

3 November 2003

The Honourable James To
Chairman
Bills Committee on Town Planning Bill
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Town Planning (Amendment) Bill 2003

We have come across a recent paper prepared by the Housing, Planning & Lands Bureau relating to the Powers of the Chief Executive in Council (CB(1)2527/02-03), and found its contents somewhat misleading. We have therefore prepared the enclosed commentary for the consideration of your Bills Committee.

Yours sincerely

Louis Loong
Secretary General

**Town Planning (Amendment) Bill 2003
Supplementary Submission**

The Real Estate Developers Association of Hong Kong

November 2003

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

1. Introduction

- 1.1 Reference is made to the paper submitted in September 2003 by the Housing Planning and Lands Bureau (reference CB(1)2527/02-03) relating to the Powers of the Chief Executive in Council. The paper was to clarify the situation relating to the powers of the CE in C and the CE in the planning process under the existing Ordinance, the Town Planning Bill of 2000 and the Town Planning (Amendment) Bill of 2003.
- 1.2 The contents of the paper as they refer to the proposal in s9(1A) are considered somewhat misleading, and we feel obliged to provide additional written comments for Bills Committee Members' information and clarification.

2. Present Arrangements

- 2.1 It is stated in paragraph 3 of the paper that "a major problem under the present arrangements is that if the CE in C does not agree with any of the amendments made by the Town Planning Board, it would have no choice but to refer the whole plan to the Town Planning Board for further consideration and amendment".
- 2.2 It is our view that there is no problem with the existing system as the CE in C should be required to refer the whole plan back to the Board, and it should only be done in exceptional circumstances because:-
- (a) It ensures proper consideration and decision making by the Town Planning Board on the basis of submissions and hearings from the public. Should the CE in C not accept a decision by the Board, then any change must be made by reference back to the Board of the whole plan. Any changes subsequently made must therefore go through public notification of amendments to the plan and public involvement in the objection process;
 - (b) The CE in C rightly has limited powers and he cannot operate without the involvement of the Board and the public;
 - (c) Many changes can only be properly made in the context of the whole plan;
 - (d) The existing process prevents the CE in C making arbitrary decisions which may not be made on the basis of planning input.

3. **Proposals under the Town Planning Bill (2000)**

- 3.1 The 2000 Bill does not really provide a useful comparison, as that Bill was not accepted and never became law.
- 3.2 The comparison made in paragraph 9 of the Paper points out that the new amendment proposal is much narrower than the 2000 proposal. While this may be so, it does not make the current proposal acceptable, as both proposals are equally unacceptable. They completely erode both the decision-making power of the Board and the involvement of the public in the decision making process.

4. **Proposals under the current Amendment Bill**

- 4.1 In the current Amendment Bill the powers of the CE in C have been extended, to enable any of the changes proposed to meet objections by the Board, to be rejected without reference to the Board or the public (s.9(1A)). There is no constraint or basis stipulated in the Bill which the CE in C would be required to consider in making such a decision so as to over-ride a decision of the Board. Therefore the decision to reject or accept an amendment by CE in C would be made on an *arbitrary* basis without public input.
- 4.2 Paragraph 6 of the Paper states that the proposal in the Bill has not changed the role of the CE in C. This is *incorrect*. It now provides the CE in C with a function in the plan making process which is currently the responsibility of the Town Planning Board. The power to partially reject a decision of the Board effectively gives the CE in C a power to determine the content of a plan without reference to the Board or to the public.
- 4.3 Paragraph 6 of the Paper also states that the CE in C would not be unduly involved in the formulation of detailed planning proposals. This is obviously *wrong* because the power to reject an amendment to the plan is a direct involvement in detailed planning proposals.
- 4.4 Paragraph 6 of the Paper also states that the CE in C “is not empowered to take a decision that would by-pass the representation consideration process”. This is also fundamentally *incorrect* as under the existing situation the Board is required to make any amendment to a plan through the objection process. Under the Proposal this will be completely different. The CE in C will be given the power to amend a plan after the Board’s consideration of representations, by not accepting a proposed amendment. This can take place without any further consideration by the Board or the public by-passing the whole public consultation process.
- 4.5 Paragraph 7 indicates that this provision of partial approval would avoid delay in development for those amendments that are accepted. However under the existing system it has been extremely rare for the CE in C to reject plans from the Board (only once in fact as in the case of South East Kowloon, as confirmed by the Administration at the Bills Committee meeting on 23 October). This means that under the current law there is no delay. Also, at

present after the Board has considered objections and advised the objectors of the decision, there is some certainty as to what the provisions of the plan would be. There is no certainty under the new proposal. There is also no time limit in the new proposal for the CE in C to make a decision. Under the proposal the potential for *delay and uncertainty* is therefore considerably increased.

- 4.6 Paragraph 8 states that to “ensure transparency” the approved plan will be “published for public inspection under s.9(5) of the Ordinance”. This statement is misleading. Under s.9(5), the plan is published only after the CE in C has made its decision to approve the plan. It is not really for "inspection" but is in fact a notification that the plan has been approved and the plan making process is completed. The public would not be able to do anything other than accept it as an approved plan. The proposal to allow the CE in C to make decisions on planning amendments in such a way is in fact the *opposite of ensuring transparency* – it is the total removal of the Board, and the public, from the decision making process, and from being able to see how the decision is made.

5 Conclusion

The Paper gives the indication that there will be no change in the function of the CE in C and this is incorrect. It provides the CE in C a power to arbitrarily over-ride the Board’s planning decisions and enables a selective administrative decision to be made. It therefore makes the system less open and less transparent. In doing so it effectively down-grades the importance and the function of the Town Planning Board and also of the public involvement in the plan making process.

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