

立法會
Legislative Council

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(These minutes have been seen
by the Administration and cleared
by the Chairman)

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Bills Committee on Town Planning Bill

**Minutes of the fourth meeting
held on Tuesday, 28 March 2000, at 8:30 am
in the Chamber of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Edward HO Sing-tin, SBS, JP
(the Chair from item II onwards)
Hon HO Sai-chu, SBS, JP
Hon Christine LOH
Hon CHAN Yuen-han
Hon Emily LAU Wai-hing, JP
Dr Hon TANG Siu-tong, JP

Members absent : Hon LEE Wing-tat
Hon Ronald ARCULLI, JP
Hon WONG Yung-kan

Public officers attending : **Planning and Lands Bureau**

Mr Wilson FUNG
Principal Assistant Secretary/Planning

Mr David LAM
Assistant Secretary/Planning

Planning Department

Mr Raymond T L CHIU
Assistant Director of Planning/Technical Services

Ms Brenda AU
Senior Town Planner/Ordinance Review

Attendance by invitation : For item II

The Real Estate Developers Association of Hong Kong

Mr Keith KERR
Chairman, Executive Committee

Mr Stewart LEUNG
Vice Chairman, Executive Committee

Mr Nelson YUEN
Member, Executive Committee

Mr Kenneth KWOK
Representative

Mr Louis LOONG
Secretary General

Mr Andrew CHAN
Planning Consultant

Hong Kong Institute of Real Estate Administration

Mr John HUI
First Vice President

Mr Andrew YU
Committee Vice Chairman (Public Affairs & Activities)

Mr YU Kam-hung
Membership Committee Chairman

Hong Kong Real Estate Agencies Association

Mr LAI King-tim
Head Office In-charge

For item III

Members of the Town Planning Board

Professor Anthony WALKER

Mr Edward PONG

Mr Daniel HEUNG

Mr Nicholas BROOKE

Professor Patrick LAU

For item IV

Heung Yee Kuk N.T.

Mr LAM Wai-keung
Vice Chairman

Mr MAN Fu-wan
Ex-officio Executive Councillor

Mr LAM Kwok-cheong
Co-opted Councillor

Mr Edwin TSANG Ching-lun
Co-opted Councillor

Mr Stephen YIP Moon-wah
Co-opted Councillor

Mr Kingsley SIT Ho-yin
Co-opted Councillor

Miss LAU Fung-yee
Senior Secretary

For item V

Land and Building Advisory Committee

Mr Andrew LAM
Member

Clerk in attendance : Mrs Mary TANG
Chief Assistant Secretary (1)6

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Ms Sarah YUEN
Senior Assistant Secretary (1)4

I Meeting with land development-related associations

Meeting with the Real Estate Developers Association of Hong Kong (REDA)
(LC Paper No. CB(1)1221/99-00(01))

The Chairman welcomed representatives from the three land development-related associations and invited their views on the Bill.

2. Mr Keith KERR briefed members on REDA's submission. Members noted that although REDA welcomed the Bill as a major step in opening up the planning process, it was of the view that there was no urgency in replacing the existing legislation because the current planning system, though not perfect, was operating reasonably well and administrative measures were available to ensure thorough consultation on new planning studies and initiatives. Moreover, as the Bill would have significant impact on all sectors of the community, a full debate within the community was justified to ensure that the needs of the community would be fully catered to in the town planning system.

3. Mr Keith KERR pointed out that REDA was concerned about the drafting and hence workability of the Bill, which in its opinion were in problem due to the lack of three essential qualities, namely, clarity, certainty and fairness. Where clarity was concerned, the Bill was seeking to cover far too many details instead of confining planning control to broad principles only. As for certainty, by introducing a number of new zonings and the concept of Designated Development, and allowing the proliferation of Comprehensive Development Areas (CDAs) which would lead to not just delays in development but confusion, the Bill would reduce the certainty of the present planning system. As to fairness, the Bill was far more in favour of the Administration. For example, the time limits for private owners to meet various requirements of the Bill were normally shorter than those for Government.

4. Mr Keith KERR then highlighted REDA's four major comments on individual provisions of the Bill as follows -

- (a) The Town Planning Board (TPB) should be seen to be truly independent with an independent Chairman and Secretariat.

