

For information

Bills Committee on Town Planning (Amendment) Bill 2003 Legislative Intent of s.9 of the Town Planning Ordinance with regard to the Role of the Chief Executive in Council

Purpose

At the Bills Committee meeting held on 23 October 2003, the Chairman requested the Administration to provide information on the legislative intent of s.9 of the Town Planning Ordinance (the Ordinance) with regard to the role of the Chief Executive in Council (CE in C) in the plan-making process. This paper provides the requested information.

Enactment History

2. The existing s.9 of the Ordinance was enacted in 1939 as part of the very first Town Planning Ordinance in Hong Kong. Since then, no change has been made to this section. The “Objects and Reasons” for the Town Planning Bill 1939 as stated in the Hansard were as follows -

“The Bill, which provides for the appointment of a Town Planning Board and for the preparation by that Board of draft plans for the future lay-out of existing and potential urban areas, as well as for the types of building suitable for erection therein, and for the approval of such plans by the Governor in Council as standards for the guidance of all public officers and bodies in the exercise of powers vested in them,”

The relevant extract of the Hansard and a copy of the Town Planning Ordinance enacted in 1939 are at Annex I and II respectively. The 1938 Report mentioned in the Hansard can no longer be found in our records.

3. Based on the documents available, it is clear that the Chief Executive in Council (or the then Governor in Council before 1997) is the final plan-approving authority.

**Housing, Planning and Lands Bureau
November 2003**

Annex I

附件 I

Extract of Hansard for LegCo Sitting on 25.5.1939

(English Only)

TOWN PLANNING BILL, 1939.

THE ATTORNEY GENERAL moved the first reading of a Bill intitled "An Ordinance for the promotion of the health, safety, convenience and general welfare of the community by making provision for the systematic preparation and approval of plans for the future lay-out of existing and potential urban areas as well as for the types of building suitable for erection therein." He said:—

Under this Bill a Town Planning Board will be appointed to prepare draft plans which will be exhibited to the public for approval or objection. When the plans are finally approved they will be submitted to this Council for consideration.

THE COLONIAL SECRETARY seconded, and the Bill was read a first time.

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows:—

This Bill, which provides for the appointment of a Town Planning Board and for the preparation by that Board of draft plans for the future lay-out of existing and potential urban areas, as well as for the types of building suitable for erection therein, and for the approval of such plans by the Governor in Council as standards for the guidance of all public officers and bodies in the exercise of powers vested in them, is intended as the first step taken to implement the Report, dated the 11th October, 1938, of the Housing Commission (Sessional Paper No. 12 of 1938). A Table of Correspondence showing the source of its various provisions is attached.

Extract of Hansard for LegCo Sitting on 22.6.1939

(English Only)

TOWN PLANNING BILL, 1939.

THE ATTORNEY GENERAL moved the second reading of a Bill intitled "An Ordinance for the promotion of the health, safety, convenience and general welfare of the community by making provision for the systematic preparation and approval of plans for the future lay-out of existing and potential urban areas as well as for the types of building suitable for erection therein." He said: When Council goes into Committee I will move certain minor amendments in Clause 3.

THE COLONIAL SECRETARY seconded, and the Bill was read a second time.

On the motion of the Attorney General, seconded by the Colonial Secretary, Council then went into Committee to consider the Bill clause by clause. The Attorney General moved the following amendments to the Bill, which were approved:—

In the fourth line of Clause 3, the word "such" be inserted before the word "existing" and in the same line the words "as the Governor may direct" be inserted after the word "areas."

Upon Council resuming,

THE ATTORNEY GENERAL reported that the Town Planning Bill had passed through Committee with certain minor amendments which were immaterial, and moved the third reading.

THE COLONIAL SECRETARY seconded, and the Bill was read a third time and passed.

Annex II

附件 II

The first Town Planning Ordinance enacted in 1939 (English Only)

CAP. 131]

Town Planning.

CHAPTER 131.

TOWN PLANNING.

23 of 1939. *To promote the health, safety, convenience and general welfare of the community by making provision for the systematic preparation and approval of plans for the future lay-out of existing and potential urban areas as well as for the types of building suitable for erection therein.*

[23rd June, 1939.]

Short title.

1. This Ordinance may be cited as the Town Planning Ordinance.

Appointment
of Town
Planning
Board.

2. (1) The Governor may appoint a Town Planning Board consisting of such official and unofficial members as he may nominate, and may appoint any member of the Board, either *ex officio* or personally, as chairman or vice-chairman and any public officer as secretary thereof.

Quorum.

(2) Five members of the Board, one of whom must be the chairman or vice-chairman, shall form a quorum at any meeting of the Board.

Functions
of the
Board.

3. With a view to the promotion of the health, safety, convenience and general welfare of the community, the Board shall undertake the systematic preparation of draft plans for the future lay-out of such existing and potential urban areas as the Governor may direct as well as for the types of building suitable for erection therein. In the course of preparation of such plans the Board shall make such inquiries and arrangements (including, if it thinks fit, the taking of any census of the occupants of any buildings or of the users of any thoroughfares or spaces) as it may consider necessary for the preparation of such drafts.

