

For information

Bills Committee on Town Planning (Amendment) Bill 2003

**Primary Consideration in Town Planning
Effect of Planning Permission and
Right of Different Parties in the Planning System**

Purpose

At the Bills Committee meeting held on 3 February 2004, the Administration was requested to explain the principles underlying the local town planning system, in particular :

- (a) to clarify whether land use or land ownership is the primary consideration in town planning;
- (b) to explain whether planning permission runs with the land, the landowners or the applicants;
- (c) to describe the order of priority in respect of the interest of landowners, applicants and members of the public; and
- (d) to compare the right of the applicants, landowners and third parties in plan making and planning application under the existing Town Planning Ordinance (“the existing Ordinance”) and the Bill.

2. Subsequently, at the Bills Committee meeting held on 29 April 2004, the Administration was requested to explain how the objective stipulated in section 3 of the existing Ordinance is achieved by the Town Planning Board (the Board) in discharge of its functions. Some members are concerned about the relative importance accorded to public interest and private interest in the plan making and approval process. The Administration was also requested to provide information on how overseas jurisdictions tackle this issue. At a further meeting on 10 June 2004, the Bills Committee also requested the Administration to provide similar information.

3. This paper provides the requested information.

Primary Consideration in Town Planning

4. The purpose of town planning in Hong Kong is clearly stated in the preamble of the existing Ordinance, which reads :

“to promote the health, safety, convenience and general welfare of the community”

Section 3(1) of the existing Ordinance, which provides the functions of the Board, echoes the objectives in the preamble. The primary function of the planning system is to regulate the use and development of land with the aim to achieving the best possible benefit to the community. The planning systems of overseas countries also promote similar objective. For example, the purpose of the **California** Planning Code is to “promote the public health, safety, peace, morals, comfort, convenience and general welfare” whereas the Environmental Planning and Assessment Act (EPAC) of the **New South Wales, Australia**, seeks to promote, among others, the social and economic welfare of the community and a better environment. The EPAC further specifies that a consent authority, in determining a development application, is to take into consideration the public interest, among others. The **United Kingdom** (UK) Government is committed to a planning system that regulates the development and use of land in the public interest. The “Planning Policy Guidance 1 : General Policy and Principles” sets out the national planning policies for England which reads :

“The planning system does not exist to protect the private interests of one person against the activities of another, although private interests may coincide with the public interest in some cases. In fact “the public interest.....may require that the interests of individual occupiers should be considered. The protection of individual interests is one aspect, and an important one, of the public interest as a whole” (Stringer v MHLG 1971). It can be difficult to distinguish between public and private interests, but this may be necessary on occasion. The basic question is not whether owners and occupier of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest.”

5. The above quote has precisely summed up the interplay between public interest and private interest in the planning system. By and large, planning law could generally be considered as “public interest” law because it balances private and public interests.

6. According to s.3(1) of the existing Ordinance, the Board shall seek to promote the object of the Ordinance by undertaking the systematic preparation of draft plans for such areas of Hong Kong as the Chief Executive may direct. In considering the appropriate land uses for an area, the Board will take into account Government policies, availability of infrastructure, social, economic as well as environmental concerns, and aspiration of the community. Very often, a planning decision is based on a balance of these factors. Land ownership may come to play a part in considering the implementability of the land use

proposals, for example, in comprehensive development or redevelopment proposals. As planning is an activity of balancing public and private interests, engaging members of the public in the process is of paramount importance. The Town Planning (Amendment) Bill 2003 therefore seeks to further enhance public participation in the planning system.

Effect of Planning Permission

7. Although the existing Ordinance does not expressly provide that a planning permission shall run with the land, it is a principle adopted in the development approval process in Hong Kong. This is in line with the doctrine that town planning is concerned primarily with the character of the use of land rather than with the status and/or circumstances of the user or potential user of land. In other words, the planning permission granted by the Board can be implemented by any person, subject to the compliance with other statutory requirements (such as obtaining approval of building plans) and completion of land-related procedures.