- (b) The interim development control (IDC) measures under which all new building plans within a zone under objection would not be approved for up to at least nine months would be an extremely significant interference with the normal development process. To avoid delays, during the objection processing period a conditional approval should be granted to building plans which complied with the Outline Zoning Plan (OZP) but did not comply with the objection, so that the developer could proceed, at his own risk, with detailed design of the project and site works up to an extent not in conflict with the plan or any adverse representation.
- (c) The requirement of TPB to have regard to “any statement of Government policy” in considering a planning application was confusing, unnecessary and unfair, and would only constitute an encumbrance to development. This was because many Government policies were involved in the planning process and, while they might not be fully complementary to each other, there would unlikely be a consensus among the Government departments concerned on which policy should take precedence. Moreover, since policies were subject to change from time to time, not every Government policy was within the applicant’s knowledge.
- (d) The requirement of applicants to construct and maintain public facilities without cost to the Government was unreasonable because provision of public facilities was Government’s responsibility. Moreover, as the heyday of property development was over and there was a need to contain development costs, the extra cost such a requirement would incur would significantly slow down development and hence the production of important facilities such as housing.

The drafting aspect

5. In reply to Miss Emily LAU on reasons for the unsatisfactory drafting of the Bill, Mr Keith KERR pointed out that given the scale, the Bill was a challenge to both the relevant bureau and department in briefing the draftsman and to the draftsman in understanding the legislative intention. Moreover, since a wide range of views had been expressed on the Bill, there was also difficulty in incorporating all such views in the Bill in a simple way.

6. Mr Edward HO agreed with REDA that the Bill, which required a lot of cross-referencing, was complicated even for professionals. Providing examples, Mr Andrew CHAN said that REDA had problems with the wording of clauses 32(4) and 45 and that even its working group on the Bill could not agree on the interpretation of the former. However, while calling for simplification of the Bill, Mr Keith KERR also pointed out that to achieve this, the intent of the Bill had to be simplified first.

Operation of TPB

7. Mr Edward HO enquired about REDA's idea of a suitable candidate for appointment as TPB Chairman to ensure TPB's independence. In his view, such a person should not be a Government official. However, it would be very difficult to identify a suitable candidate because few people from the private sector could be free from any conflict of interests. In reply, Mr Keith KERR said that the sensitivity of the position demanded great care in selecting the holder but he was confident that Hong Kong could find the right person.

8. Elaborating in response to Miss Emily LAU on REDA's views on opening of TPB's meetings to the public, Mr Keith KERR pointed out that while it would be fine in the interests of the public to open TPB's meetings when broad planning issues were discussed, the same should not apply when individual applications were examined for three reasons. Firstly, efficiency would suffer because of the significant constraining effect of such an approach on TPB's deliberations. Secondly, in some cases commercial secrets might be involved. Thirdly, the Board had already incorporated representatives from all sectors of the community and as such should be able to adequately reflect public opinions.

9. Miss Emily LAU however stressed that efficiency should not be a consideration in deciding whether to open TPB's meetings because a public debate should be allowed if the issue concerned was controversial. In response, Mr Keith KERR clarified that many planning applications were in fact very minor and might be controversial to only one or two persons. With a large number of applications to process, it was important that TPB could operate efficiently.

Other concerns

10. In response to Mr Edward HO on the proposal on the adoption of the planning certificate system to enhance certainty, Mr Keith KERR said that the creation of planning certificates was not necessary because Hong Kong already had a set of approved OZPs to provide the certainty accorded by a planning certificate system. In fact, REDA was more concerned about the growing use of CDAs where implementation was a problem because planning intents often did not match ownership. As such, it was important that when a change in land use was proposed, it should be promulgated in the form of a draft plan and subject to due process of objection while the approved OZP would remain fully in force and workable. Mr HO commented that in such a case, the OZP would need to be very precise.

11. At Miss Emily LAU's invitation to elaborate on REDA's comment on the requirement to have regard to statements of Government policies in considering planning applications, Mr Keith KERR advised that for the sake of clarity, the relevant Government policies and planning intentions considered in determining an application should be included in the OZP in the form of notes or explanatory statements. Mr Andrew CHAN supplemented that this would also ensure fairness and transparency

by enabling the public and/or developer to make representations on such statements and take them into account in making investment and planning for development. Members noted that presently there was no reference to the sources of Government policies and the timing of the policies vis-à-vis the dates of application submission so that the applicants might not know the existence of certain policies and, most importantly, what could be regarded as Government policies when TPB considered the planning applications. The inclusion of the relevant policies considered in the OZP would therefore help to address the above problem.

