Comments
of The Real Estate Developers Association of Hong Kong
on the Town Planning Bill

Part 1 General Comments

1. Objective of the Bill

The Town Planning Bill seeks to give much wider and unfettered power to the Town Planning Board over matters not only on planning control but also very detailed building design. The Real Estate Developers Association of Hong Kong ("REDA") is of the view that planning control should be confined to broad planning matters such as land use and density given that there are also controls exercised under lease conditions and the Buildings Ordinance. Instead of simplifying the current planning control mechanism through a revamp of the legislation, the Bill will introduce more complexity, uncertainty and bureaucratic discretion into the planning system.

2. Independence of Town Planning Board and its Secretariat (Section 3)

The Board should be seen to be truly independent. The Secretary for Planning and Lands or the Director of Planning should not be the Chairman of the Board. Otherwise, the Board would act or be seen to be acting as the judge in its own cause as the papers presented to the Board are prepared by the Planning Department. We propose that both the Chairman and the Deputy Chairman should not be public officers as is currently the case with the Appeal Board. There should also be a wider and more diversified composition of the Board, with more representatives from the professional bodies and institutes and the real estate development sector.

Likewise, the Secretariat, which is responsible for the preparation of papers relating to representations and objections, should be independent from the Planning Department, or at least be an independent and impartial unit separated from the Department.

3. Zoning for Public Purpose (Section 6)

The existing planning legislation has no provision for full compensation for the erosion or removal of private property rights by planning measures, such as the imposition of Comprehensive Development Area ("CDA"), Conservation Area ("CA"), Site of Special Scientific Interest ("SSSI"), down zoning, or the proposed new zonings of Special Design Area "SDA" and Environmentally Sensitive Area "ESA". These measures often compromise the development potential or effective use of the land enshrined in the lease conditions and the prevailing Building Regulations. The lease is a voluntary civil contract between Government and the landowner.

Where genuine public interest dictates a breach of this contract, compensation remains payable to the aggrieved party. However, there appears to be a tendency for planners to ignore the rights of landowners in statutory planning. The Bill is silent on the economic and contractual dimensions on land ownership.

It is stated in the Comprehensive Review of the Town Planning Ordinance – Consultative Document published in July 1991 that:

"There exists an administrative policy for land owners to request the Government to resume their land. If a development proposal on land zoned for a public purpose (e.g. 'Government/Institution/Community' or 'Open Space' use) is rejected by the TPB, and if further upon a petition to the (former) G in C, the decision to reject the development proposal is still maintained, the Government will either acquire the property within the next financial year or permit the applicant to develop in accordance with the lease."

To uphold fairness to landowners and avoid planning blight, this administrative policy should be formalised in statue and the Bill should provide that Government is required to purchase or resume the land zoned for public purposes upon the owner's request. In the administrative policy, there should also be a clear time frame for the Government to resume upon receipt of an owner's request.

4. Designated Development (Section 9(2) and 9(3))

The Bill provides that the Board may designate on a draft plan certain developments as designated development. Designation through this procedure shall be subject to public consultation where affected persons will have the opportunity to make representations and an enquiry will be conducted to consider the representations. The Secretary for Planning and Lands may, however, by regulations, designate any class or description of development as designated development without going through public consultation. REDA considers this unacceptable. It is unnecessary and "undemocratic" for him to be given this power to over-ride the Board.

5. Rezoning Request (Section 29)

Inclusion of provisions to enable rezoning requests is welcomed. However, the proposal falls short in that it does not provide for any opportunity for the applicant to have a Review Hearing if the Board's initial decision is disputed. This process should be the same as the application process for a planning permission, where initial consideration by the Board is followed by a right to a hearing. To avoid unnecessary delay, REDA recommends that there should be an expressed provision to require the amended OZP to be gazetted within 3 months after the amendment has been adopted by the Board.

6. Transfer of Development Potential (Section 31)

It is provided in Clause 31(4) that no "building works" involving any transfer of development potential shall be carried out unless planning permission has been granted.

In the 1996 White Bill, planning permission is required only for sites involving transfer of development potential where there is a restriction in plot ratio in the OZP. This is in line with the spirit of the OZP in question. To extend such restriction generally as proposed in the current Bill is an unnecessary usurpation to the existing well established system.

In the event that such proposal becomes operative, any existing projects involving transfer of development potential will have to cease work and if planning permission is not granted, the developer will suffer loss. This is unacceptable. We recommend that the provisions in the 1996 Bill be restored without alteration.

