

立法會 *Legislative Council*

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Report of the Panel on Planning, Lands and Works for submission to the Legislative Council

Purpose

1. This report gives an account of the work of the Panel on Planning, Lands and Works from October 2003 to June 2004. It will be tabled at the meeting of the Legislative Council (LegCo) on 7 July 2004 in accordance with Rule 77(14) of the Rules of Procedure of LegCo.

The Panel

2. The Panel was formed by resolution of LegCo on 8 July 1998 and as amended on 20 December 2000 for the purpose of monitoring and examining Government policies and issues of public concern relating to lands, buildings and planning matters, works and water supply, and the Public Works Programme. The terms of reference of the Panel are in **Appendix I**.

3. For the 2003-2004 session, the Panel comprises 14 members. Dr Hon TANG Siu-tong and Hon LAU Ping-cheung were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

West Kowloon Cultural District development project

4. During the 2003-04 session, the Panel held a series of meetings to examine issues relating to the development of the West Kowloon Cultural District (WKCD). The proposed WKCD is a waterfront site of 40 hectares at the southern tip of the West Kowloon Reclamation. In September 2003, the Government launched an Invitation for Proposals (IFP) for WKCD. Under the IFP, certain mandatory requirements as to the property development, marketing and management capability of the proponent and the provision of core cultural facilities are stipulated. In view of the grave concerns expressed by the public on the project, the Panel invited professional bodies, the arts and cultural sector and other interested groups to give views, in particular, on the arrangements set out in the IFP.

5. The Panel noted that there was wide concern about the single package development approach adopted for the project. According to depositions, this approach would in effect restrict the pool of eligible proponents to a few large private corporations. They considered that for such an important public development project, the Government should adopt an open and fair procurement approach allowing the participation of large as well as small and medium sized corporations. Moreover, there was also the concern that the eligible proponents, which would probably be consortia led by property developers, might not possess the necessary expertise and experience in managing and operating the cultural facilities in the WKCD, and the pursuit of development profits being their primary objective would compromise the Government's objective of developing a world class cultural district with a comprehensive range of arts, cultural and entertainment facilities for the enjoyment of the people of Hong Kong and visitors to the city.

6. The engineering and architectural professions were more concerned about the practicality and cost-effectiveness of the required provision of a canopy, as envisioned in the Foster scheme (the first prize winning concept plan in the concept competition for the WKCD) which should cover at least 55% of the development site under the IFP. They criticised that although the canopy might be technically feasible to build, its construction and maintenance costs would be very high. The canopy would not serve any practical purposes other than being an architectural icon. The Administration, on the other hand, affirmed that technically speaking, there were no particular problems in constructing the canopy. The Administration needed to study proponents' proposals before the construction cost of the canopy and the overall financial plan of the proposals could be assessed. At this stage, the Administration did not consider that the design of the canopy and its financial aspects would affect the viability of the development project.

7. Members noted that given the single package development approach adopted for the project, the entire project would not involve any public funding, and hence the Finance Committee of the Legislative Council would not have a role in scrutinizing and approving any part of the project. In this respect, the Administration assured members that the WKCD development would be procured in an open and prudent manner. Apart from following all relevant government tendering procedures, the Administration had laid down the criteria for assessment of proposals. The Administration would seek the views of the Legislative Council and the Town Planning Board on the preferred development proposal before the proposal was finalized for approval by the Chief Executive in Council. Notwithstanding these undertakings, members in general were still gravely concerned that the process of selecting a preferred development proposal would be lacking in transparency. Some members also criticised that the single package development approach would not be in the public interest, since the approach inherently restricted competition. After substantial discussion at the Panel meeting on 27 April 2004, the Panel passed the motion that “就政府所提出西九龍文娛藝術區的土地及財務安排，本事務委員會表示反

對。” [“That this Panel opposes the land and financial arrangements proposed by the Administration for the West Kowloon Cultural District.” (English translation)]

8. In response to the views expressed by Members in a motion debate on the WKCD on 26 November 2003, the Government decided to extend the deadline for submission of proposals for the development from 19 March 2004 to 19 June 2004. The Panel noted that in order to achieve greater public involvement at the subsequent stages of the proposal selection process, the Administration would conduct forums and public consultations by way of exhibition of those proposals that complied with the mandatory requirements, after completion of the internal assessment process.