Meeting with Hong Kong Institute of Real Estate Administration (HKIREA)
(LC Paper No. CB(1)1221/99-00(02))

12. Mr John HUI highlighted the salient points of HKIREA's submission as follows -

- (a) Where TPB's role was concerned, planning control exerted by the Planning Authority should be limited to strategic and broad issues like land use, density, general cityscape and city development as a whole. Detailed control should still be under the existing control mechanism under the Lands Departments and Buildings Department. However, the Bill not only introduced overlapping powers but the Buildings Authority (BA)'s current processing system for building plans would be jeopardized under clause 45, and clause 46 even provided that appeals against BA's refusal of building plans on planning grounds should be lodged to TPB instead of the Building Appeal Tribunal. This was undesirable as TPB would then be playing a double role by preparing the plans as well as handling appeals regarding non-conformities to such plans at the same time.
- (b) The Bill should only introduce more public consultation when conducting planning studies, making overall planning policies, determining large-scale development strategies, etc. Once these important issues were determined after adequate public consultation and the relevant statutory plans were prepared, future developments, if in conformity with these approved parameters, should be allowed to go smoothly without introducing another round of public consultation. The Bill which allowed public consultation down to the level of planning applications might create unnecessary conflicts and ultimately lead to delays in building development.
- (c) It was undesirable to prohibit developments to proceed when draft plans were under adverse representations, and to allow the mechanism for final decision to last as long as 16 months. This might happen during the IDC period when all developments within an area covered by plans under adverse representation would be frozen.

- (d) TPB should be seen and functioning as an independent body. To this end, its Chairman and Deputy Chairman should be non-official members, and the appointment of its members should be made more transparent.

13. Dr TANG Siu-tong asked HKIREA to elaborate on its suggestion that the TPB Chairman, in exercising his administrative power at a meeting, should have no vote save for a casting vote. In response, Mr John HUI said that the quorum of TPB meetings should be odd numbers to avoid a tie as far as possible. He further elaborated that at present the TPB Chairman was a Government official and had participated in the making of planning proposals. He should not be allowed to participate in the decision-making process of TPB, which was essentially an independent set-up for examining planning proposals. If the TPB Chairman was not a Government official, HKIREA would not object to his having a vote.

14. In reply to Miss CHAN Yuen-han on the appropriate extent of public consultation, Mr John HUI said that as adequate public consultation had already been conducted before the statutory plans were prepared, there was no need to conduct public consultation again on the relevant planning applications to avoid leaking commercial secrets and prolonging the development process. As to the need for public consultation on medium-scale developments affecting many people such as the redevelopment of Yue Man Square in Kwun Tong, Mr HUI opined that public consultation could be conducted in the districts and adjacent districts concerned. In cases where the details on an area had yet to be decided when public consultation on the relevant OZP was conducted, he suggested that the area could be designated as a CDA first so that public consultation could be conducted on a district basis later.

Meeting with Hong Kong Real Estate Agencies Association (HKREAA)

15. Mr LAI King-tim said that as HKREAA had yet to form their views on the Bill, they would send in their written submission later.

Deliberations

16. The Principal Assistant Secretary for Planning and Lands (Planning) (PAS/PL(P)) responded to the major concerns expressed by the land development-related associations as follows -

- (a) Fears that IDC would freeze development were unnecessary because IDC had been imposed with such flexibility that it would only affect sites subject to an objection, and for a period up to ten months except in very special circumstances. Even in the case of a blanket objection to an entire OZP, developments could still proceed whilst the objection was being dealt with as long as they did not fall under the scope of the objection. Moreover, the definition of “building works” did not include ground investigation, site formation works, demolition, drainage works, and slope maintenance works. The above works could therefore go ahead

to save time except in cases specified in clauses 45(6)(c)(i) and (v) where the works would significantly reduce the value of any property owned or occupied by the representer or where valuable natural resources were involved. In fact, the Administration had already highlighted the above safeguards against works delays to REDA in writing. The Bill had also included two such safeguards proposed by them to address their concerns. The relevant correspondence could be copied to members if required.

