

Town Planning Bill 2003
Presentation to the Bill Committee
on 24 September 2003

I support enhancing public involvement in the planning process whereby all applications will be made available for public inspection.

However, the proposal will practically demand a substantial increase of staff resources of the Planning Department and time of the Town Planning Board members. It will need to lengthen the consideration period.

To reduce the work load of the Town Planning Board members by allowing consideration of submissions by circulation is not acceptable in that Board members will tend not to attend Town Planning Board meetings leaving the decision of the Board by a simple minority. Board members who are too busy to attend Board meetings are advised not to take up the appointments.

As a counter proposal, one way to reduce the work load is to reduce number of submission / re-submission and the second is to increase the cost of submissions. The Bill has proposed prescribed fees for each submission. The other way is to require statutory professional submission so as to improve the quality.

Submission made by professionals will require less time for processing by the Planning Authority than non-professional and unprofessional submission which may include incorrect background data and obvious inappropriate proposals. There have been adverse comments on the quality of submissions prepared by non-professionals by public officers of relevant government departments as well, e.g. submission plans are hand drawn out of scale and it is difficult to identify on site etc. Professionals will tend to discourage inappropriate submissions / re-submissions, thus cutting costs in public administration.

Shortening the statutory objection period is not acceptable as this would discourage rather than encourage the public involvement in the planning process. Also, the saving of one month in plan exhibition/objection period is insignificant as compared with the time taken in the preparation of draft plan and planning studies, the departmental circulation for comments and the plan making process as a whole.

To cut short the deliberation, I generally tend to support the comments made respectively by HKIP, HKIA, HKIS & HYK.

The Bill does not mention statutory professional submissions and I have proposed it to be considered in this or the next Bill Amendment.

The detail of my comment is at Appendix attached.

Edwin C.L. Tsang
19/9/2003

Town Planning Bill 2003

Proposed AP System for Planning Submission Section 16 and Rezoning Requests Section 17 Objections / Appeals

Date : 18 September 2003

1. Introduction

The reason for missing out of professional submission in the Town Planning Ordinance is not known. The first and original 1939 Town Planning Ordinance aims at systematic preparation of outline zoning plans and is not concerned with planning submission by professionals. Objection to town plan could be made by any person is the norm and all along planning submission under Section 16 follows the same practice of planning objections by any persons.

The requirement of planning submission by professionals was not mentioned in the subsequent 1974, 1991, 2000 and again 2003 revisions of the Town Planning Ordinance.

2. Argument on whether Town Planning is common sense or is a Profession

(a) Argument on Town Planning is a common sense

Town Planning is concerned with the improving living condition for people. It is a matter of common sense.

Any person can raise objection to town plans prepared for them. It is the right of every citizen.

Any person can submit proposals which affects their living/working conditions e.g. ideas and suggestions/ proposals on improvement of the neighbourhood or such proposals as discussed in the District Boards etc.

Thus, some people argue that Town Planning is only common sense. It has no technical matter. As long as it is rational, it is a matter of choice.

(b) Argument on Town Planning is a profession

It involves improvement for more comfortable living, working and recreational environment; it concerns health and welfare, environmental issues, preservation and conservation, sustainable development, traffic implications, geotechnical and infrastructural issues, sub-regional and regional issues, public expenditure etc. The process also involves systematic collection and collation of data, analysis and evaluation of alternatives and making rational choice. It is a highly public and political matter.

Because of the need to deal with such complicated technical social and political issues, Town planning is a profession. It requires educational training at postgraduate level and years of practical experience before they can be qualified as planning professional capable of dealing with matters on planning. It is a pre-requisite before taking up civil employment in the Planning Authority / public bodies.

The question is how to draw a line between the matter in question is a common sense or whether it is a predominantly professional matter.

Professionals in competition with non-professionals and un-professionals

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In the open market, professionals stand a better prospect in satisfactory completion of a planning task because of their expertise. But the general public may not always aware of the merits of employing professionals because of the additional expenses of employing professionals. The current Town Planning Ordinance does not mention professional submission and has led the public to believe that professionals and non-professionals and even un-professionals are all equal in professional knowledge and ability.

The Town Planning Board Section 16 Form does not mention the applicant's professional identity, which leads people to believe that all people are of equal capability and equally good in planning.