7. Consideration of Similar Planning Application (Section 32(3)(c))

Under section 32(3)(c), the Board is given the power to refuse to consider an application which is similar to one that it has previously rejected. This clause effectively prevents the Board from giving a right of hearing to justify its decision or to hear submissions from the applicant as to why it should be heard. It is unnecessary. The rejection of the application is more appropriate than a refusal to hear.

An application though rejected by the Board may be acceptable in principle, and the application could be revised with minor changes and/or further supporting materials to satisfy the requirements of the Board.

Hong Kong is well known for its fast growth. Circumstances keep changing all the time. These changes may lead to changes in planning policies or planning considerations. What may be objectionable at one point may not necessarily be so at a later time.

The proposed provision may stifle the flexibility to cope with the changing circumstances which may be unforeseen at the time of plan preparation.

8. Public Participation in Planning Application (Section 34)

It is Government's view that in the existing planning system there are insufficient mechanisms for public participation. In order to address this issue, Government has proposed public consultation in planning study and plan making stages and that a list of selected uses be published to prescribe those applications which require public notification.

REDA fully supports the proposal for public consultation at the planning study and plan making stages. This will enable the public's views to be considered and addressed in the early stage.

REDA has great concern however over the proposed public notification and comment of certain prescribed development applications, without knowing the proposed uses that will be subject to public notification. As this notification and comment requirement will inevitably delay the development process and result in disclosure of the applicant's information which is currently treated as private, we believe that the list should be restricted to exceptional cases such as offensive uses, and suggest these uses be transferred from column two to a new column three so that the public could comment when the OZP is gazetted. We believe the Administration should provide an example of the proposed schedule of uses in the stage of Bill scrutiny for consideration of the Bills Committee and the public.

9. Status of Explanatory Statement and Policy Statement (Section 36(3))

It is well known that the Board and the Planning Department often seek to rely on the "explanatory statement" in determining a planning application. Since the explanatory Statement is expressly declared to be not part of the plan, objections to the statement are not entertained by the Town Planning Board even though the statement may contain matters which may adversely affect the interests of landowners.

Under Section 36(3)(a) of the Bill, the Board is required, in considering an application, to have regard to "any statement of Government policy" and in Section 36(3)(g) "any other matters, which, in the opinion of the Board, is relevant to the application". It is unfair because the public or affected persons are not afforded an opportunity to make representations on these statements or matters.

Moreover, the scope of these sub-clauses is so broad that the basis for determining an application will be entirely uncertain. There is no reference to the source of Government policy and the timing of the policy vis-à-vis the date of application submission. It is not clear what could be regarded as Government policy.

As regards the timing, it is not clear whether it refers to the policy prevailing at the time of submission of application, or the time of consideration, or the time of review. Under section 59, it seems that the Appeal Board should be satisfied that the appellant was or could reasonably have been expected to be aware of that Government policy. However, the Board is not subject to the same requirement.

To make an extreme case, if the Board is minded to refuse an application on policy ground, but fails to find a policy to support its decision, it could defer making a decision to a later date. In the meantime, a policy could be formulated and form the basis for rejecting the application.

Such policy is not known to the applicant at the time of submission. There is no way that the proposed development could be planned to comply with the requirements of the policy which comes into being after the submission. The same situation would repeat at the stage of review.

On the question of planning intention, Section 36(3)(a) refers to "any planning intention…." It does not specify whose planning intention, where it is to be ascertained, whether it would be subject to representation and whether it could keep on changing at various stages of the application procedure.

If the planning system is intended to be an open, fair, certain, efficient and effective system, the relevant Government policy statement and the planning intention should be included in the OZPs through the notes and the explanatory statement. The explanatory statement should also legally form part of the plan so that the public and/or developer can make representations and take, inter alia, the policy statement and planning intention into account in making investment and planning for development.

10. Conditions Relating to Provision of Public Facilities (Section 37)

Section 37 empowers the Board to impose conditions requiring of the applicant:

(i) the dedication or surrender of land without cost to the Government for the provision of such public facilities;
(ii) the payment to the Government of a monetary contribution for the provision of such public facilities; and
(iii) the construction and maintenance without cost to the Government of such public facilities.

Provision of public facilities is Government's responsibility and it is unreasonable and unfair to ask the private sector to shoulder the responsibility of satisfying the broader community benefits.

At present, in certain circumstances, developers undertaking development projects may be required to bear the costs of building affiliated public facilities, such as schools and community centres serving not only the project but the neighbouring area as well. This differs from the practice for land sold by public auction or tender. Developers' costs of building public facilities on such land are either reflected in the land prices or reimbursed by the Government. Therefore, the above clauses should be amended to remove the disparity.