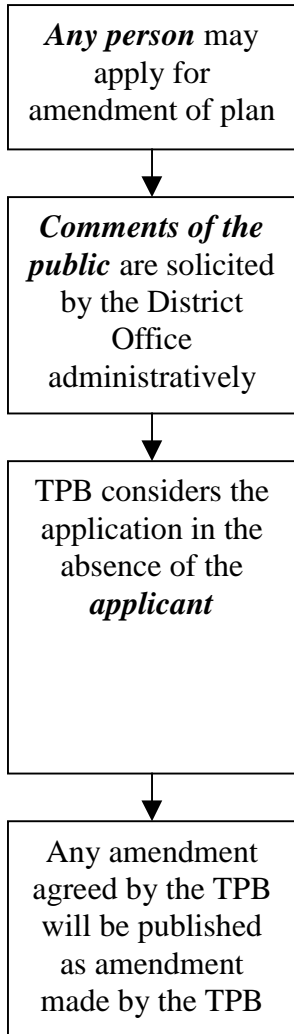
Right of Different Parties in the Planning System

8. The flowcharts at **Annexes A and B** compare the right of applicants, landowners and third parties (or members of the public) in the plan-making process and planning permission system respectively. Distinction is also drawn between their rights under the existing Ordinance and that in the Bill.

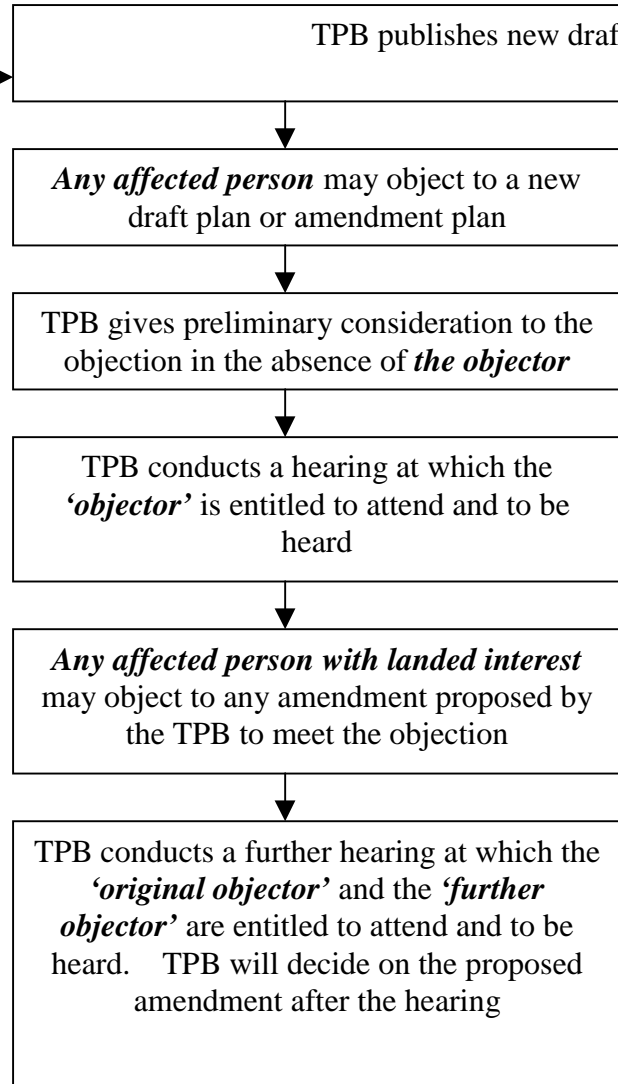
9. In gist, under both the existing Ordinance and the Bill, any person has the right to apply for planning permission or for amendment of plan, and to make an objection or representation in respect of a new or amendment plan. Under the Bill, other than those who have made representation on the plan, any other persons including the landowners are given express statutory right to take part as ‘commenter’ in the plan-making process. Moreover, any persons have the statutory right to comment on planning applications (if they are not the applicants). However, under the existing Ordinance, the views of the public on planning applications are solicited by the District Office administratively. Further, protection is given to the right of the landowner under the Bill in that an applicant for planning permission or amendment of plan is statutorily required to obtain the consent of or notify the landowner of the application site.

