amendment made to meet a representation after the hearing could easily affect landowners who did not make a representation or comment on and objection originally. They need to be given one chance to present their views to the Board if the decision is seen to adversely affect their land. The present S.6(7) procedure provides for the right to know as well as the right to object and be heard.

Section 8 Submission of Plans to Chief Executive in Council

- 2.7 ss (2) (b) and (b). The time period for completion of the hearing process has been reduced from 9 months to 6 months and the further extension period reduced from 6 months to 3 months. This is not supported as this effectively removes time for the public to prepare proper submissions and removes their opportunities to be heard by the Board. The full and proper consideration of objections is more important than artificially reducing the time available when there is usually nothing critical to be considered. The existing 9-month period has proved too short in many cases for proper preparation and consideration of objections.

12A – Amendment to Plans on Application to the Board

- 2.8 This new Section introduces a legal basis for an existing administrative process. The process has been made much more complex and difficult. It would involve the need to notify the land owner, to have the proposal publicly notified before it is considered by the Board. Should the Board accept the proposal it is then incorporated on to the Plan by gazetting an amendment which is again subject to the formal public notification and submission process.
- 2.9 This triple consultation process is unacceptable to REDA unless Government is also subject to the same procedures when it proposes an amendment to a plan. That would be of great public benefit as it would provide a formal process of consultation before the change has statutory effect.
- 2.10 ss. (3) to (5) – Many amendments relate to the Notes to a Plan and can affect thousands of properties. It is impractical to notify these people as required by these sections, especially as the formal process under sc 6 will allow for public representations.
- 2.11 ss. (6) to (11) - This public consultation process is useful in that it gives the public an opportunity to comment before the amendment has legal effect. These provisions should therefore also apply to any proposed amendment that the Board intends to introduce where the changes usually have a more significant negative impact on private land ownership rights.
- 2.12 ss. (12) to (14) The submission of additional information should be permitted up to 4 weeks before the date of the meeting without affecting the programme for consideration of the submission. The delay is only for the convenience of

government and does not affect the proper consideration of the proposal by the Board.

3. Fees

Section 14 – Regulations for Fees

- 3.1 ss (2) to (5) The proposed changes allow for the Secretary for Housing, Planning & Lands to set fees relating to the costs of recovery of expenditure by the Board and Government and they will not be limited by the amount of costs incurred. Government departments are excluded from paying fees.
- 3.2 There is no objection in principle to allowing for fees to be charged. However, there is no control on the fees which may be prescribed. There is no guarantee that the costs incurred are minimal and that the bureaucracy serving the Board is operating efficiently.
- 3.3 If the Board was provided with a separate Secretariat and removed from the Planning Department then there would be a sound basis for operating efficiently and for clearly assessing the costs of processing applications. There is no reason why Government Departments should be removed from paying for the costs of the work that they generate and this should also cover any proposed changes to Plans which originate from the Government.

4. Applications for Planning Permission

Section 16 - Applications for Permission in respect of Plans

- 4.1 The existing simple arrangements and wording have been changed to be more bureaucratic and time consuming with little real benefit. This is only to the advantage of Government and does not streamline the process.
- 4.2 ss.(2), (2A) and (2B) are too stringent in relation to obtaining consent from the owners or notifying them, particularly if there is a complex ownership situation. The possibility of corruption arises. Notification should be adequate as under the proposed wording the application once made will be available for public notification and comment under ss (2C) and (2D).
- 4.3 Public notification should relate only to contentious uses. ss.(2C) should be amended to allow the Board to specify a group or class of uses which would require public notification and to exclude classes of uses from requiring public notification.
- 4.4 ss. (2J) introduces potential delay to the process as the 2 month period for consideration starts from the time the information is received. At present additional information can be submitted at any time and the flexibility provides for clarification of issues before the application is submitted to the Board.
- 4.5 ss.(3) This should be amended to enable the applicant to attend to present the proposal rather than relying on the Government to present it. This would be much more efficient and reduce the number of Sc 17 Review cases.

Section 16A – Amendments to permissions in respect of Plans

- 4.6 The proposal is good in principle, but the wording of the section and the process is more complex than the existing system and likely to result in delays.
- 4.7 ss. (2) The right to apply for a minor amendment should be available to anyone as the approval runs with the land not the owner.
- 4.8 ss. (6) Further information should be permitted at any time without resulting in a delay to the application being considered.
- 4.9 ss. (10) The Board may impose new conditions and the applicant should have a right to a review under Sc 17. The words “and where it refused the application” should be deleted.

Section 17 - Right of Review

- 4.10 The amendments to Sc 17 do not streamline the process.
- 4.11 ss. (2A) to (2F). These sections propose that the Sc 17 review be publicly notified for comment again. The application is the same as that which was notified under Sc 16. There is no need for further public inspection as this has already been completed and the Board has already received comments.
- 4.12 ss. (2G) and (2H) prohibit the submission of additional information in relation to the review without resulting in a deferment of the hearing. This is only to the benefit of Government. The applicant should be able to submit additional information up to 4 weeks before the hearing, so that a proper response to the Boards decision can be prepared.