

**Extract of
Confirmed Minutes of the 54th Planning Sub-Committee (PSC)
of the Land and Building Advisory Committee (LBAC)
Meeting held on 27.8.2003 (Wednesday) at 2:30 p.m.
in Room 1707 on 17/E, North Point Government Offices**

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| Present : | Mr. Bosco Fung | PlanD | (Chairman) |
| | Mr. Steve Yiu | HKIP | |
| | Mr. Augustine Wong | REDA | |
| | Mr. Gordon Ongley | REDA | |
| | Mr. Sandy Duggie | HKILA | |
| | Mr. Francis Lam | HKIS | |
| | Mr. Vincent Ng | HKIA | |
| | Mr. Bosco Ho | AAP | |
| | Mr. K. S. Yip | EPD | |
| | Mrs. Agnes Yuen | TDD | |
| | Miss Ophelia Wong | PlanD | |
| | Mr. Jimmy Leung | PlanD | |
| | Mr. W. W. Chan | PlanD | (Secretary) |
| In attendance: | Ms. Jacinta Woo | PlanD | for item 4 |
| Absent with : Apologies | Mr. Conrad Wong | HKCA | |
| | Ir. William Chan | HKIE | |
| | Mr. T. W. Ng | HPLB | |
| | Mr. Howard Yam | HD | |
| | Ms. Connie Lai | HD | |
| | Mr. H. W. Law | LandsD | |

4. Town Planning (Amendment) Bill 2003 (PSC Paper No. 8/2003)

- 4.1 The Chairman invited Ms. Jacinta Woo to introduce the paper. Ms. Jacinta Woo said that the objectives of the Amendment Bill were three-fold : (i) to streamline and shorten the planning process; (ii) to enhance the openness and fairness of the planning system; and (iii) to strengthen enforcement control on unauthorized developments in the rural New Territories.
- 4.2 Ms. Jacinta Woo then highlighted the major proposals of the Amendment Bill. In the plan-making process, the proposals included: (i) to standardize the plan exhibition period for submitting representations to a draft plan from 3 weeks or two months to one month;

(ii) to publish all representations for three weeks for public comments; (iii) to allow representers to submit further written statements within four weeks upon expiry of the plan exhibition period; (iv) to adopt a single hearing process to consider all representations and comments at the same meeting; and (v) to shorten the period for considering representations from nine months to six months, and to reduce the extension period that could be granted by the Chief Executive from six months to three months.

4.3 Ms. Jacinta Woo went on to elaborate the proposals on applications for planning permission and amendment of plan. The proposals included: (i) to formalize the existing administrative arrangement for processing applications for amendment of plan and to allow applicants to attend the TPB meeting and make representation; (ii) to require an applicant, who is not the land owner of an application site, to obtain consent of or notify the concerned land owner; (iii) to require the TPB to publicize all applications by posting site notices or advertising in local newspapers for three weeks for public comments; (iv) to exempt certain minor amendments to planning permission from the requirement of submitting further application; (v) to charge application fees to recover the cost of services provided by the Administration; and (vi) to enable TPB to set up committees to consider reviews of certain planning applications.

4.4 Ms. Jacinta Woo proceeded to explain the proposals on planning enforcement. The proposals included: (i) to make discontinuance of an unauthorized development as the only means to comply with an enforcement notice in order to stop possible abuse of the existing system by submission of a planning application and instituting the review and appeal processes to delay the prosecution proceedings; (ii) to expressly provide that managers of tso tong should be regarded as land owners under the Ordinance, so that they would be liable to offences in relation to unauthorized developments; and (iii) to enable the Planning Authority to issue a notice to request for

information in relation to investigation on suspected unauthorized developments.

- 4.5 The Chairman informed members that LegCo had set up a Bills Committee, which had invited the Planning Sub-Committee to provide comments on the Amendment Bill. He welcomed members' views on the proposals.