Town Planning today is a complicated process

Town Planning today is a process more complicated than the situation when Town Planning was first introduced in 1939. Today, it involves many facets, social-economic aspects, traffic implications, density and height controls, environmental issues, preservation and conservation, slope stabilization and drainage implications, urban design, landscaping issues and visual impact, land administration, compensation issues, public spending, long term planning goals etc.

It involves not only one profession but multi disciplinary professions. It requires a co-ordinator to organise the work of related disciplines to prepare planning submissions.

Administrative Submission and Statutory Submission

At present, without statutory AP system, all proposals are submitted administratively (not statutorily) to the Planning Authority / Town Planning Board. It is noted that all 8 professionals (accountants, architects, engineers, surveyors, lawyers, barristers, dentists, medical practitioners) have a statutory role to play and there is no reason why planning profession is the exception.

3. Proposal for the Planning Authority / Town Planning Board to devise and set up a Development Submission System.

3.1 Current System

It has been in operation for years and appears to work well. It would appear that the best choice is to leave every thing untouched. Since government is going to amend the Ordinance, some improvement of the current system is recommended. Under the current system, Planning Authority /Town Planning Board will continue to receive less quality submissions by, and will cause a lot of time for Town Planning Board in deliberation. On the other hand, the applicants, not knowing that it is the quality of their submissions that caused delays in the processing. It is opportune for Planning Authority during the revision of the Town planning Ordinance to review the current system.

3.2 Proposed System

Whilst the review of the Ordinance will take some time, some interim measures shall be adopted to address the current short-coming of the current system.

3.2.1 Administrative Means

(a) Proposed Minor Amendment of the Section 16 Forms

The Section 16 Form should be amended to include a space to identify / differentiate submission by professionals and non-professional persons so as to indicate that submission by professionals has a standing.
(see Attachment 1)

(b) Government Advisory Pamphlets

In view of the complicated planning matter and process, government should issue some kind of advice in the Government advisory pamphlets to introduce to the public the merit of employment of professional persons to process planning submissions (like seeing doctors when having health problems).

3.2.2 Statutory Means by licencing

Review of the current system to licensing system will take some time. But there are merits in so doing and it is worthwhile to consider the proposal in the long run.

4. Justifications for AP System

An authorized person is a co-ordinator in co-ordinating planning studies with various disciplines and the Preparation of and submission of planning proposals, meeting with the public officers of the Planning Authority, have a good grasp of planning law and planning policies, competent in the implementation of planning conditions and appearing before the Town Planning Board and Appeal Board. It is doubtful that any person (other than experienced professionals) can deal with such highly complicated matters.

The ideal profession for APs are registered professional planners but other related professionals who are acknowledged and experienced in the planning practice will do.

The proposed AP System is justified on the following grounds: -

(A) Avoid potential damage to the environment

Planning / Development schemes prepared by qualified professionals will ensure more quality proposals and submissions. Professional advice to laymen proposal will at least improve Planning / Development schemes prepared by non-professionals.

Planning Authority / Town Planning Board's duty is to approve / reject proposals not in line with planning intention / planning standards / favourable or adverse departmental comments. It is not their duty to improve the quality of the proposals submitted. Poor quality proposals could well be approved by Town Planning Board and once implemented, will add poor developments to the existing stock and thus cause damages to the existing environment for life. (More quality development proposals by professionals will reduce chances of damages to the environment)

(B) Avoid time cost (and thus loss of general revenue) to government departments and Town Planning Board members.

Poor quality submissions may lead to a high Town Planning Board rejection rate. Further resubmissions will cost more time for Planning Authority to process the resubmission and other government departments to comment which will add departmental cost to the public, (expenditure in staff time) and will also waste Town Planning Board members valuable time in consideration of resubmissions.

(C) Avoid cost to the applicants

Professional submission will ensure higher rate of success and avoid the cost of delay in Town Planning Board resubmission.

Also professional submission with more quality proposals will have added value.

(D) Licensing Practice in Line with other professional practice

It has been a common practice to license professionals in Hong Kong. Professionals like architects, engineers, surveyors, medical practitioners; dentists, accountants, solicitors and barristers, each have a statutory role to play under respective Ordinances. More recently licensing includes estate agents and housing managers.