Central and Wanchai reclamation

9. The Panel continued to look into the controversies over the Central and Wanchai reclamation projects. On Wanchai development phase II (WDII), the Panel noted that in February 2003, the Society for the Protection of the Harbour Limited (SPH) applied for a judicial review of the Town Planning Board's decision on the relevant Outline Zoning Plan (OZP). The extent of reclamation in WDII, which aimed to provide land for transport infrastructure, had been reduced from the originally 45 hectares of the seabed to 28.5 hectares including a harbour park involving reclamation of 2 hectares of land. The Court ruled that TPB had failed to comply with the Protection of the Harbour Ordinance (Cap. 531). The Administration filed an appeal to the Court of Final Appeal (CFA) in December 2003. The judgement delivered by the CFA on 9 January 2004 upheld the High Court's decision. Before the CFA judgement, TPB decided to remove the harbour park from its proposal. The Administration announced that it would conduct a comprehensive planning and engineering review of the WDII and would also review the Southeast Kowloon reclamation in light of the CFA judgement.

10. As for Central reclamation phase III (CRIII), the Panel noted that in September 2003, SPH filed an application for judicial review of the Chief Executive in Council's approval of the Central District (Extension) OZP and interim relief that all works under CRIII directly or indirectly connected to the reclamation of the harbour be stopped pending a determination of all relevant litigation. The Court granted leave for judicial review but dismissed the application for interim relief. CRIII involved reclamation of 23 hectares of land to provide land for transport infrastructure, including the Central-Wanchai Bypass (CWB) as well as other road and railway networks, a military dock and water cooling facilities for the waterfront. The works contract was awarded on 10 February 2003 and the actual area of reclamation under the contract was 18 hectares.

11. In the light of wide public concern, the Panel held four joint meetings with the Panel on Environmental Affairs from October to December 2003 to

meet deputations, including engineering professionals, green groups and transport trades, and to discuss with the Administration. The Panel noted that most of the deputations did not object to the construction of CWB in view of the heavy traffic on roads along the waterfront on the condition that the extent of reclamation would be minimized. There were however queries on the need to construct CWB, as the anticipated traffic load might not be very high. The Administration was urged to consider other measures to relieve the traffic load in Central, such as adjusting the toll charges of the three cross harbour tunnels, implementation of the Electronic Road Pricing System, reducing the size of the cooling water pumping stations, and ascertaining the need for the military berth.

12. On 9 March 2004, the High Court delivered judgement on the CRIII and held that the Chief Executive in Council, in exercising his discretion under section 12 of the Town Planning Ordinance, was acting lawfully and reasonably. In late April 2004, the Administration informed the Legislative Council that the Executive Council had decided not to revoke the approved Central District (Extension) OZP nor refer it to the Town Planning Board for reconsideration.

Hong Kong 2030 Planning Vision and Strategy

13. The Panel continued to monitor the progress of the Hong Kong 2030 Planning Vision and Strategy (HK2030 Study) and received the Administration's briefing on the stage-three public consultation paper. The consultation paper explained the key assumptions for the future development of Hong Kong used in the Study and presented options to meet the future development requirements and their implications. Based on the results of the stage-three public consultation, the Administration would proceed with the last stage of the Study with the formulation of development strategies and response plans.