- (b) As to some deputations' suggestion that planning applications which complied with approved OZPs should be allowed to proceed without further consultation or invitation to object, there was a need to balance developers' interest in keeping the confidentiality of their projects and the public's concern that the neighbours should be informed of a planned development to enable them to raise objection to any use they found undesirable. As such, the present proposal of requiring publication of planning application for selected uses for public comments was already a compromise balancing the views of different parties. Moreover, the present proposal was also necessary having regard to the possibility of seemingly harmless uses resulting in undesirable establishments. For example, land designated for commercial use could be used to operate massage parlours.
- (c) On comments that Government policies were not clear and that the explanatory statement should form a part of the OZP, the Bill as it was could already enable TPB to decide on what to include in an OZP for public consultation. The present arrangement that TPB would give regard to all relevant policies by circulating the draft plans to various bureaux/departments for comments was also satisfactory and could help avoid leaving out any related policies despite frequent policy changes. Moreover, the District Planning Officers would give specific advice to developers on whether their planned developments would conflict with any existing policies. As such, it might be more helpful to strengthen communication between the Planning Department and the developers instead of just stipulating what to include in the OZP. Owing to the large number of policies, it was practically impossible to list out all relevant policies in the OZP.

The IDC

17. Notwithstanding the above assurances from PAS/PL(P), Mr Keith KERR of REDA maintained that IDC was not necessary and would only delay development given that the requirement of land use changes be approved by TPB could already safeguard against violation of approved land use. PAS/PL(P) however explained that the IDC mechanism was essential to providing a more open planning system and ensuring that the final decision of TPB and the Chief Executive in Council on draft town plans would not be pre-empted by any approval, in the interim, of planning

applications or building plans in respect of particular sites or developments.

Handling of planning applications

18. Referring to PAS/PL(P)'s point on planning applications, Mr John HUI of HKIREA emphasized that to avoid delays to development, public consultation on planning applications should be conducted in a structured way such as through the District Council instead of inviting individual comments. He also quoted cases to highlight the need to retain BA's authority to approve minor changes to approved applications within the scope of the Buildings Ordinance and proposed that TPB should also entrust Planning Department (Plan D) with the vetting of simple planning applications.

19. Miss CHAN Yuen-han however shared PAS/PL(P)'s view that individual planning applications that might adversely affect others should go through public consultation down to owners' corporations so that objections could be handled early.

Reference to Government policies

20. While agreeing with PAS/PL(P) that strengthening of communication between Plan D and the industry would help developers identify relevant policies, Mr Andrew CHAN of REDA said that the requirement of TPB to have regard to all relevant Government policies and planning intentions in examining planning applications should be similar to that imposed on the Appeal Board under clause 59(1). Mr Keith KERR of REDA supplemented that by operation of the widely represented TPB, the different policies concerned should have been balanced during the decision-making process and there was no need for the requirement or else there might be a lot of appeals and litigation.

21. Concluding this session, the Chairman invited the three land development-related associations to closely follow the deliberations of the Bills Committee and submit further views to the Bills Committee if necessary.

II Meeting with members of the Town Planning Board (TPB) (LC Paper Nos. CB(1)1221/99-00(03) and (04))

22. As the Chairman had other engagements, members agreed that Mr Edward HO took the Chair at this juncture. The Chair welcomed members of TPB and explained that they were attending the meeting in their personal capacities. He then invited them to express their views on the Bill.

23. As an introductory remark, Professor Anthony WALKER explained that because of time constraints, TPB had not been able to have any in-depth deliberations for a collective view to be formed on each and every provision of the Bill. Moreover, although TPB members supported the general principles of the Bill, their views on

certain matters differed. The Board was therefore not in a position to appoint a delegation in its name to attend the meeting and to make a formal submission to the Bills Committee. He however pointed out that the Board in general warmly supported the provisions of the Bill with regard to its objectives to streamline the statutory planning procedures, to encourage public participation and to increase openness and transparency of the planning process.

24. Mr Nicholas BROOKE then stated his support for the Bill and highlighted the salient points of his own submission as follows -

- (a) Instead of proposing that the Administration “may” consult TPB on statutory planning issues, the word “may” should be substituted by “shall” to make the above a requirement.
- (b) The opening of TPB meetings would help to remove any misunderstanding about its work and should start with the plan making process. As for opening of the deliberations on individual applications, flexibility might be necessary to allow private hearings to be conducted where sensitive commercial interests were involved. The debate among Board members before they reached a decision on a planning application might also need to take place behind closed doors.
- (c) The present arrangement of having the Secretary for Planning and Lands to be the TPB Chairman worked well and there was no need to require the TPB Chairman to be a non-official member.