The intention is to ensure quality work and also to regulate the practice under respective codes of professional conduct under respective disciplines. (The current Code of Professional Practice of HKIP, is attached for easy reference at Attachment 2)

Planning is complicated process which affects each person and the whole community. It has far reaching social, traffic, environmental and other implications as much as other implications addressed / resolved by other licensed professionals

It is difficult to justify how professional planning work can be done by any non-professional person.

The proposed system will bring in line with the current common practice of licensing to protect the community and the environment in public interest.

5. Adverse comment on the proposed system

- (a) The proposed system will deprive the right of any person to submit planning/ development applications.

Response

People may argue that it causes injustice to the public. It should, however, be noted that the proposal does not include planning objections. Planning objections will continue to be submitted by any person. It only concerned with application for permission under Section 16/ Section 17 appeals and rezoning requests.

But employment of professionals will ensure quality work, like seeing qualified licensed doctors during illness and health problems, qualified lawyers in legal or suit cases, qualified architects and engineers in building developments and structural works etc. Employing professionals will gain in the long run.

- (b) It will appear to cost more money in engaging professionals to the applicants.

Response

The proposed system will cost less in the long run with speedy approval, more quality submission and added value in the final enhanced development. Thus it pays in the end.

It is not a closed shop. It will be open to all planning and related professionals.

6. Proposed licensing system for Town Planning Board's consideration

The proposed system shall be devised and approved by the Town Planning Board which is the statutory body in control of planning. As regard details of implementation it is the duty of the Planning Authority.

However the following could be some thoughts for the consideration of the planning Authority and the Town Planning Board.

Category of APs

- (a) Category A

Planners AP (P)

Professional planners will be accorded with Category A classification because of their academic training in planning and professional qualification and experience.

- (b) Category B

Other related professionals

Other professionals will be accorded with Category B classification because of their training in planning related fields. Their professional training is of special consultant services to comprehensive planning as follows.

AP (A)	–	Architects
AP (E)	–	Engineers
AP (S)	–	Surveyors : -
	–	Planning and Development Division
	–	General Practice Division
	–	Building Surveying Division
AP (LA)	–	Landscape Architects

Note: Professional planners are in a position to produce proposals more in keeping with the planning intentions of approved town plans. However in view of the current practice where planning is allowed to be done by any person, all professionals are treated as equal.

Proposed Exemption from AP submissions

The Town Planning Board shall make rules and decide on what will be exempted from AP submissions. The following are some suggestions for the Planning Authority to consider:

- (a) N.T. Exempted Houses (less than 10 houses or where MDP is not required)
- (b) Change of use in existing multi-storey buildings (with G.F.A. less than 500m²).
- (c) Planning objections and proposals like Protection of the Harbour, ecology, conservation etc., in public interest are to be exempted.

7. Time Frame for Introduction

The introduction should be as soon as possible. If not, some administrative means shall be introduced within the current system as proposed by HKIP. If the system cannot be introduced in 2003/2004, it should be introduced in the next round of Bill Amendment.

Owner 擁有人

Is the applicant the owner of the site/premises to which this application relates? Yes/No.* If yes, please provide documentary proof. If no, please provide the following information about the owner. 申請人是否本申請書所涉土地/樓宇的擁有人? 是/否* 若是, 請提供書面証明; 若否, 請提供土地/樓宇擁有人的以下資料 o	
Name of Owner (Mr./Mrs./Ms./ Miss*) 擁有人姓名 (先生 / 女士 *)	
Address 地址	
E-Mail Address 電郵地址	
Tel. No. 電話號碼	
Fax. No. 圖文傳真號碼	
Has owner's consent to the applied use been obtained? 是否就所申請的用途徵得擁有人同意?	Yes/No* If yes, please provide documentary proof. 是/否* 如已徵得擁有人同意, 請提供書面証明 o

Agent 代理人 (Category A / Category B / Category C * 第一類 / 第二類 / 第三類)

Has the applicant authorized an agent to submit this application ? Yes/No.* If yes, please provide the following information about the agent and provide a letter signed by the applicant authorizing the agent to act on his/her behalf. All correspondence related to this application will be sent to the agent. 申請人有沒有授權代理人代表行事? 有/沒有* 若有, 請提供代理人的以下資料並提供具申請人簽署的授權書 o 所有關於本申請的來往信件將會送達代理人 o
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Name of Agent 代理人名稱	
Contact Person (Mr./Mrs./Ms./Miss*) 聯絡人 (先生 / 女士 *)	
Address 地址	
E-Mail Address 電郵地址	
Tel. No. 電話號碼	
Fax. No. 圖文傳真號碼	