14. Panel members stressed that all planning strategies should be people oriented and thus emphasis should be put on people's quality of life rather than the outlook of the city or economic developments as such. It was important that through the Study, the community could clearly envision how their quality of life could be improved through land-use planning. The Panel was delighted to note that "providing a quality living environment" was one of the three planning directions put forth in the consultation paper, and more attention was given to greening, protection of the Harbour and reduction in development density. Some members considered that attention should also be given to the conservation of Hong Kong's cultural heritage, and the Administration should formulate a planning strategy to preserve those areas with unique characteristics.

Further development of Tseung Kwan O

15. The Panel examined the proposed Concept Plan for further development of Tseung Kwan O (TKO), which if supported by the public would form the basis for the formulation of detailed layout plans for the future development of TKO Town Centre South and Pak Shing Kok. The Panel in general welcomed the

Administration's decision to reduce the plot ratio and the development density of the further development areas and to provide recreational facilities and more open space without further reclamation.

16. Panel members however alerted the Administration of the need to put in place suitable planning controls to implement the various planning concepts such as the stepped building height profile, easy pedestrian access to the waterfront and the Riverine Park, and the maintenance of breeze corridors between buildings. "Screen type" housing developments along waterfronts should however be prevented. The Panel noted the Administration's response that the plot ratio, site coverage and building height of a development could be specified in the Note of the OZP to achieve a lower development density and a stepped building height profile. While it was necessary to set out a framework or some design requirements to guide the future developments, it might not be desirable to place too many restrictions on the design of the buildings to stifle developers' creativity. However, if the circumstances required, specific development briefs could be drawn up for individual plots of land to specify the detailed design requirements, and appropriate conditions could be included in the land leases to ensure that the developments would adhere to the provisions in the development briefs.

17. In response to members' concern about the timely provision of adequate traffic infrastructure to meet the traffic demands from the further development of TKO, the Administration assured the Panel that apart from the relevant District Councils, the Administration would consult professional bodies, green groups, the Mass Transit Railway Corporation Limited and other relevant parties on the proposed traffic infrastructure plan in the on-going public consultation. The Western Coast Road would be planned with reserve capacity to meet future traffic demands.

Town Planning Ordinance and Town Planning Board

18. The Panel continued to monitor the progress of the phased review and amendments to the Town Planning Ordinance (Cap. 131), which was first enacted in 1939. The stage-one amendments to the ordinance were covered in the Town Planning (Amendment) Bill 2003, which was introduced to the Legislative Council on 21 May 2003 and had been under scrutiny by a Bills Committee. In response to the calls of members of the Panel and the Bills Committee for expediting the work on the stage-two amendments, the Administration briefed the Panel on 27 January 2004 on its current thinking and proposals regarding the operation and composition of TPB, and the designation of "Special Design Area", "Environmentally Sensitive Area" and "Designated Development".

19. On the opening up of the meetings of TPB, the Panel noted that while TPB members were almost unanimous in allowing the public to witness the hearing part of the Board's proceedings, they had grave reservations on opening

up the deliberation part. TPB had therefore endorsed proposals to open up the hearing part of its meetings while deliberations would continue to be held in private. However, TPB had agreed that minutes could be released for public information, e.g. by posting them on the website of TPB. The Panel also noted that as the existing Ordinance was silent on whether TPB meetings should be held in public or private, TPB had the discretion in this regard. Upon enactment of the Town Planning (Amendment) Bill 2003, the issues relating to protection of personal data and confidentiality might be overcome, thus paving the way for TPB to open up its meetings.

20. Members of the Panel were in general supportive of opening up the meetings of TPB for greater transparency of its proceedings. Some members considered that TPB should also open up the deliberation part of meetings. They did not agree that this arrangement would subject TPB members to undue pressure, as there should be mechanisms for avoidance of any potential or perceived conflict of interests. Members also gave views on the composition of TPB, quorum of TPB meetings and the existing arrangements of the relevant Permanent Secretary taking up the chairmanship of TPB and Government officials providing secretariat services to TPB. They highlighted the need to ensure fairness and objectivity of the planning process both in actual practice and in terms of public perception. The Administration agreed to take account of Panel members' views in taking forward the stage-two amendments of the Town Planning Ordinance and the administrative measures for enhancing the transparency of the operation of TPB.

