

立法會
Legislative Council

LC Paper No. CB(1)1876/04-05
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by the Administration)

Ref : CB1/PL/PLW/1

Panel on Planning, Lands and Works

**Minutes of special meeting
held on Friday, 1 April 2005 at 3:00 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Patrick LAU Sau-shing, SBS, JP (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon James TO Kun-sun
Hon CHOY So-yuk
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Albert CHAN Wai-yip
Hon Daniel LAM Wai-keung, BBS, JP
Hon CHEUNG Hok-ming, SBS, JP

Member attending : Hon Emily LAU Wai-hing, JP

Members absent : Hon LAU Wong-fat, GBS, JP (Chairman)
Hon WONG Yung-kan, JP
Hon Abraham SHEK Lai-him, JP
Hon LEE Wing-tat
Hon LI Kwok-ying, MH
Hon Alan LEONG Kah-kit, SC

Public officers attending : **Agenda item I**

Mr TSO Man-tai, Thomas
Deputy Secretary for Housing, Planning and Lands
(Planning and Lands) 1

Miss CHOW Kam-yuk, Christine
Principal Assistant Secretary for Housing, Planning and
Lands (Planning and Lands) 2

Miss WONG Yuen-sheung, Ophelia
Assistant Director of Planning/Board

Ms WOO Kit-ching, Jacinta
Senior Town Planner/Ordinance Review
Planning Department

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (1)4

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Ms Sarah YUEN
Senior Council Secretary (1)6

Ms Christina SHIU
Legislative Assistant

Action

- I Implementation of the Town Planning (Amendment) Ordinance 2004**
(LC Paper No. CB(1)1169/04-05(01) -- Information paper provided by
the Administration
LC Paper No. CB(1)1116/04-05(06) -- Information paper provided by
the Administration
LC Paper No. CB(1)1116/04-05(05) -- Background brief on “Town
Planning (Amendment)
Ordinance 2004” prepared by
the Legislative Council
Secretariat
LC Paper No. CB(1)2279/03-04(01) -- Memorandum dated 28 June
2004 from Complaints Division
referring to the Panel the
comments raised at a meeting of
Legislative Council Members
with representatives from the
Coalition of Open Storage
Operators in the North West of
the New Territories on 9 June

2004 on the Town Planning Ordinance (Cap. 131) and other planning policies
LC Paper No. CB(1)557/04-05(01) -- Submission from The Real Estate Developers Association of Hong Kong on the Town Planning (Amendment) Ordinance)

Owing to the unavailability of the Chairman, the Deputy Chairman took up the chair. He stated that the purpose of the meeting was to examine in depth issues relating to the implementation of the Town Planning (Amendment) Ordinance 2004 (the Amendment Ordinance), in particular the eight sets of new/revised Town Planning Board (TPB) Guidelines (the TPB Guidelines). He also declared interests as Vice-chairman of the TPB.

2. With the aid of power-point, the Senior Town Planner/Ordinance Review, Planning Department briefed members on the TPB Guidelines.

(Post-meeting note: The hard copy of the power-point presentation was circulated to members vide LC Paper No. CB(1)1205/04-05(01) on 4 April 2005.)

General

3. While considering the Amendment Ordinance a great step forward in improving the town planning process, Mr CHEUNG Hok-ming was keen to ascertain whether the land owner would be consulted in the plan-making process. In reply, the Assistant Director of Planning/Board (AD of Plan/B) explained that there was no requirement to consult the land owner in plan making but an applicant for a planning permission would be required to obtain the consent or give notification to the current land owner. However, before a plan was made, the Planning Department (Plan D) would have conducted the relevant planning study during which private rights would be taken into consideration. Moreover, the draft plan made by TPB would be subject to the statutory procedure of publication for representations and comments.

Draft Town Planning Board Guidelines No. B

4. Ms Emily LAU Wai-hing noted that where submission of comments was concerned, personal data would not be published for public inspection except names of “commenters”. At her request for details of and reasons for the above arrangement, AD of Plan/Board advised that the decision to withhold personal data had been made on the advice of the Privacy Commissioner for Personal Data and the Department of Justice. Except the name of the applicant/commenter, which formed part of the application/comment, other personal data such as the

commenter's telephone and fax numbers, address and email address, should not be disclosed for public inspection.

5. Mr James TO Kun-sun saw a need to know more about the commenters' background to ascertain the validity of the comments, as the mere number of representations might be misleading. Some might lack substance or even contain ulterior motives or were vexatious. In response, the Deputy Secretary for Housing, Planning and Lands (Planning and Lands)1 (DS/HPL(P&L)1 and AD of Plan/Board assured members that the commenters would need to fill in their personal data in the form of submission, and TPB members would have access to such data when they considered the comments. The application form, except the part which contained the "Particulars of Applicant and Authorized Agent", would be published for public inspection. At members' request, AD of Plan/Board agreed to provide a sample form of submission for members' information. She also clarified that the official capacity of the commenter as well as the particulars of the organization he represented, such as its telephone and fax numbers, its email address and address, would not be considered as personal data and would hence be published.