Signed by the Applicant/Agent* Category A / Category B / Category C
申請人 / 代理人* 簽署 第一類 / 第二類 / 第三類

* Delete as appropriate

Date _____
日期 _____

Note :

Category A Professional Planners

Category B Other related professionals such as
Architects/Surveyors/Engineers/
Lawyers etc

Category C Others

Name(s) of Person(s) signing _____
簽署人姓名 (block letters) (正楷)on behalf of _____
簽署人所代表的人士 / 機構

- Delete as appropriate
- 請刪去不適用字句

Please fill in 'NA' for inapplicable item
請在不適用的項目上填寫[不適用]

Code of Conduct

HONG KONG INSTITUTE OF PLANNERS

Code of Professional Conduct

Following approval by the Extraordinary General Meeting on 30th May 1995, this Code came into operation on 1st July 1995.

Preamble

1. The Hong Kong Institute of Planners (the Institute) was constituted, among others, to promote and safeguard the social, physical and economic development of the urban and rural environment of Hong Kong in the best interest of the community and to raise the status and safeguard and advance the interests of the profession of town planning. Members of the Institute are governed by its Constitution, By-laws, Rules and this Code of Professional Conduct, under and in addition to the general law.
2. The object of this Code of Professional Conduct is to promote the standard of professional conduct and self discipline required of every Member of the Institute in the interest of the public. (All references to "Member" in this Code refer to Fellow and Member.) Students of the Institute are required to comply with the provision of the Code wherever applicable.
3. This Code comprises four areas namely:
 - Responsibility to Society;
 - Responsibility to the Profession;
 - Responsibility to the Clients/ Employers; and
 - Responsibility to fellow Members.

In each of the area are principles and rules which indicate good practice or the conditions under which certain activities are permitted/ prohibited.

4. Members may be required to answer enquiries concerning their professional conduct in accordance with the Constitution of the Institute. In accordance with Clause 76 of the By-laws, the Council of the Institute shall have the power to suspend, expel or reprimand Members who are proved to have acted against the aims and objects of the Institute and contrary to the intent of the Code of Professional Conduct.
5. Note that unless the context otherwise requires, words importing the

singular number only shall include the plural number and vice versa and words importing the masculine gender only shall include the feminine and the neuter gender and vice versa and words importing persons shall include companies or corporations and vice versa.

A. Responsibility to Society

6. Members of the Institute in discharging their responsibilities to their employers and the profession shall at all times be cognisant of the interests of the general public in matters of town and country planning.
7. When making a public statement professionally and personally, Members shall:
 - (a) ensure that both their qualification to make the statement and their association with any benefiting party are made known to the recipients of the statement; and
 - (b) avoid giving the impression to any person reading or hearing those views that they form part of a statement made on behalf of the Institute.
8. Members are encouraged to extend public understanding of the planning profession, and to offer professional advice and comments to the government and related authorities on planning policies and implementation provided that any adverse criticism is neither malicious nor with improper motives.
9. Members shall faithfully carry out the duties which they undertake, and shall have a proper regard for the interests both of those who commission, and of those who may be affected by, the planning proposals.
10. Members advertising or authorising an advertisement of professional planning services shall ensure that the advertisements are neither misleading to the public nor such as to prejudice their professional status or the reputation of the profession. In particular, no advertisement of planning service shall contain any of the following:
 - (a) an inaccurate statement;
 - (b) an explicit comparison between the service offered by the Member advertising and the service offered by other

Members of the Institute;

- (c) any endorsement for a commercial product or company; or
 - (d) statements which run counter to the Constitution of the Institute.
11. Members shall not discriminate on the grounds of race, sex, creed, religion, disability or age and shall seek to eliminate such discrimination by others and to promote equality of opportunity.