Land administration

21. In light of a number of reported incidents involving unauthorised occupation of Government land and the breach of land lease conditions, the Panel considered that there was a need to critically review the Government's land administration work. In particular, members were concerned whether the Lands Department (LD) had set the correct priorities for its enforcement actions. Some members commented that priority should be accorded to cases of unlawful occupation of Government land involving larger land lots, as such activities were more prone to cause environmental nuisances to nearby residents. Members also observed that the prolonged and complicated procedures in processing applications for Short Term Tenancies had indirectly brought about some cases of unlawful occupation of Government land.

22. The Panel was briefed that the Administration attached great importance to the management of unleased Government land and enforcement of lease conditions. However, due to resources constraints and the fact that there were numerous plots of unleased Government land of a total area of 31,860 hectares that required daily management, LD might not have been able to respond fully to public expectations. In light of the findings of a consultancy study on the Land Administration Office of LD, the Administration would take forward the various improvement measures, such as streamlining LD's work procedures, stepping up

prosecution and putting suitable vacant sites for optimal short term uses by non-governmental organizations. The Administration would also review the provisions of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) to ascertain whether changes, such as increasing the amount of penalty, are required to facilitate more efficient land control work.

23. In view of some cases of land-filling and other activities on private land in rural New Territories, which had apparently caused adverse environmental and ecological impacts, the Panel examined whether the existing regulatory regime was adequate to deal with such activities. The Panel noted that the Government exercised control on activities on private land through land use planning control, land lease enforcement, as well as pollution control and prevention of environmental nuisances through legislation. The Administration advised that land-filling in an "Agriculture" zone did not breach the permitted use under the relevant statutory plan, and unless there was clear evidence that the land-filling activity would lead to unauthorized developments, no legal action could be taken under the Town Planning Ordinance.

24. In this respect, Panel members made various suggestions. These included regularizing acceptable activities on agricultural lots by incorporating appropriate planning directives in the relevant OZP with a proper appeal mechanism, resumption of private land which was designated as conservation zonings, introducing deeming provisions in the Town Planning Ordinance to control large-scale and continuous land-filling activities on private land etc. The Administration agreed to consider members' suggestions in the appropriate contexts such as the next stage of amendments of the Town Planning Ordinance. The Panel also drew the Administration's attention that the introduction of the construction waste disposal charging scheme might aggravate the problem of illegal disposal of waste on agricultural lots in the New Territories. The Administration agreed to consider how best to amend the Waste Disposal Ordinance and/or other legislation to tackle the anticipated problem.

Impact of construction works on rivers in Hong Kong

25. The environmental damages to the streams at Tung Chung and Sha Kok Mei as a result of excavation and channelization respectively had aroused much public concern on the impact of private developments and public works projects on the natural environment of rivers and streams in Hong Kong. The Panel held two meetings with the Panel on Environmental Affairs to discuss the restoration plans for the damaged sections of the streams as well as the measures to prevent recurrence of similar incidents. Deputations were invited to attend for discussion of the subject. Some members shared deputations' view that the channelization of streams or rivers to prevent flooding would jeopardize the natural habitats of freshwater fish, and that many of the channelization projects were overly designed. It was suggested that a more ecologically friendly approach, such as retention of wetlands and planting of vegetation to improve drainage, should be adopted in the long run. Some members however pointed

out that channelization was effective for flood prevention purposes but care should be taken to strike a balance between flood prevention and ecological protection. The Panels also urged the Administration to step up enforcement against illegal activities which might cause irreparable damages to rivers and streams.