Right of Different Parties in the Plan-Making Process

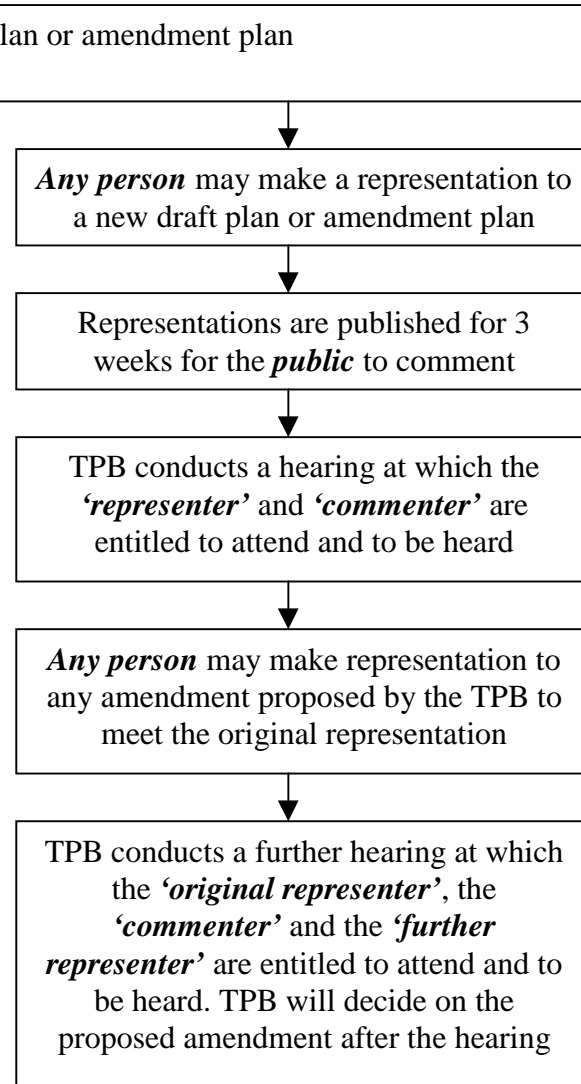
Existing Application for Amendment of Plan¹



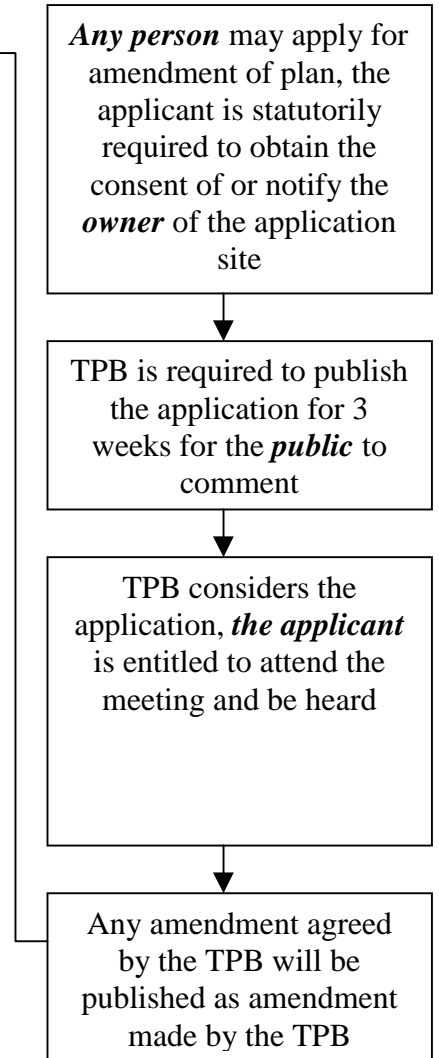
Existing Plan-Making Process



The 2-stage representation consideration process under the Bill



Application for Amendment of Plan under the Bill



1. There is no provision under the existing Ordinance for applications for amendments of plan. They are being dealt with administratively.

Right of Different Parties in the Planning Permission System

Under the Existing Town Planning Ordinance

Under the Town Planning (Amendment) Bill