B. Responsibility to the Profession

12. Members of the Institute shall order their conduct so as to uphold the dignity, standing and reputation of the profession. Members shall:
- (a) discharge their professional responsibilities with integrity, dignity, fairness and courtesy;
 - (b) give opinions in their professional capacity that are objective, reliable and honest and to the best of their ability and knowledge;
 - (c) take all reasonable steps to maintain adequate development of their professional competence;
 - (d) accept responsibility for their actions and ensure that persons to whom they delegate authority are sufficiently competent to carry the associated responsibility;
 - (e) not undertake responsibility which they themselves are not qualified and competent to discharge;
 - (f) when working outside Hong Kong show their professional conduct according to the recognized standards of conduct in that country, provided always that their conduct shall be such as to uphold the status and integrity of the Institute;
 - (g) have proper regard for the professional obligations and qualifications of those with whom they are professionally associated; and
 - (h) when working within the field of another profession pay due regard to the ethics of that profession.
13. Members must not hold, assume, accept or retain a position in which their interests are in conflict with their professional duty.

14. Members must not undertake any duties or carry out any instruction of an employer, client or supervisor which involve making statements purporting to be their own but which are contrary to their bona fide professional opinion.

C. Responsibility to Clients/Employers

15. Administration/ General

- (a) It is the responsibility of Members to take all reasonable steps to ensure that all town planning matters are conducted in accordance with the Code.
- (b) Members shall, where necessary, co-operate with or arrange for the services of other experts wherever an employer's or client's interest might best be served this way.
- (c) Members shall not subcommission work for which they have been commissioned without the prior agreement of their client nor without defining the responsibilities of those concerned.
- (d) Members shall not accept any financial or contractual obligation on behalf of their employer or client without their authority.

16. Remuneration

- (a) Members shall be remunerated for their planning services solely by professional fee paid by clients and/or a salary and other benefits of the conditions of employment with their employers. In particular, Members must not undertake any planning services, or participate in any actions, which run counter to the provisions of Prevention of Bribery Ordinance.
- (b) Members who are offering professional services shall not reduce a fee quotation to take account of the fee quoted by another planner for the same service.

17. Conflict of Interest

- (a) Members employed by a government department or agency must not undertake any private planning work or dealings in land, in any area where, by reason of his office, he is in a position to adjudicate or influence a decision. Provided that prior notice is given to their employer, Members are not prevented from undertaking planning work for a residence for themselves or members of their family.

- (b) Members who prepare a planning scheme for a government department or agency either as an employee or a consultant, shall not engage in any dealings in land within the area covered or affected by the scheme. This restriction applies during the period of preparation of the scheme or thereafter so long as they are still advising the government department or agency on the implementation of the scheme. Provided that prior notice in writing is given to the government department or agency, Members are not prevented from applying for planning permission or dealing in land transaction of a residence for themselves or members of their family.

- (c) Members shall ensure that they are not placing themselves in the position of adjudicating or influencing the decision of their own application to a government department or agency in any circumstances.

- (d) Members who have undertaken planning work on behalf of a client must not, until that engagement has been terminated, undertake work for or on behalf of any other client if by so doing the interests of either client would be prejudiced or the Members' ability to act wholly in the interests of either client would be impaired.

- (e) Members shall inform their employer or client in writing of any conflict between their personal or financial interest and faithful service to their employer or client, and obtain the agreement of the parties concerned to the continuance of their engagement.

18. Confidentiality

- (a) Members shall safeguard confidential information relating to their employer or client and shall not disclose such information to other parties without the consent of their employer or client. Members shall not receive any advantage, gift or favour for disclosing such information to other parties nor make use of it for personal gain.
- (b) Whatever the circumstances, Members must always be prepared to justify their action if they have disclosed confidential information. If Members are in doubt about disclosing information in a particular situation they will be wise to seek independent legal advice.

19. Competence /Negligence

- (a) Members must not act or continue to act in circumstances where the client

- cannot be represented with competence or diligence.
- (b) Members who have accepted instructions on behalf of a client are bound to carry out those instructions with diligence and must exercise reasonable care and skill.
 - (c) Members are under a duty to keep their client properly informed and to comply with reasonable requests from their client for information concerning their business affairs.

D. Responsibility to Fellow Members

- 20. Members shall, where appropriate seek, accept and offer honest criticism of work and properly credit the contributions of others. They shall not maliciously or recklessly injure the professional reputation of another Member. However, they shall bring to the notice of the Institute any evidence of unethical, illegal or unfair professional practice.
- 21. Members shall not attempt to supplant another Member, or collude with any person, to gain a commission or position by unfair means or inducement.
- 22. Members in private practice, on being approached or instructed to proceed with professional work upon which to their knowledge another Member is currently undertaking, shall notify the fact to such a Member.