Contents
of lay-out
plans and
powers of
the Board.

4. (1) The Board's draft plans for the lay-out of any such area may show or make provision for—

- (a) streets, railways and other main communications;
- (b) zones or districts set apart for use for residential, commercial, industrial or other specified uses;
- (c) reserves for Government purposes;
- (d) parks, recreation grounds and similar open spaces.

(2) The Board may recommend to the Governor in Council the resumption of any land interfering with its plans for the lay-out of any area; and resumption to avoid such interference shall be deemed to be resumption for a public purpose within the meaning of the Crown Lands Resumption Ordinance.

(Cap. 124.)

(3) Except in the case of resumption under the said Ordinance no compensation shall be paid to the proprietor or any person interested in any holding by reason of the fact that it lies within or is affected by any zone or district set apart under paragraph (b) of subsection (1).

5. Any draft plan, prepared under the direction of the Board, which the Board deems suitable for submission to the Governor in Council for approval, shall be exhibited by the Board for public inspection at reasonable hours for a period of two months. During such period the Board shall advertise once a week in a local newspaper and shall notify in each issue of the *Gazette* the place and hours at which such plan may be inspected.

Exhibition
of draft
plans.

6. (1) Any person affected by the draft plan so exhibited may within the said period of two months send to the Board a written statement of his objections to anything appearing in the draft plan.

Consideration
of
objections.

(2) Such written statement shall set out—

- (a) the nature of and reasons for the objection;
- (b) if the objection would be removed by an alteration of the draft plan, any alteration proposed.

(3) Any such written statement shall be considered at a meeting of the Board, of which the objector shall be advised, and the objector or any duly authorized representative may attend and shall be heard if he so desires.

(4) The Board may reject any objection in whole or in part or frame amendments of the draft plan to meet such objection.

(5) Where, however, any such amendment appears to the Board to affect any land, other than that of the objector, held under lease from the Crown, the Board shall adjourn its meeting and give such notice by service, advertisement or otherwise as it deems desirable and practicable to the

(a. 8 cont.) owner of the land in question. Any written objection to an amendment received within fourteen days after the giving of such notice shall be considered at the adjourned meeting of the Board at which the original objector and the objector to the amendment or any duly authorized representative shall be given an opportunity to attend and be heard.

Submission
of considered
draft plan
to Governor
in Council.

7. After consideration of all objections, the Board shall submit the draft plan, with or without amendments, to the Governor in Council for approval, and shall submit therewith—

- (a) a schedule of the objections (if any) made under section 6 and not withdrawn;
- (b) a schedule of the amendments (if any) framed by the Board with a view to meeting such objections.

Powers of
Governor in
Council
upon
submission.

8. (1) Upon submission of a draft plan the Governor in Council may—

- (a) approve it;
- (b) refuse to approve it;
- (c) refer it to the Board for further consideration and amendment.

(2) The Governor in Council may approve a draft plan notwithstanding that any requirements of this Ordinance applicable thereto have not been complied with.

(3) A draft plan approved as aforesaid is hereinafter referred to as an "approved plan".

(4) The Governor in Council may by notification in the *Gazette* correct any omission from or error in any approved plan.

(5) On such approval being given the approved plan shall be printed and exhibited for public inspection at such place as the Board may consider suitable and the fact of such approval and exhibition shall be notified in the *Gazette*.

(6) The Board shall supply a copy of any approved plan to any person on payment of such fee as the Board may determine.

Refusal to
approve
plan.

9. If the Governor in Council refuses to approve a draft plan such refusal shall be notified in the *Gazette*;

but any such refusal shall be without prejudice to the preparation of a new draft plan and the submission of the same.

10. A copy of the approved plan, certified by the Chairman of the Board shall be deposited in the Land Office and the Land Officer shall make a note thereof in the register relating to any parcel of land which appears to him to be affected thereby.

Deposit of copies of approved plan.

11. The Governor in Council may revoke in whole or in part any approved plan or may refer it to the Board for replacement by a new plan prepared, exhibited, considered, submitted, approved and deposited in accordance with the foregoing provisions of this Ordinance. Notification of any such revocation or reference shall be published in the *Gazette* and noted by the Land Officer on the plan deposited under section 10. The Land Officer shall also amend as may be necessary any note made in the register under that section.

Revocation and replacement of approved plans.

12. Until so revoked or replaced, approved plans shall be used by all public officers and bodies as standards for guidance in the exercise of any powers vested in them.

Approved plans to serve as standards.

13. The Governor in Council may make regulations for the purpose of facilitating the work of the Board and generally for the purpose of carrying the provisions of this Ordinance into effect.

Governor in Council may make regulations.

14. Any expense incurred with the sanction of the Governor by the Board in connexion with the exercise of its powers or the performance of its duties under this Ordinance or the regulations made thereunder shall be met from moneys voted by the Legislative Council.

Expenses of the Board.