The proposed performance bond in Sections 37(1)(c) and 37(2) for securing developers' performance of the conditions proposed in "planning permission" is considered unnecessary. Planning conditions imposed can be incorporated in the lease conditions where lease modification is required and compliance can be ensured.

11. Development during Publication of Plan and Processing of Representation (Section 45)

The proposed Interim Development Control could potentially put large areas of the territory under the threat of a development moratorium for up to 16 months. It is not difficult to imagine a blanket freeze of the whole planning area if the entire draft plan is the subject of an adverse representation. In fact this happened in 1993, when a total of 16 outline zoning plans of Kowloon and New Kowloon were amended overnight in a bid to introduce additional plot ratio control to regulate developments. It is not over-cautious to anticipate such scenario from happening again, for example, if ridgeline height controls were introduced along the north shore of Hong Kong Island and the southern part of Tsim Sha Tsui. Such a controversial proposal could result in multiple and blanket objections that would lead to a freezing of all building works, both public and private, for a considerable length of time whilst all the adverse representations were being dealt with.

The Bill fails to address the problems arising from this planning and development delay, including the possible slippage of housing production. Nor does Government recognise the cost to the economy of this Bill in its infringement of private property rights, the decrease of development value of land because of more planning hurdles and the discouragement of development and urban renewal initiatives.

The proposed withholding of development is said to avoid the current situation where a development may proceed in accordance with the zoning of the site, despite the zoning may be a subject of an objection under consideration by the Board. Whilst the current situation needs to be addressed, the proposal is a draconian measure which would cause much delay to the building development process and would aggravate the fluctuation of housing production.

The fundamental solution to so-called “pre-emption” problem is not to give the draft plan a statutory status. Alternatively REDA would reiterate its earlier proposal (see Appendix A) that conditional approvals should be given and developers should be permitted to proceed with construction up to the completion of sub-structure or up to such extent not in conflict with the plan or any adverse representation, at the developer’s risk. This would at least redress some of the potential delays. The similar interim measures implemented when lifting the airport height restrictions of the old Kai Tak Airport is a good example of its applicability.

12. Review of Building Authority’s Decision on Planning Matters (Section 46)

This is likely to have negative implications on development as the stated provisions are so wide ranging. The satisfaction of planning conditions is so difficult at present that discretion is used to ensure that the most significant conditions are complied with before building plans are approved. Other “minor” conditions can be satisfied later. Some form of discretion needs to be retained : the Planning Department can exercise its control over the broad planning concepts, density and zoning in the stage of master

layout plan; the Buildings Department, which is more involved in the down to earth details, should be allowed to exercise discretion of approval with the building plans.

It is proposed by the Administration that the right of appeal for the rejection of building plans on "Town Planning Grounds" be directed to the Town Planning Board, which is the authority that has imposed the condition in the first place. This new proposal would remove the right of appeal to the Building Appeal Tribunal for the rejection of building plans and also the subsequent right of appeal against the Tribunal's decision on points of law.

We propose that the present discretion of the Building Authority should be retained and any appeal be handled by the Building Appeal Tribunal.

If this is not acceptable, then it is considered essential that appeals should be made to the Town Planning Appeal Board which is an independent body similar to the Building Appeal Tribunal. A clear time frame is required in order to maintain the efficiency and certainty of the process.

13. Transitional Arrangement

New legislation should not operate retrospectively. As stated in Item 6 before (on Transfer of Development Potential in Section 31), the new provision may affect development projects already commenced and those with approved building plans. Some amendment is therefore required to address this transitional problem such that any new measures will not affect projects which have already obtained general building plan approval.

Part 2 Specific Comments

1. Interpretation [Section 2]

- The definition of "existing use" refers to the existing use in an area covered by Interim Development Permission Area and Development Permission Area Plans only. The definition should be amended to include the existing use in areas covered by Outline Zoning Plans.

- "building works" should exclude repair works not involving any change of use or increase in gross floor area and "foundation works".

2. Town Planning Board [Section 3]

Please refer to Item 2 of General Comments.

3. Delegation by Board to committees and to Authority [Section 4(2)]

This should be deleted as it would appear to remove the Objection Hearing Committees which are working very effectively. However, it is actually permitted under Section 5. The current drafting has created ambiguity.

4. Powers and functions of Board (Section 6)

(6)(3) The circumstances in which the Board may recommend resumption are not specified. We recommend that in order to implement a plan, the person or persons who own not less than 80% of the undivided shares in the properties affected by the plan may make an application to the Board for the resumption of the properties.