6. Ms Emily LAU sought to ascertain if the Home Affairs Department (HAD) would conduct regular checks to ensure site notices would be kept posted during the required period. In response, AD of Plan/Board advised that HAD had already agreed to the arrangement of periodic checks by the staff of the relevant District Office. If the notice was found to be removed or damaged, the staff would report to the TPB Secretariat and arrangement would be made to replace the notice as soon as practicable. Ms LAU opined that efforts should be made to ensure HAD staff were made well aware of their duties in this regard.

7. In this regard, Mr CHEUNG Hok-ming enquired whether, as was the case in the New Territories (NT), there would be a requirement to sign to acknowledge receipt of the site notices relating to planning applications in the urban areas. Such an arrangement would ensure that someone could be held responsible for keeping them posted. He also enquired whether photos of the site notices would be taken from time to time to ensure they were kept posted during the statutory notice period. In reply, AD of Plan/Board confirmed that the same practices would be adopted in both urban areas and the NT.

Town Planning Board Guidelines No. C

Newspaper notices

8. Miss CHOY So-yuk opined that it might not be desirable to exempt applications for temporary use from newspaper notices because such temporary uses could be offensive and affect the environment. In reply, AD of Plan/B explained that the exemption only applied to the applicant in satisfying the 'reasonable steps' requirement for obtaining owner's consent or giving notification to the owner, and was provided in response to concerns expressed in

the course of consultation that publishing newspaper notices might be too expensive especially for small-scale applications. Since TPB would publish all planning applications in newspapers under the Amendment Ordinance as well as post notices on site so far as local circumstances permitted, affected parties should be sufficiently alerted of the applied use. In addition, as an administrative measure to further enhance the effectiveness of publication, the TPB would also upload a notice together with a gist of the relevant application to TPB's website and post a notice at the TPB Secretariat, the relevant District Planning Office, District Office and Rural Committee (RC) (where appropriate). A notice would also be sent to the Owners' Corporation(s) (OCs) or other management committee(s) of buildings within 100 feet (around 30 metres) from the boundary of the application site. For cases of territorial or major local significance, a notice would also be mounted to a roadside railing in a prominent location in the area.

9. In reply to Ms Emily LAU on the newspapers in which newspaper notices should be published, AD of Plan/B advised that where the applicant was concerned, he could choose from a score of newspapers listed in Guidelines No. C. As for the statutory notices currently published by the TPB, they would be published in Ming Pao, the Economic Daily and the Hong Kong Standard. The selection of newspapers for publishing notices would be reviewed every year on the basis of circulation and prices, etc. Ms LAU considered it more appropriate to specify the local Chinese and English newspapers in which notices of planning applications should be published by the applicant. In response to her, AD of Plan/Board agreed to relay her suggestion to TPB for consideration.

Sending of requests for consent

10. Mr CHEUNG Hok-ming noted that under the "reasonable steps" requirement, request for consent would need to be sent to every owner. In this regard, he enquired if efforts would be made to ascertain whether the owners had received the request for consent. In reply, AD of Plan/B confirmed that as long as the request had been sent out, the requirement would be considered as having been satisfied. However, the applicant would be required to send the request by registered mail or local recorded delivery mail (e.g. courier service). A full set of the relevant documents showing the steps taken such as records of registered mail or local recorded delivery mail should also be submitted together with the application. Moreover, TPB would carry out random checks on the submission to ensure the applicant had fully complied with the 'owner's consent/notification' requirements. If the applicant was found to have made any false declaration or statement on the application, TPB might withdraw its decision on an application. Any person who knowingly or wilfully made a false declaration or statement would also be liable to prosecution. In response to Mr James TO, AD of Plan/Board advised that random checks would be made once every 20 applications. She also noted Mr TO's view to target at those more sensitive cases which warranted closer monitoring.

11. In this regard, Mr James TO opined that apart from the owner, the holder of a long-term lease of the application site should also be alerted of the relevant application in the same way as the owner because he would also be directly affected. In response, AD of Plan/Board assured members that since notices of the application would be sent to concerned OCs, Owners' Committees, Mutual Aid Committees, management committees or the relevant RC where appropriate within 100 feet from the boundary of the application site, the lease holder should be alerted of the application. Moreover, information on the applications was also available on the Internet and Plan D's Planning Enquiry Counters.

Posting of notices on/near application site

12. Ms Emily LAU was keen to ensure that notices to be posted on/near the application site under the "reasonable steps" requirement would be posted in a prominent position, such as the doors of individual units affected. In response, AD of Plan/Board advised that Guidelines No. C had mentioned that the notice should preferably be posted at the entrance/lobby of the site or building concerned. However, this might not always be feasible if Owners' Committees were uncooperative and refused to allow the posting of notices of planning applications at the buildings. She however assured members that apart from the notice requirement, there were other statutory and administrative means to enhance the effectiveness of notification as elaborated in paragraph 8 above.