25. Mr Edward PONG however pointed out that on grounds of confidentiality, he did not entirely agree with Mr BROOKE’s point on opening of TPB meetings to the public and was of the view that public consultation conducted on planning studies should suffice.

Deliberations

Role of TPB

26. Miss Christine LOH enquired if the TPB members present were in favour of TPB taking over the additional proactive role of an independent strategic planning commission with increased resources. In reply, Mr Nicholas BROOKE said that to avoid duplication of resources, TPB should be entrusted with strategic planning in addition to its statutory planning function. Professor Anthony WALKER echoed Mr BROOKE’s points and supplemented that it would be desirable for TPB to play a continuum role so that a project could be handled from the strategic level to the implementation level by the same body. However, some thinking on how TPB should be better structured to perform such an enhanced role was necessary and there might be a need for additional subcommittees. Mr Daniel HEUNG agreed and pointed out that if the scope of TPB’s work was to increase, the number of TPB

members should also increase.

Admin

27. PAS/PL(P) said that the above proposal for the TPB to perform the role of a planning commission was beyond the remit of the Bill and might render the work of TPB overlapping with that of the present Commission on Strategic Development chaired by the Chief Executive. He however agreed to examine the proposal in another context.

Admin

28. As to Mr Nicholas BROOKE's point that TPB should be consulted on strategic planning issues, PAS/PL(P) said that TPB's role had in fact evolved slowly over the past one or two years. As a matter of practice TPB was already consulted on all major strategic planning issues. As such, the Administration would consider amending the wording of the relevant clause as proposed by Mr BROOKE.

29. In this regard, Professor Anthony WALKER also supported the proposed participation of TPB in major road or rail projects having regard to the significant implications of their fundamental design on land use planning. The Chair and Miss Christine LOH pointed out that some Legislative Council (LegCo) members also had the same view and invited TPB members present to make suggestions on how the Bill could be amended to give TPB the necessary mandate. Miss Emily LAU added that such might be achieved by amending clause 6 on powers and functions of the Board.

(Post-meeting note: The suggestion by TPB members was circulated vide LC Paper No. CB(1)1352/99-00.)

Admin

30. Commenting on the above proposal, PAS/PL(P) advised that this would go beyond the purview of the Planning and Lands Bureau. He further explained that presently road or rail projects did not need to go through TPB because they were handled according to the Roads (Works, Use and Compensation) Ordinance and the Railways Ordinance and not under the Town Planning Ordinance, and that all road and rail projects gazetted under the Roads (Works, Use and Compensation) Ordinance or the Railway Ordinance and approved by the Chief Executive would be deemed as having been approved under the Town Planning Ordinance. He however undertook to convey the views of TPB members and LegCo members in this regard to the relevant bureaux for consideration. Mr Nicholas BROOKE pointed out that there were occasions where TPB was opposed to certain gazetted road development projects.

Composition of TPB and meeting attendance

31. In reply to Miss Emily LAU on the composition of TPB, especially on the designated number of members and the Chairmanship, Mr Daniel HEUNG commented that if TPB's membership was enlarged, it might take a longer time to make a decision on planning applications.

32. Miss Emily LAU invited TPB members' comments on the concern that due to unstable meeting attendance, TPB members who examined the planning applications might not necessarily be the same group of members who voted on them. In response, Professor Anthony WALKER assured members that such cases were very rare. Mr Edward PONG concurred and said that members might need to go out to make phone calls during long meetings. Mr Nicholas BROOKE however said that while there was close to full attendance in the morning, there would barely be a quorum in the afternoon. Mr Daniel HEUNG agreed that at certain times of the year, there was a difficulty in securing a quorum for a meeting, especially in the afternoon. He however said that this was understandable because the meetings, which might last a whole day, were very demanding in terms of time. As business people who had many engagements, some TPB members might find it difficult to attend and sit through all meetings.

Opening of TPB's meetings

33. In response to the Chair, members of TPB confirmed that relevant parts of the minutes on processing application and objection hearings would be sent to the applicants as well as the objectors. However, individual TPB members who expressed their views on the applications or objections would not be named in the minutes.

