

**The Association of Planning Consultants of Hong Kong**

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Your Ref. CB1/BC/12/02  
Dated 25 November 2003

Our Ref.: MP/APC/2  
Date: 15 December 2003

The Legislative Council,  
Legislative Council Building,  
8 Jackson Road,  
Central,  
Hong Kong

By Fax and By Post

Attention Miss Odelia Leung

Dear Miss Leung,

**Bills Committee on the Town Planning (Amendment) Bill 2003-12-15**

I refer to your letter of the 25 November 2003 and your request for clarification of the comment I made during our representation on the 18 September in relation to the ability to Judicially Review (JR) a decision of the Chief Executive in Council. My comments related to the proposed section 9(1A).

I would like to state again that I am not a lawyer, and that the comments I made were based on advice that had been given to a client of mine by Senior Counsel.

You will recall that the point I had made was that the Town Planning Board under the proposed amendment would not be making a decision on objections to a Plan but would only be making recommendations to the CEC. In that respect the proposal was very different from the existing situation where the Town Planning Board made a decision on the objection and referred the whole plan to the CEC for approval. The decision on the objections under the new proposal would mean that CEC would actually be the decision maker.

The previous advice had been that under the existing Town Planning Ordinance, if the Plan was submitted to CEC and approved, a JR could not proceed against the Town Planning Board because the Draft Plan would be superceded by the Approved Plan.

My understanding of the advice was that a JR against the CEC on matters of substance would be futile because the meetings are always in camera, the minutes are never published, reasons for its decisions are never given and discoveries are never allowed as discussions are privileged and are protected by public interest immunity.

If the new section 9(1A) is to provide the CEC with the power to decide which recommendation of the Board to adopt or reject in relation to objections, it is therefore providing the CEC power to make decisions on matters of substance. Based on the comments above, this would appear to be removing from the public a right of effective access to the Courts in relation to such decisions.

Our fundamental point remains however, that the Town Planning Board should be the only body to make a decision on an objection because it is the only body to hear the objection. Should the decision be unacceptable to the CEC, then the existing process of referring the Plan back to the Board for amendment is the correct process, as it provides the public with rights to make submissions and to be heard.

The new process provides the CEC with administrative power to over-rule the Town Planning Board and to make irreversible decisions without any reference to the public or affected parties. That process is therefore neither open, transparent or efficient, as there is no time limit for consideration by CEC.

We strongly recommend to the Bills Committee that the proposed procedures embodied in section 9(1A) not be accepted.

Yours faithfully,

I. T. Brownlee  
Chairman