

19 March 2004

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

**Bills Committee on Town Planning (Amendment) Bill 2003**

We refer to our letter of 26 January 2004 which gave conditional support for the latest plan making proposals from the Government as set out in the Administration's paper to the Bills Committee [CB(1)700/03-04(01)] presented in January 2004.

We have now reviewed the Administration's proposals for the second stage amendments to the Town Planning Ordinance, and consider them unacceptable. They are vague and without any specific timetable. As such we must maintain our objection to a phased review of the Town Planning Ordinance.

Our reason is quite simple. Unless and until there is a fundamental review of the structure of the Town Planning Board, there can be no material improvement to the current and increasingly confrontational planning process. This is detrimental to Hong Kong. It neither satisfies those community groups seeking greater transparency nor owners and investors who wish to ensure development can proceed within a reasonable timescale.

It is our view that if the Stage One Amendments proceed without a clear commitment from the Administration to proceed with the second stage, including a review of the structure of the Town Planning Board, there will be increasing confrontation between land owners and Government and ever growing delays in decision making.

Attached is a summary of our key concerns on the Stage Two Amendments. We would however highlight several key points:-

1. We have consistently and repeatedly expressed our support for the principle of a more open and transparent planning system, but simply allowing the public full access to the information currently submitted to the Board will not suffice.
2. Measures must be introduced, in parallel with a more open planning system, to ensure that the Board is not influenced by public protest on non-planning grounds. This can be achieved through the establishment of clear guidelines in the Ordinance to clarify just what “planning” issues the Board should consider.
3. It is inevitable that a more open planning system is likely to cause more delay. This is a price worth paying **provided** decisions are made in a timely manner.

We remain of the view that thorough public consultation should be conducted at the plan-making stage. As public opinions have been fully expressed and consensus reached regarding the land use planning of an OZP, there should not be any need for planning applications to be subject to the same level of public consultation. This would only be a duplication of process and undermine the efficiency of the planning system.

We would further submit that there should be provisions under clause 16 of the bill to exclude any commercially sensitive information and any supporting technical reports of a planning application from publication. The relevant Government departments should be the sole and proper party to objectively assess the technical information submitted by applicants and present their analysis to the Board to assist the Board’s decision making. The Board and the public can then concentrate on the real planning issues.

Finally as a way to help efficient planning decision making, much of the repetition of detail now required by the Board or the relevant Government Departments through the imposition of unnecessary planning conditions could be avoided. Where adequate information has been provided to enable the Board to approve an application, such as a Traffic Impact Assessment, then there should be no need to subsequently submit the same information in relation to a condition of the approval.

4. A level playing field is essential if the Board is to have credibility within the community. We do not accept the Administration’s response to our call for an independent secretariat. As long as the Planning Department provides planning

advisory services and prepares the papers for the Board, the Board will not be seen as an independent decision maker but simply another part of the Government bureaucracy.

It is often said that justice must not only be done but must be seen to be done. A truly independent secretariat that provided not only clerical support but genuinely independent planning advice in assessing both private sector and Government proposals would achieve this. There would be little or no duplication because the planning department would cease to exercise this role and therefore concerns over additional costs are misguided.

These are fundamental issues to the future of Hong Kong. At the outset of the current review, the Administration argued that there were two principal goals – greater openness and improved efficiency. The latest stage one proposals improve openness but at the expense of efficiency.

If Government is not prepared to address the key issues in the Stage One Amendments and is genuine in its declared intentions to improve efficiency, then a specific commitment to a timetable and criteria for the second stage review is essential before the first stage amendments are enacted.

**Comments on  
Stage Two Amendments  
to the Town Planning Ordinance**

The Real Estate Developers Association of Hong Kong

March 2004

**Submission to the Bills Committee by  
The Real Estate Developers Association of Hong Kong in relation to the  
Stage Two Amendments to the Town Planning Ordinance**

Reference is made to a LegCo paper (“the paper”) submitted in January 2004 by the Housing, Planning and Lands Bureau (reference CB(1)813/03-04(10)) relating to the proposed Stage Two Amendments to the Town Planning Ordinance.

**Operation and Composition of the Town Planning Board**

**(a) Opening up of TPB Meetings**

There are varying degrees as to how open the TPB meetings should be. Under the amendments being considered by the Bills Committee, the Sc16 process, proposals for amendments to plans and the plan making process are to be subject to greater public consultation, considerably more open than the existing situation. It could therefore be argued that if these components are to be made more public, then the actual consideration of these comments by the Board should be open to the general public. While the Ordinance is silent on whether the meetings should be open, we have argued previously that the actual hearing part of the process should be open while the deliberation should be closed.

The proposals in paragraph 10 of the paper follow this general approach. It would therefore be necessary to include provisions in the Town Planning Ordinance requiring that the Board hold meetings in public unless the matter is to be considered confidential.

However, it should be possible for an applicant to have the right to request that, because of the particular circumstances of a case, the matter be considered without the public being present.

**(b) Declaration of Interests by TPB Members**

The existing process for declaration of interest by the Board members is considered to be working quite well and there would appear to have no reason to include this in the legislation. To some extent it is considered that the Guidelines are too restrictive and unnecessarily limit the members’ ability to take part in the Board’s functions. This would apply to those indirect interests such as the member being part of a big consulting firm which is involved in projects of which the member has no direct involvement or knowledge. This could also apply to the situation where the member’s spouse is an employee of such a firm. This broad definition of interest often unnecessarily deprives the Board of obtaining good professional input. This also creates difficulties in ensuring that enough members are available to satisfy the quorum.