34. Miss Emily LAU referred to Mr Nicholas BROOKE's point on opening of TPB's meetings, and opined that if TPB meetings were to be opened, the deliberations before decision making should not be an exception. In response, Professor Anthony WALKER cautioned that if such debates were to be conducted in public, TPB members might not be as articulate because not everybody was used to speaking in public. Given the already daunting workload of TPB, this approach might also make it more difficult to find people to serve on TPB. Mr BROOKE compared TPB's work to those of a jury and stressed that it was completely acceptable that the final decision on a planning application should be made in private. Mr Daniel HEUNG further pointed out that the opening of the deliberations would change the nature of the Board which usually made decisions collectively by way of consensus rather than by voting. He was concerned that if the deliberations were open so that personal views were made known, in the case of a deferred decision, the amount of lobbying by business clients and pressure from the press would be tremendous. He also stated his support for opening certain parts of TPB's meetings such as the presentations and hearings, if the deliberations and voting part could remain closed.

35. The Chair shared TPB members' views and opined that their concern about opening the decision-making process was understandable because individual TPB members inevitably had business connections and to avoid hard feelings with their clients, it was only natural that they would be inhibited in open deliberations on planning applications. As such, he considered the adoption of the operation mode of a jury as suggested by Mr Nicholas BROOKE desirable.

36. Miss Christine LOH also acknowledged TPB members' concerns about being individually identified with their choices in consideration of the small business circle in Hong Kong. At her invitation to comment on the proposal to adopt the principle of open meetings while including an enabling provision in the Bill to allow TPB to exercise discretion to conduct closed meetings if necessary, Mr Daniel HEUNG, Professor Anthony WALKER and Professor Patrick LAU said they personally supported the principle. Professor WALKER however said that in such a case, a set of criteria would have to be worked out to determine what meetings were to be open. Professor LAU also opined that such a change would need to come gradually.

37. In response, PAS/PL(P) assured members that all views expressed would be carefully considered. He also confirmed that the Administration had already agreed to examine the need for the above enabling provision although the details would be decided by TPB.

Other proposals

38. Professor Anthony WALKER pointed out that one problem facing TPB was that they had no independent professional advice on which way to go in cases where the Administration and the applicant had opposing views but each was backed up by experts. There was thus a need to give TPB more resources to seek independent expert advice when necessary.

III Meeting with Heung Yee Kuk (HYK)

(LC Paper No. CB(1)1221/99-00(05))

39. The Chair welcomed the representatives from HYK and at his invitation, Mr LAM Kwok-cheong briefed members on the submission from HYK as follows -

- (a) The extension of statutory planning control to rural New Territories effected by the Town Planning (Amendment) Ordinance 1991 had frozen the development of land there and adversely affected the property rights of residents there, who were entitled to put their land to uses more profitable than agricultural. As such, Government should allow the affected land owners to seek resumption of their land by Government, introduce a land exchange mechanism or pay compensation for diminution of development rights due to planning actions.
- (b) According to Part VI of the Bill, "any person whom the Authority has reason to believe is responsible for that undertaking, carry on or continuance of that unauthorized development" would be made liable to offences for unauthorized development. In other words, managers registered under section 15 of the New Territories Ordinance would also be made personally liable to such offences. HYK considered this

provision to be too stringent having regard that the maximum fines had already been proposed to be doubled.

- (c) Approvals of planning applications where the owner of the application site had only been notified but his consent not secured should be revoked if the owner objected to the application later.

40. Mr MAN Fu-wan and Mr Stephen YIP supplemented the following points -

- (a) The maximum fines against unauthorized development should not be increased as they were already quite heavy.
- (b) It was unfair that actions were only taken against unauthorized developments in the New Territories and not those in the urban areas.
- (c) During the planning process, there should be more consultation with local residents, including landowners, District Councils and village representatives.
- (d) The purpose of proposing compensation and compulsory acquisition for land zoned for a public purpose was to ensure fairness. In fact, this principle was followed in many overseas countries such as the United Kingdom.
- (e) The existing Town Planning Ordinance failed to respond quickly to market conditions and had affected development. In recognition of that, the Bill should accord flexibility to landowners to respond to market needs so as to facilitate Hong Kong's overall development.

Deliberations

41. While agreeing that town planning should accommodate economic development, Miss Emily LAU was concerned about the significant social price paid as a result of the haphazard way agricultural land in the New Territories was put to various uncontrolled uses. In response to her on whether compensation was HYK's major concern, Mr LAM Kwok-cheong stressed the need to maintain an appropriate balance between town planning and private property rights.