Owner consent or notification

- 4.6 On the proposals of requiring an applicant, who was not the land owner of an application site, to obtain consent of or notify the concerned land owner, Mr. Bosco Ho enquired about the differences between owner consent and notification, and whether the differences would be a material consideration of the concerned application. The Chairman said that either owner consent or notification would meet the requirement under the Amendment Bill. The proposal was in response to community request for openness and transparency. Mr. Jimmy Leung supplemented that owner consent would not normally be a material consideration for planning applications. If the land owner's consent was not obtained, the planning permission could not be implemented. Miss Ophelia Wong added that ownership pattern could be a relevant piece of information in rezoning requests, for instance, in respect of a CDA zone as the TPB would be concerned about the implementability of the zone.

- 4.7 Mr. Gordon Ongley said that it was sometimes difficult to obtain consent of or notify the concerned land owner due to various reasons. As TPB would publicize the application for consultation, he did not see the need for owner notification, and considered the proposal a duplication of effort. Mr. Augustine Wong had the same concern and suggested that similar requirement should also be applied to applications for amending the plan initiated by the Government. Mr. Steve Yiu said that the practicality of notifying owners of application sites required careful consideration. Mr. Francis Lam said that for application sites with

multiple ownership, it would be a burden to the applicants to satisfy the requirement. He said that the proposal of regarding managers of tso tong as land owners might be subject to legal challenge because these managers did not own the land and were assigned to manage the land only.

- 4.8 Ms. Jacinta Woo clarified that an applicant was required to notify the owners of the application site or premises only. There was no need to notify owners of sites and/or premises adjacent to the application site as the posting of site notice by TPB would serve the purpose. Mr. Jimmy Leung said that as some owners might not be living near or within the application site especially in the New Territories, they might not be aware of the site notice posted by TPB to invite comments on the application. The consent or notification requirement was therefore to ensure that owner of the application site was aware of the scheme relating to his/her site. TPB would promulgate the forms of notification in due course. Miss Ophelia Wong explained that owner and community notifications served different purposes. Owner notification served to protect the right of the owner, particularly when the owner was not aware of the application which involved his/her own land (as in the case of application for temporary uses in the New Territories where the question of trespass was serious), whereas community notification was just a general notification to the public about the application. On submission of zoning amendments by Planning Department, Miss Ophelia Wong said that prior to submitting such amendments to TPB, the Department, as the executive arm of TPB, would normally have conducted public consultation on the concerned amendments as part of the plan making and review process.

Plan-making process

- 4.9 Mr. Vincent Ng considered the plan exhibition period of one month inadequate and suggested a period of two months. Regarding the period for considering representations, Mr. Augustine Wong, Mr. Vincent Ng

and Mr. Sandy Duggie supported the current 3 stages of consideration of objections in 9 months which was more fair and comprehensive. Mr. Augustine Wong considered that further consideration of representations was necessary and that a single hearing process might limit the time for each party to present their case if there were many “representers” and “commenters”. Mr. Gordon Ongley was of the view that a well considered decision was preferred to a quick decision. Hence, comparing the existing procedures to the proposed procedures, he would prefer the existing 3 stages of objection consideration within nine months so that there would be opportunities for owners to raise comments on any amendment proposed by TPB. The Chairman said that both procedures had their own merits and demerits. It was necessary to strike a balance between the objectives of shortening the planning process and enhancing openness and fairness.

Further submission after an application is made

- 4.10 Mr. Steve Yiu said that it would not be uncommon for an applicant to provide further information after a planning application was submitted. The Amendment Bill would be too rigid as any further submission would be regarded as a fresh application to be processed in two months from date of receiving the further submission. Mr. Augustine Wong had similar concern on the possible lengthening of processing of planning applications due to further submissions. He said that there were occasions when an applicant tabled additional information at TPB meeting to clarify matters that were simple and factual. Mr. Steve Yiu said that some public officers might be tempted to ask for additional information so as to get more time to process an application.

