

URGENT

The Legislative Council Building
8 Jackson Road
Central
Hong Kong

Attn: Clerk of the Bills Committee

23rd September 2003

Dear Sirs,

Bills Committee on Town Planning (Amendment) Bill 2003
Response to Invitation for Submissions

1. As someone who has had direct experience of the defects in the current Town Planning system and the Planning Department's failure or refusal or inability to provide notice, information or important relevant material to affected residents, the following submissions are based on experience from actual events which have led to injustice, procedural impropriety, complaints of maladministration, and regrettably defective planning decisions made without full or proper knowledge and appreciation of the relevant facts and made by way of repeated applications.
2. We have seen, in several examples, the secrecy or selective consultation or partial or deficient consultation which takes place by the Planning Department even for major changes of policy. This makes it even more essential that a transparent and level playing field is provided for plan making and amending and for Section 16 applications for development permission and amendments and the review and appeal procedures.
3. The Explanatory Memorandum notes that **a main purpose of the Bill is "enhancing public participation in the town planning process..."** This principle is long overdue and thus must be implemented fully and with clear recognition that the public interest in protecting our natural, rural and urban environment is now a fundamental concern deserving of the highest legislative priority. Private property owners must be enabled to have the information with which they can protect their interests and the local environment from unwanted impacts, damage and over development.
4. At the same time as this Bill is taking place the public is being asked to separately consider the **draft Conservation Policy** of the Government. This claims that town planning is part of the process of conservation of our ecology and natural and rural landscapes but nowhere is this made apparent from these amendments. Current Government policy requires that measures for conservation be integrated into the functions and tasks of all departments where it impinges upon conservation, see Chief Executive Policy Address 1999 in which one major target is listed by Mr Tung

Chee Hwa as "Making Hong Kong an ideal home...every citizen, every business, **every government department and bureau needs to start working in partnership to achieve what is known as sustainable development. Conservation policy is an ecological approach to design and plan in an effort to build Hong Kong into a world class city.**" Good planning is well placed to help protect and conserve Hong Kong.

5. Thus it is proposed that **Section 3 of the Ordinance be amended** to add after the phrase "and general welfare of the community", the words "and the conservation of the natural heritage and cultural heritage and the environment."
6. Special provisions should be inserted to ensure that any plans or amendments or section 16 applications for development must not prejudice the natural environment and ecology. Increasingly in environmental legislation, international principles are used for example in the implementation of the EIA Ordinance and others. **It is thus proposed, that in all cases related to conservation and biological diversity, accepted international conservation principles and in particular the precautionary principle should be adopted and followed in the deliberations and plan making and development permitting or regulating functions of the Planning Department and the Board.**
7. It is further proposed that the Planning Standards and Guidelines on Conservation and international principles for the protection of the cultural heritage and natural or rural landscape be actively implemented in the plan making, amending and development permission process. In order to restore the balance in the countryside, development zonings should be always be counter balanced by conservation zonings so that there is **no net loss of conservation value countryside**
8. For the sake of good administration and the rule of law, it is essential that public participation is enhanced by ensuring that every aspect of this Bill contains the relevant set of provisions at each stage of the process to give **notice and adequate information** to the public and those most closely affected either physically or legally or those whose public interests are involved.
9. **The fundamental rights** of adequate and timely notice, consultation, the right to information and the right to make representations, and attend and be heard must be built into the Planning Department's systems and institutions through this Bill and related administrative measures to follow. **The current bill does not achieve this.**
10. **The efficiency of the system can only be truly improved and time can really be saved if the quality of the information and consultation process is significantly improved.** Only if there is full and frank disclosure of all relevant facts and opinions can the time periods be shortened and the planning process expedited in a fair way. Without such improvements, the proposed **time reduction is not acceptable** as there will not be enough time to make enquiries and secure information and responses from government departments and other sources and then formulate the same into useful submissions or comments.

11. **All relevant reports and evidence in support of the plan and application for development permission must be made available to the public on request. This includes plans, surveys, impact assessments, infrastructure reports, traffic and road alignment reports, geo-technical reports and ecological or vegetation reports and surveys and amendments or supplements thereto.** At present Planning Department claim not to be able to supply reports and surveys from developers or applicants for development permission to those directly affected by the application for the reason that the documents belong to the developer or applicant and the developer refuses permission. This obstacle can and must be overcome by legislative provision to ensure that the main purpose of this Bill can be achieved, ie "to streamline the town planning procedures while enhancing public involvement in the town planning system process." **There can be no true public involvement or fairness if the public are kept in the dark on evidence and data which are essential to understanding, supporting or commenting on the plan or application. The whole Bill will be flawed if this obstacle to information continues to exist.**
12. This will also have the effect of **improving the quality** of the eventual result and will provide an element of fairness and equality to all concerned in the process as well as helping ensure that the decision is more environmentally sound and responsible and sustainable for the sake of the future generations.
13. The following improvements are proposed to be institutionalised into the system and the Bill as follows. The Notice and Information system:
 - a. Advance informal notice be provided to those who are obviously likely to be affected by the application, such informal letters and contact to be made even before the formal application is lodged. This will save much time;
 - b. Immediate direct notice be issued upon the application being made, such notice to be informative, contain a description and complete summary with plans or sketches so those notified can relate the application to their particular concern;
 - c. The notice to specify the environmental, pollution, visual and ecological impacts;
 - d. The notice to specify that the relevant supporting documents, reports and surveys will be made available upon request.
14. The notice should be sent to the following categories of persons:
 - a. Persons close by and likely to be directly or indirectly affected by the works, pollution, all kinds of impacts, vegetation damage and slope disturbance;
 - b. The Green Non Governmental Organisations, especially if the works are close to existing or potential conservation areas or are likely to involve

environmental, natural landscape, vegetation disturbance and areas of ecological interest or otherwise have bio diversity relevance;