(c) **Quorum of TPB Meetings**

It is appreciated that the work of the Board occupies a lot of members' time. However, it is often disappointing to have an important case heard by the minimum number of members, where it may not be possible to get the best discussion and consideration. A wider range of knowledge and experience available to hearing cases is considered more appropriate, particularly if they are Sc 17 Review Hearings or Objection Hearings. We would therefore support a slight increase in the size of the quorum.

(d) **TPB Secretariat**

We consider an independent Secretariat to the TPB a fundamental requirement to improve its impartiality. It is important that there should be a distinction between the professional input provided to the Board by the Planning Department and the function of the Secretariat. At present the Board is perceived as an extension of the functions of the Planning Department ("PD") because of the inter-relationship between the Town Planning Board Section, the Secretary who is the Deputy Director of Planning, the Director of Planning who is the Vice-Chairman, and the Permanent Secretary of Housing Planning and Lands who is the Chairman.

The Secretariat could provide an independent planning assessment of a proposal made by either the PD or a private sector applicant. The Secretary should not hold a position in the PD. The professional/technical function need not be organized in a similar way to the existing situation. By removing some of the functions from the PD they could be carried out in a more efficient manner in a smaller Secretariat, while the PD would be relieved of functions which would enable it to focus more efficiently on other important planning matters. A separate Secretariat could therefore result in greater efficiency overall.

The Stage One Amendments includes a proposal of charging for planning applications on a cost recovery basis. This proposal in itself highlights the very need to clearly separate the operations of the Board Secretariat from the general operation of the PD. The costs of a separate Board Secretariat could be clearly defined and established, whereas this is not possible when it is embedded within the PD.

Another integral part of the need for an independent Secretariat is the need for independent legal advice. Recent experience has shown that legal advice provided through the Department of Justice has not served the Board well and was biased towards the Administration's view-point.

**(e) Composition of the TPB**

The integrity and independence of the TPB would be considerably enhanced by the appointment of Chairman and Vice-Chairmen who are not government officials. The reasoning that only a civil servant has the independence and policy background to chair the Board is misplaced. In the past the Bureau Secretary has not taken an active role in many of the Board meetings, leaving them to be chaired by the Director of Planning. The Bureau Secretary and Permanent Secretary often change during the period that appointed members are serving on the Board, to the extent that some Board Members often have more experience of the Board's operation than the Chairman. The other major disadvantage in the appointment of a civil servant is that he is a bureaucrat with no or limited experience of private sector activities and approaches.

Presently the Chairman and the Board members all have to declare their interests, in this way a Chairman who is not a civil servant can be and be seen to be independent of private interests. There is no reason why respected and experienced members of the Board could not effectively fulfill the role of Chairman or Vice-Chairmen as a logical progression of their membership. There are also other respected people of integrity who could be identified to fulfill this function, in a similar way to which members of the public are appointed to other Boards and Committees, or to be Magistrates and Judges.

By making this significant change of stipulating that the Chairman and Vice-Chairman should not be public officers, the public will be given a major boost of their confidence in the effectiveness and openness of the Board. It is also relevant to note that Sc 17A of the Town Planning Ordinance relating to the composition of the Town Planning Appeal Board already prohibits public officers from being members.

**Designation of "SDA", "ESA" and "DD"**

- (a)** In general it is considered unnecessary to complicate the planning system by the introduction of too many zones with unclear intentions, many of which may duplicate existing zones or provisions in other ordinances. The "ESA" and "DD" are considered to fall into this category and should not be pursued.
- (b)** There may be justification for identifying particular areas which are of architectural, archaeological, cultural or historical interest, and a zoning could be used to identify such areas. The designation of the area as "Special Design Area" introduces connotations of control over design, whereas the system to be established should really be a form of control over the general development of an area of specific interest. There would appear to be no reason why the "CDA" approach could not be applied, with a clearly stated planning intention and development objectives, and requiring submissions to the Board for approval. The identification of such areas on Outline Zoning Plans would also provide the public and landowners with rights of objection and comment,

during which clarifications and suggestions of refinement can be made in respect of the proposal and its implementation.

- (c) The public concern over the land along the harbourfront transcends the level of land use zoning. It relates directly to the public aspiration of an ideal harbourfront and how it is to be developed and managed. We have previously made submissions in relation to finding a better way to implement the harbourfront, an approach that will successfully integrate the design, the development and the management functions. The existing piecemeal approach through the Government process is seriously flawed as can be seen by any example of existing public property along the harbourfront. The consideration of a new zoning mechanism without addressing the fundamental issues will further exacerbate the existing problems. The introduction of a new zoning should be deferred until the other more important matters have been addressed.

### **Conclusion**

While it is helpful that the Administration has identified some of the matters which need to be addressed in the second phase of the amendment process, the approach is vague and there is no time-table proposed. As previously stated, fundamental matters such as the operation and composition of the TPB are the most important ones to be addressed, and should be considered as part of the Stage One Amendments. However, the approach taken in the paper prepared by the Administration shows that these matters are still not being seriously addressed, particularly that of the Chairmanship.

March 2004