Independent Chairman/Secretariat of TPB

- 4.11 Mr. Gordon Ongley commented that TPB should be serviced by an independent secretariat with an independent chairman to enhance openness of the planning system. The Amendment Bill should address this fundamental issue. Both Mr. Vincent

Ng and Mr. Francis Lam shared the same view.

Setting up of committees

- 4.12 As for the setting up of committees to consider reviews of planning applications, Mr. Vincent Ng agreed in principle to the delegation of authority but cautioned that the size of the committee should be reasonable to ensure independence and impartiality. Mr. Steve Yiu suggested that members of the review committee should be different from those who first considered the application. The Chairman said that the set up and operation of review committees would be examined further in detail by TPB.

Consideration of Paper by Circulation

- 4.13 Mr. Steve Yiu noted that there was a proposal to allow transaction of business by circulation of papers. He suggested that the Amendment Bill should state clearly the type of business that would be dealt with under this category. Miss Ophelia Wong clarified that the proposal was not intended to enable the TPB to decide on planning applications and plan-making matters by circulation of paper.

Application fee

- 4.14 Mr. Gordon Ongley questioned how fees for applications were to be fixed. Mr. Vincent Ng suggested that non-profit making organizations should be exempted from paying application fees similar to the case where the Building Authority had the discretion to waive fees for building plan submission.

Others

- 4.15 Mr. Vincent Ng said that there should be guidelines on the type of minor amendments to planning permission that could be exempted from fresh application. He had no objection on the proposals on planning enforcement.
- 4.16 Mr. Gordon Ongley said that it was unnecessary to seek public comment again at review stage of planning applications and the procedure was considered not business friendly.

- 4.17 Mr. Augustine Wong said that from past experience, there were not many applications for amendment of plan being approved within a period of three months. He was worried that the proposal would put pressure to TPB to disapprove applications in order to meet the three-month deadline.
- 4.18 Mr. Steve Yiu said that the Stages 2 and 3 amendments to other parts of the Town Planning Ordinance should be expedited. He wondered whether the Amendment Bill could be re-drafted in simple terms for easy understanding. Mr. Sandy Duggie also found the Amendment Bill difficult to comprehend. Mr. Bosco Ho said that the Amendment Bill was complicated and might lead to uncertainty. The Chairman suggested to send members a copy of the current Ordinance incorporating the proposed amendments which was more readable.
- 4.19 Mr. Vincent Ng and Mr. Gordon Ongley passed a copy of HKIA and REDA's comments on the Amendment Bill respectively to the Secretary for reference.
- 4.20 At the request of members, Mr. Jimmy Leung summarised the broad consensus of views among the non-official members present at the meeting. They included:
- (i) it was not necessary to require an applicant to obtain consent of or notify the concerned land owners on application for planning permission and amendment of plan as the publication of applications for public comments would serve the purpose;
 - (ii) the requirement of obtaining consent of or notifying the concerned land owners for application for amendment of plan would be a duplication of effort on public consultation as the amendment plan would be gazetted again;

- (iii) the requirement of obtaining consent of or notifying the concerned land owners for application for amendment of plan, if adopted, should also be applied to applications submitted by Government;
- (iv) the current system of considering objections in nine months with three stages was preferred to the proposed system of six months in one stage;
- (v) the plan exhibition period should be standardized to two months;
- (vi) the proposal to restart the two-month cycle from the date of further submission of information to a planning application should not be included in the Amendment Bill as this would delay the development process; and
- (vii) apart from Mr. Francis Lam who had concerns on the proposal to regard managers of tso tong as land owners, members had no objection to the major proposals on planning enforcement.

4.21 Whilst a full consensus on the issue of an independent chairman and secretariat was not reached as some non-official members had not discussed the issue with their organizations, some members including REDA, HKIA and HKIS felt that the need for an independent chairman and secretariat was of fundamental importance to achieve real transparency in the planning process and should therefore be included in any Stage 1 amendment to the current Ordinance.

4.22 The Chairman thanked members' comments on the Amendment Bill. He said that the minutes of the meeting, after endorsement by members by circulation, would be passed to LegCo Bills Committee for their reference.