26. The Panel noted that the Administration would set up an inter-bureaux/departamental working group to enhance co-ordination and environmental awareness among bureaux/departments in dealing with issues relating to protection of rivers and streams in the territory. Moreover, the Administration was conducting a baseline study to compile an ecological database for Hong Kong. It was expected that more rivers and streams would be identified as ecologically important sites for appropriate conservation zonings when more data were available. On the suggestion of designating all rivers in the territory as "protected areas" in order to impose a stringent control over any development on or near rivers, the Administration's response was that it was Government policy to strike a balance between development needs and environmental protection. There was no intention to impose a general presumption against development on or near rivers through legislative measures.

Reprovisioning of Sha Tin Water Treatment Works

27. The Panel discussed vigorously the feasibility of using the public private partnership (PPP) approach for the reprovisioning of Sha Tin Water Treatment Works (STWTW) and the delivery of water supply, distribution, customer and support services. Being the largest water treatment works in Hong Kong, STWTW provides a nominal capacity of over 1.2 million cubic metres of fresh water a day which meets about 40% of the total water demand in the territory. Although the Administration quoted the success of some PPP projects in water sector in overseas jurisdictions, members noted the failure of many other PPP projects worldwide. One of the major concerns of members was how water quality could be ensured and maintained using the PPP approach, regardless of changes in the economic, environmental and political arenas. The Panel also noted the grave concern expressed by the Alliance of Staff Unions of Water Services Department on the impact of the proposal on the 800 staff. The Panel passed a motion to call on the Government not to make any decisions on privatization of the STWTW before the relevant consultancy report was endorsed by the Panel.

Building safety and maintenance

Administration's public consultation on building management and maintenance

28. In late 2003, the Panel received a briefing by the Administration on the launch of the public consultation on "Building Management and Maintenance". The Panel was advised that the existing management and maintenance problem of old buildings in multiple ownership was massive. The problem could not be

resolved effectively through the existing measures and programmes undertaken by the Buildings Department, the Home Affairs Department and the Urban Renewal Authority. As at August 2003, out of the 38 400 private multi-storey buildings in Hong Kong, about 11 000 had no owners' corporations (OCs) and were not serviced by management firms.

29. In the consultation paper, the Administration set out two broad principles as follows -

- (a) it was the owners' responsibility to ensure that their buildings were in good repair, including the need to shoulder the attendant financial commitment; and
- (b) focus should continue to be put on private sector efforts to facilitate the market's functioning, whilst ensuring safety standards through enforcement against non-compliance with statutory requirements.

The Administration also advocated making building maintenance an integral part of on-going building management to provide a long-term and sustainable solution to the building neglect problem.

30. Some members were disappointed with the lack of concrete proposals in the consultation paper to tackle the long-standing problem. They pointed out that over the years, there had already been a lot of discussions on the subject at the Legislative Council and at the district level and there was no lack of consensus on the general principles. Indeed, the major problem areas which required concrete measures to tackle had already been identified. The public consultation would only be meaningful if the Administration would set out various policy options with implementation details for discussion by the community.

31. While members were supportive of the direction of harnessing efforts of the private sector, in particular the building professions and industries, to tackle the building neglect problem, members considered that the Government should take a more proactive role in co-ordinating concerned parties and stakeholders and in formulating initiatives which would provide effective incentives for the parties concerned to contribute towards good building management and maintenance.

Safety of aluminium windows of buildings

32. In view of a number of reported incidents of aluminium windows falling from buildings due to window sash detachment in January 2004, the Panel asked the Administration to brief the Panel on the relevant existing regulatory measures and the planned improvement measures to ensure public safety. The Panel noted that the quality of aluminium windows was monitored through works supervision by building professionals and registered contractors. The Buildings

Department provided general guidelines on the design and installation of aluminium windows for the reference of building professionals and registered contractors. For installation of aluminium windows in newly constructed buildings, adequate site supervision by authorized professionals and their supervisors was generally in place. For the installation and alteration works in existing buildings, guidelines were provided to owners and occupants in the "Building Maintenance Guidebook" published in June 2002. The Administration planned to strengthen the control of window installation and alteration works by designating such works as minor works, which would be required to be carried out and certified by registered minor works contractors with relevant competence. The proposal was included in the Building (Amendment) Bill 2003.