42. In this regard, representatives of HYK highlighted cases where landowners in the New Territories had been unfairly treated. Mr MAN Fu-wan quoted Government's plan to locate the Lok Ma Chau station of the East Rail next to the 68 hectares of land in San Tin originally zoned as container backup area but rezoned as wetland conservation area, and considered Government to be acting inconsistently and unfairly in this case. He and Mr Kingsley SIT further pointed out that it was not uncommon that land zoned as green belts was rezoned for residential purposes shortly after having been bought by developers. Mr SIT suspected that corruption might be

in play in such cases and opined that to guard against corruption and ensure long-term planning control, TPB should open its meetings to the public to enhance transparency of its work and the Bill should restrict change of land use within a certain time frame unless there were absolute urgent needs. Mr Stephen YIP also opined that the problem did not restrict to the New Territories, since planning blight could also exist in the urban areas when land was zoned for a public purpose. A land owner should be allowed to request resumption of his land if his application for planning permission to develop the land according to the provisions of the statutory plan and lease conditions had been rejected and all rights of review and appeal had been exhausted.

43. At the Chair's invitation, PAS/PL(P) responded to HYK and members' comments as follows -

- (a) The Administration was willing to consider amending the Bill to enable TPB to conduct open meetings.
- (b) Regarding HYK's view that consent from the owner of the application site concerned should be required in planning applications involving private land, there were also views that there was no need to notify, not to mention seek consent from, the land owner concerned in such applications having regard that consultation had already been conducted on the relevant OZP. As such, the present requirement that the owner be notified was already a balance of the above dissenting views.
- (c) As for comments that the increase in maximum fines against unauthorized development was too great, there were also views that given the huge financial gains from such unauthorized development as container storage, the present enforcement actions and penalties, averaging \$30,000 only, did not have sufficient deterrent effect. In fact, when consultation was conducted on the White Bill in 1996, there were proposals that unauthorized development should be punishable by imprisonment. With the deletion of the imprisonment proposal, it would be necessary to double the fines.
- (d) On compensation, it had to be noted that the lease only specified the contractual rights of the Government as lessor and private owners as lessees. As such, the grantee's right to use his land according to the lease was always subject to the control under the planning law in existence at the time. In fact, in consideration of the significant financial implications, there were no common law jurisdictions which provided compensation to owners of land for planning restrictions. Notwithstanding, the Government had already set up an internal working group to review the compensation issue. Pending a conclusion to be drawn by this working group, it might not be appropriate to examine this issue at this stage.

- (e) As to members' comment that the unsatisfactory planning of the New Territories had led to a proliferation of unauthorized developments such as container storage sites, the fact was that while there were sufficient amounts of land designated for container storage, users tended to resort to unauthorised developments out of cost considerations.
- (f) Concerning claims that planning control had led to "planning blights", the fact was that both the existing Town Planning Ordinance and the Bill allowed applications for amendment to statutory plans. Moreover, it had to be noted that the contractual right to use a plot of land per se was not unlimited but might be subject to compliance with certain procedures such as lease modifications or payment of additional premium in the case of up-zoning.

44. In response to point (f) made by PAS/PL(P), Mr Kingsley SIT stressed that the small house development rights enjoyed by the indigenous residents of the New Territories were not to be questioned, and their exercise should not be subject to any restrictions. In response, PAS/PL(P) clarified that the Bill would not affect the legal status of small house development rights. It was mainly targeted at the unauthorized use of agricultural land.

Admin 45. Mr LAM Kwok-cheong pointed out that the right to develop agricultural land for other economic uses was granted to the indigenous residents of the New Territories under the Block Crown Lease in 1905. As such, compensation should be paid for taking away this right. At Miss Emily LAU's request, PAS/PL(P) agreed to address this point in the Administration's response to HYK's submission.

Admin 46. In this connection, the Chair enquired whether compensation would be paid in cases where the designated rather than assumed rights under a lease such as the approved plot ratio were affected. In reply, PAS/PL(P) confirmed that under the present arrangement, compensation would not be paid. He however assured members that such cases would be rare because the lease should have already specified that the land should be developed within a certain period during which the plot ratio would unlikely change. Moreover, the above-mentioned working group was also examining whether compensation should be paid in such cases. At the Chair's request, PAS/PL(P) agreed to provide a paper on the common law principles on compensation for planning actions.

(Post-meeting note: The required paper was circulated vide LC Paper No. CB(1)1392/99-00(02).)

