

Bills Committee on Town Planning (Amendment) Bill 2003

**List of follow-up actions arising from discussion
at the meeting on 20 November 2003**

The Administration was requested to -

- (a) review the proposal under clause 11 to allow the Chief Executive in Council (CE in C) to approve some of the amendments proposed by the Town Planning Board (TPB). Members raised the following concerns -
 - (i) although the decision made by the CE in C is subject to judicial review, it may be limited to the procedure for the making of the decision instead of its merit and it is difficult to call into question the decision itself if the CE in C refuses to disclose its deliberations under its confidentiality rule;
 - (ii) unlike Government officials who may attend meetings of the Executive Council, representers are not provided with the opportunity to be heard by the CE in C before the latter makes its decision on draft plans. The proposal will deviate further from the principle of natural justice; and
 - (iii) in exercising its power under section 9 of the Town Planning Ordinance (TPO), whether the CE in C is bound by section 3 of TPO in that the draft plan should be made "with a view to the promotion of the health, safety, convenience and general welfare of the community" and whether TPB is bound by this objective in the plan making process.
- (b) advise if there are any precedent cases of judicial review on the decision of the CE in C;
- (c) advise if there are any precedent cases of judicial review on draft new plans made by TPB;
- (d) review the proposal in clause 12 to confer the power on CE instead of CE in C to refer an approved plan to TPB for replacement or amendment. Members expressed different views on the proposal as follows -
 - (i) some members consider that the power may be delegated to TPB; and

- (ii) some members consider that the CE in C should remain the authority to exercise such power which should not rest with the CE.
- (e) provide a paper to explain the proposal under clauses 13 (section 12A(3)(a)) and 16 (section 16(2)(a)), and to address the following concerns -
 - (i) whether the policy intention is to require an applicant to obtain the consent, or to notify the landowner for amendment of plan and planning permission if the applicant is not the owner of the site concerned;
 - (ii) whether TPB will verify the claim of the applicant that the consent of the landowner has been obtained or the landowner has been notified. If the answer is in the affirmative, please advise how the claim will be verified;
 - (iii) if the answer to (ii) is in the negative, whether TPB will be held liable if the claim is found out to be false;
 - (iv) the circumstances under which prior notice will and will not be given to the landowner concerned in making a draft plan and/or amendment to plan by TPB; and
 - (v) the merit for providing an exemption clause to proposed sections 12A(3) and 16(2)(a) to address cases such as where the application for amendment of plan or planning permission is made by a non-profit making body in the public interest and where the application involves sensitive information.