- c. Nearby residents and landowners in particular if the works will affect their facilities, access and environment.
15. **The intention is to place the public in a position of equality in terms of information and being heard as the proponent plan maker or the applicant for development permission.** Thus the Bill should provide and the Notice should also specify that the recipient has the right to object, comment and make submissions, proposals for improvements or amendment and to attend and be heard at each appropriate stage of the process, ie plan making, plan amending, development application, review, appeal etc and that the recipient be informed of the time period and method of so doing this. The current Bill is deficient in several sections in this regard, for example, the Section 17 review process does not provide for the public to attend or be heard. This is a serious defect since Section 16 is a paper consideration and approval process with no provisions for hearing.
16. **The evidence and material to be relied up by the Board at each stage must be signed and verified.** The quality and integrity and independence and reliability of the material upon which the Planning Department and the Board relies as evidence must be of a high standard. Thus all plans, explanatory statements, summaries, submissions, reports or surveys should be appropriately signed and with attributable names so that personal accountability and good governance is achieved. This applies to plan making and amending and development applications, and should apply to all concerned and at each stage. In particular expert type reports must certify that they contain the complete and relevant information on the matter.
17. **The material must continue to be available** for the duration of the whole process of the plan making or application and must not cease to be available part way through the process. If this happens, it will be difficult to understand the context of relate amendments to the original position, especially if there are a series of changes over months or years.
18. **Previous applications are often relevant and connected and must be referred to.** This is because it is the practice for developers to lodge repeated applications to secure changes piece meal over years. There must be provision for all related applications and decisions to be referred to and for copies of such documentation to be made available. The applicant must state to what extent the previous application is relevant or else verify that it is not relevant. The objective is to seek full and frank disclosure so as to expedite and make open and efficient the whole process.
19. **Prohibit review or appeal whilst making similar new application.** At present it is a known but extraordinary practise for an applicant to review or appeal a decision at the same time as putting in a similar new application. Such an abuse of process should be prevented by legislative provision which prevents an applicant from pursuing two similar applications in respect of the same place at the same time in the

hope of getting different results. They should be consolidated or else one should be abandoned.

20. Connected with this, **minor amendments must be carefully scrutinized as this will again be a tactic to secure changes in a piece meal fashion** in the hope that such escapes the attention of the planning officer or the public. All applications for minor amendments must therefore be the subject of notice, consultation, comment and hearing if needs be. The current Bill which fails to provide safeguards is not adequate.
21. Additionally, in order to secure any favourable expedited treatment of any minor change, the applicant for a minor amendment must make full and frank disclosure and state to what extent the amendment relates to previous matters and **expressly declare and verify that there are no other connected or relevant matters or non apparent issues of which the Planning Department or the public need be aware or concerned about.**
22. **Conflict of interest exists in the system. Because of this delegation to officers and to Committees is to be very narrowly permitted. Officers should not have power to permit minor amendments. A committee should not hear a Review.**
23. No doubt there are many other methods to improve the transparency and equality of the current Town Planning process so as to protect and enhance our environment. It should no longer mostly be a dialogue between developer and the Lands Department and the Planning Department. The community must be involved. The private developer who is seeking permission from the Government in order to profit must be prepared to make proper disclosure if his actions may affect the interests and environment of his neighbours and the public interest in conservation and the countryside. This public participation should be the essence of the Town Planning Ordinance and is the declared main purpose of this Bill. This being so, the above principles are proposed for suitable incorporation into an amended version to better achieve this objective.
24. **Enforcement** is sporadic and requires more resources. Failure to enforce leads to long term environmental damage and degradation. Thus legislative amendments are needed to make enforcement more efficient at less cost. One common example is the filling of fields followed by the assertion that this is for an agricultural purpose. In order to facilitate enforcement against such filling it is proposed that where recognized and real farming activities are not performed within a period of time the development on the land is deemed to be unauthorized. The perpetrator of the filling would have the burden of proving that his development or action was and is for agriculture, failing which he would have to restore the land.
25. **Environmental damage.** Cases of environmental or ecological damage prior to applications for re-zoning or development are known. Some cases are more obvious and rapid, some cases are more sophisticated. To deter such conduct, in cases where damage to the natural landscape, trees, vegetation, wetlands, streams or

slopes etc is performed such damage will require to be the subject of suitable restoration before an application can be processed. The intention is to place the land in the same condition as it was prior to the damage. The application must be assessed on the basis that the land and environment had not been damaged so as to reduce its ecological or landscape quality. **The principle should be that no indirect advantage will be gained by reason of the reduction in biological diversity or damage to the landscape integrity.**

26. I would be grateful if I could be informed as to progress and results and the methods and wordings proposed to achieve the above in due course.

Yours sincerely,

Ruy Barretto S.C.

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