IV Meeting with the Land and Building Advisory Committee (LBAC) (LC Paper No. CB(1)1246/99-00(01))

47. At the Chair's invitation, Mr Andrew LAM briefed members on the various comments made by the unofficial members of LBAC on the Bill as follows -

- (a) The unofficial members of LBAC in general supported the Bill and welcomed the various proposals to enhance the openness and public accountability of the planning system, to streamline planning procedures, and to improve efficiency and effectiveness.
- (b) Where the work of TPB was concerned, some unofficial members of LBAC opined that more had to be done to further improve the openness and accountability of TPB, and some had expressed concerns that TPB might be given too much authority if it was empowered to designate "Designated Development", "Environmentally Sensitive Area", "Special Design Area" (SDA), and very fine details of development such as the design and disposition of buildings and landscaping, etc. One unofficial member of LBAC also suggested that all TPB meetings should be open to the public.
- (c) As for enforcement against unauthorized developments, an unofficial member of LBAC had suggested that the Bill should clarify the definition of "contractors" to prevent registered contractors from being penalized for acts committed by the subcontractors.
- (d) On compensation, some unofficial members of LBAC opined that to ensure fairness, compensation should be paid to land owners whose rights to develop their land had been deprived by planning blights. They had also requested that provisions be added in the Bill to enable all landowners affected by planning blights to request the Government to resume their land. One such member had also suggested that an independent board be set up to consider these resumption requests.
- (e) The unofficial members of LBAC in general supported the proposed one-stage inquiry by TPB on unwithdrawn adverse representations and comments.
- (f) The unofficial members of LBAC in general supported the publication of planning applications related to "bad neighbour uses" for public comments and opined that this would enable TPB to obtain a wider spectrum of views before approving these environmentally sensitive planning applications. However, some had suggested that except for designated development within an ESA, public participation should be confined to the plan-making stage so as not to prolong the development process.

- (g) As to consequential legislative amendments, some unofficial members of LBAC opined that since it had been the established practice of BA to seek comments from all relevant departments before approving building plans, it might not be necessary to introduce amendments to the Buildings Ordinance to require BA to refuse to approve building plans which contravened the Town Planning Ordinance.

Deliberations

48. In response to Miss Emily LAU, Mr Andrew LAM confirmed that while only one member strongly called for the opening of TPB meetings, other unofficial members of LBAC did not strongly object to the proposal. He further reported that there were altogether 15 unofficial members on LBAC, and LBAC's submission was a summary of the views expressed at a meeting of the LBAC prepared by its Secretary. His points were confirmed by PAS/PL(P).

49. Miss Emily LAU sought confirmation as to whether the unofficial members of LBAC were of the view that the amount of compensation for planning blights should be greater than that for resumption of land. In reply, Mr Andrew LAM clarified that the view had been made by an unofficial member who was also a member of HYK. Thus, the view was very similar to what had just been mentioned by the HYK deputation. He however said his personal view was that any compensation provisions in the Bill should tie in with other relevant legislation such as the Buildings Ordinance. No compensation was payable under the Buildings Ordinance despite inclusion of restrictions on development density according to the classes of sites. As such, there had been arguments on the compensation issue at LBAC meetings in the past.

50. Referring to the concern about innocent contractors being implicated in the acts of subcontractors highlighted in LBAC's submission, PAS/PL(P) assured members that clause 50(5) had already provided the necessary exemption to the effect that if the principal contractor could prove he had no knowledge of such an act or that although the act was known to him, due diligence had been exercised to prevent that from continuing, he would not be criminally held liable. Moreover, the Administration was considering including the definition of "principal contractor" to address such concerns.

V Any other business

- Admin 51. At the Chair's request, PAS/PL(P) undertook to provide a consolidated written response to the views expressed by different deputations at this meeting. He also
Admin agreed to work with the Legal Service Division of the LegCo Secretariat in improving or simplifying the drafting of the Bill.

52. Members agreed on the arrangements for the fifth, sixth and seventh meetings of the Bills Committee as follows -

Date	Time
Thursday, 6 April 2000	8:30 am to 10:30 am
Friday, 7 April 2000	4:30 pm to 6:30 pm
Tuesday, 11 April 2000	10:45 am to 12:45 pm

(Post-meeting note: The meeting scheduled for 7 April 2000 was subsequently cancelled.)

53. The meeting ended at 12:00 noon.

Legislative Council Secretariat
23 October 2000