13. Ms Emily LAU stressed the importance of ensuring that all parties affected by planning applications would be properly alerted. Mr Albert CHAN Wai-yip also highlighted the need to prevent management companies, which might be affiliates of the developers who were applicants of the planning applications, from deliberately obstructing the posting of notices of planning applications, so as to keep affected parties in the dark about the applications. Mr James TO shared his view, and considered that the Administration should ascertain the reasons behind refusal to allow posting of notice, preferably with the assistance of the District Offices concerned. Where necessary, more radical measures should be taken to enhance the effectiveness of notification. In this regard, members made the following proposals -

- (a) If the owners or management of the subject building refused to allow the posting of the notice of the planning application concerned, the notice should be mounted to the roadside railing opposite the premises;
- (b) The Administration should make reference to the overseas practice of standardizing the posting of notices of planning applications on a board to be erected near the application site;
- (c) Provisions against unreasonable refusal to allow posting of notices should be included in the relevant TPB Guidelines;

- (d) The Administration should consider the feasibility of posting notices of planning applications at fixed prominent public transport points, such as railway stations and bus stops with the costs recovered from the applicants;
- (e) The Administration should be empowered to take additional measures on a case-by-case basis as necessary. It should consider the merits of expressly stating in the relevant TPB Guidelines that where TPB considered it appropriate, it might use administrative measures which were not specified therein;
- (f) There should be fixed channels where information on planning applications was regularly published. For example, in designated newspapers, on the Internet and on fixed notice boards in community centres; and
- (g) The existing procedure of disseminating information on planning applications in the NT, namely, that notices would be posted on site, and in the relevant village, RC and District Office should be adopted in the urban areas as well.

14. In response, DS/HPL(P&L)1 and AD of Plan/Board assured members that the Administration had actively explored measures to ensure affected parties would be alerted of planning applications. They commented on members' proposals as follows -

- (a) There were technical difficulties in pursuing proposal (a) above in consideration of the large number of planning applications and the need to seek permission from the Lands Department (Lands D). Notwithstanding, for cases of territorial or major local significance, a notice would be mounted to a roadside railing in a prominent location in the area;
- (b) While the practice in paragraph 13(b) above was viable in rural areas, it might not be feasible in the urban areas, especially where planning applications involving premises within existing buildings were concerned;
- (c) Where proposal (f) was concerned, information on planning applications would be uploaded to TPB's website for easy access. The information would also be made available at Plan D's Planning Enquiry Counters. Plan D would also further examine with HAD on how to improve dissemination of such information, such as by posting such information in community centres and on fixed public notice boards. The Administration had identified five locations each in individual districts at which notices about planning applications would be posted. The arrangement for publication of regular notices

in designated newspapers would also be reported to the TPB and promulgated in due course; and

- (d) As for proposal (g) above, a similar approach would in fact be adopted for the urban areas.

15. AD of Plan/Board said that the Administration would consider members' proposals as far as practicable and would provide a list of the locations mentioned in paragraph 14(c) above.

Draft Town Planning Board Guidelines No. D

16. Miss CHOY So-yuk asked whether further information such as amendment of application to fell trees on the subject site would be considered as a "material change" of the nature of the application and would be subject to public inspection and comments. In reply, AD of Plan/B explained that except minor change in proposed scheme (not involving major development parameters), clarification of background information, technical clarifications/responses to Governments' comments, and rectification of editorial and transcript errors which were exempted from publication for comments, all further information had to be published for public inspection and comments. In relation to tree felling, any amendment which would result in an increase in the number of trees to be felled would need to be published for public inspection and comments. If the increase in number exceeded the specified "10% threshold", it would constitute a "material change" to the development proposal, which meant that the further information would not be accepted by the TPB and a fresh application would have to be submitted.

17. Miss CHOY So-yuk expressed concern about possible abuse of the above exemption and the "10% threshold" to circumvent more stringent controls and public consultation, such as by introducing minor changes to the number of trees to be felled on the subject site, so that valuable trees of an insignificant number could be felled unnoticed. To address her concern, AD of Plan/B clarified that all further information had to be submitted before the relevant application was considered by the TPB. Moreover, all further information would be made available for public inspection.

The way forward

18. Mr James TO opined that although the TPB Guidelines should be further improved, the Amendment Ordinance should commence as soon as practicable to improve the town planning process.

19. At the Deputy Chairman's request for details on the legislative timetable, DS/HPL(P&L)1 advised that members' views expressed at this meeting would be followed up and brought to TPB's attention at its meeting on 8 April 2005. The TPB Guidelines would be revised as necessary and finalized. The notice for

commencement of the Amendment Ordinance would then be published in the Gazette in April and tabled before the Legislative Council for negative vetting, so that it could come into operation in June 2005. To facilitate the House Committee's consideration of the need to form a subcommittee to consider the notice, the Deputy Chairman urged the Administration to provide a response to members' views expressed at this meeting as soon as practicable. In response, DS/HPL(P&L) 1 said that the Administration would aim to address points concerning the TPB Guidelines first.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)1309/04-05 on 19 April 2005.)

II Any other business

20. There being no other business, the meeting ended at 4:35 pm.

Council Business Division 1
Legislative Council Secretariat
22 June 2005