33. The Panel called on the Administration to strengthen the relevant publicity and public education on the proper installation and maintenance of aluminium windows as public safety was at stake. Members also asked the Administration to exercise more stringent control over the quality of imported aluminium windows instead of relying on building professionals and registered contractors to ensure quality of windows. While heeding members' requests, the Administration maintained that it was owners' and occupants' responsibility to maintain regular inspections and timely maintenance of aluminium windows.

Proposed establishment of Construction Industry Council

34. The Panel, together with the Panel on Manpower, examined the Administration's proposal to establish a Construction Industry Council (CIC). Panel members raised concern on the mode of appointment of members to the CIC. Currently, the appointment of members to the existing Construction Industry Training Authority (CITA) was made through nominations by a list of designated industry bodies. Under the Administration's proposal, members of the CIC would be appointed in their personal capacities. Some members were concerned that the new appointment arrangement would not be conducive to a collaborative working relationship between the CIC and the relevant industry bodies. The Administration undertook to discuss with the relevant industry bodies and the Provisional Construction Industry Co-ordination Board on the matter. On the proposed composition of the CIC, members in general considered that in comparison with other construction-related sectors, the allocation of only two seats for construction workers was apparently unfair and insufficient.

Preservation of old and valuable trees

35. The Panel received a briefing by Hon CHOY So-yuk on her proposal to amend the Forests and Countryside (Amendment) Bill 2004 for preservation of old and valuable trees. Miss CHOY pointed out that the existing legislative and administrative measures were inadequate in the scope of protection and passive in enforcement, thus failing to provide the necessary protection for valuable trees

which were old, large, or of historical, cultural and ecological significance. The absence of a single enforcement authority was also an obstacle to the effective protection of trees through legislative and administrative measures. Her proposal would strengthen the statutory protection of old and valuable trees.

36. In connection with Miss CHOY's legislative proposal, the Panel also examined the existing legislative and administrative measures for tree preservation. Panel members in general concurred with Miss CHOY that Government's past efforts on preservation of trees were inadequate and thus should be strengthened. Some members commented that additional legislative measures might not be a priority and it might be advisable to explore other feasible alternatives in consultation with the general public and interested groups. The Panel however urged the Administration to expedite the compilation of a register of old and valuable trees on unleased Government land within built-up areas and that the register should be available for public access by end-2004 as pledged by the Administration.

Public works

37. The Panel examined the policy matters related to the following public works projects before the relevant funding proposals were presented to the Public Works Subcommittee -

- (a) infrastructure at the north apron area of the former Kai Tak Airport; and
- (b) drainage improvement in Tsuen Wan, Kwai Chung and Tsing Yi.

Re-organization of works departments

38. The Panel examined the proposed amalgamation of Civil Engineering Department and Territory Development Department with effect from 1 July 2004, before the relevant staff establishment proposal was presented to the Establishment Subcommittee.

39. The Panel held a total of 22 meetings from October 2003 to June 2004, including 11 held jointly with other Panels, to examine all the above issues and several other issues.

Panel on Planning, Lands and Works

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to lands, buildings and planning matters, works and water supply and Public Works Programme.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

Panel on Planning, Lands and Works

Membership list for 2003-2004 session

Chairman Dr Hon TANG Siu-tong, JP

Deputy Chairman Hon LAU Ping-cheung

Members Hon James TIEN Pei-chun, GBS, JP
Dr Hon David CHU Yu-lin, JP
Ir Dr Hon Raymond HO Chung-tai, JP
Hon James TO Kun-sun
Hon WONG Yung-kan
Hon LAU Wong-fat, GBS, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi
Hon IP Kwok-him, JP

(Total: 14 members)

Clerk Miss Odelia LEUNG

Legal Adviser Ms Bernice WONG

Date 18 May 2004