(6)(5), (6)(6) & (6)(7) Although the directions are not applicable to the exercise by the Board of its power under certain circumstances as set out in Section 6(6), the Board should nevertheless exercise its power independently without any interference. If directions are deemed appropriate, they should be published and prior to their publication should not be effective on any application submitted to the Board.

Please also refer to Item 3 of General Comments.

5. Designated Development (Section 9(2) and 9(3))

Please refer to Item 4 of General Comments.

6. Draft development permission area plan [Section 10(1)]

This provision will unnecessarily result in a greater degree of uncertainty in the planning intention for an area. When the Development Permission Area ("DPA") plan was first introduced in 1991, the intention was to introduce an interim planning

control measure whereby the Board would be given some time to prepare an Outline Zoning Plan ("OZP"). Such interim control device will not be necessary if there is an existing OZP. This is reflected in section 20(2) of the current Town Planning Ordinance:

"The Board shall not designate as a development permission area any area that is or was previously included in a plan under this Ordinance, other than a plan prepared under section 26."[1]

We fail to see why, if there is already an OZP, the Board, with the directive from the Chief Executive (which is required anyway for any new plan to be prepared by the Board), should be given the power to prepare a DPA plan to replace an existing OZP. The current provision should remain unchanged.

7. Publication and inspection of planning study [Section 12]

The one-month period for public inspection of the planning study is considered insufficient. Two months would be preferable.

8. Response to comments [Section 13]

No time limit is specified for the Board to respond to the comments on a planning study. To increase the certainty of the process, we suggest that this should be done within 2 months or alternatively before the draft or replacement plan is published.

9. Board to take into account comments, Government policy, etc in preparing draft plans [Section 15(b) and (c)]

Preparation of a draft plan should only be made within the parameters set by the findings of the planning study and any subsequent consultation. Any statement of Government policy or any matter that the Chief Executive may direct the Board to take into account should be that which has been reflected in preparing the planning study stage under Section 11. If the Board aims to prepare the plan differently, it should revert to the planning study and consultation mechanism.

10. Publication and inspection of draft plans [Section 16(1)]

The 1-month period for public inspection is insufficient. In most cases, the affected person will have to study the implications of the plan and the planning proposals, and carry out assessment work for alternative proposals. Past experience shows that this can hardly be fully done within the current 2-month period. The proposed 1-month period is unacceptable and the status quo should remain.

[1] A plan prepared under section 26 is the Interim Development Permission Plan.

In consideration of representations, the adverse representations are given more rights and authority than the supportive representations. All representations should be given the same right of consideration and counter comment. It may be difficult at times to determine whether comments are adverse or positive. Reference to "adverse" should be removed from "adverse representations" in the various sections (17,18,19,20 and 21). This is important as under this Bill there is no further right of objection if the Board is to amend the plan to meet one of the objections (Section 24). This is a right in the existing situation.

11. Representations relating to draft plans [Section 17]

Once a representation is withdrawn then it is "to be treated as not having been made". This also applies to other aspects of the Bill.

It is unnecessary to state this, as it can just be considered to be withdrawn. In the case of the Board changing the plan to meet the representation, it was a significant point in the plan preparation process and cannot be considered to be never have been made.

12. Preliminary consideration of representations and comments [Section 20]

There is no time limit on when preliminary consideration should be given to the representations and comments on a new plan. 3 months would seem adequate.

13. Inquiry relating to unwithdrawn adverse representations [Section 21]

In sub-section (1), a 2-month notice of the hearing is given. Sub-section (4) stipulates that written submissions must be made within 6 weeks of the hearing. The combined effect of these two provisions is that the representer will be given only 2 weeks to prepare and submit. 2 weeks for the representer/commenter to prepare and 6 weeks for the Government is not equitable, let alone the fact that any later submission may be treated as "not having been made", as stated in Sub-section (5). We consider that similar time period should apply to all parties, and in this regard the present system, being more flexible, fair and effective, should be retained.

14. Amendment of draft plan by Board to meet unwithdrawn adverse representations [Section 22(4)]

Under this provision, the absence of response by the representer will result in automatic withdrawal. This is opposite to the present situation where the objection is withdrawn only if it is specifically done so in writing. The present situation should be retained.

15. Procedure on submission of draft plan to Chief Executive in Council [Section 26(8)]

The effective period of the revived Development Permission Area ("DPA") plan is not clear. Whilst Section 26(8)(a) provides that the DPA plan has a 1-year life span, it is not clear whether the original effective period of the DPA plan will be taken into

account. Take for an example, the original DPA has had an effective period of 3 years plus 1 year of extension. Would the DPA be revived?

16. Amendment to plan prior to submission to Chief Executive in Council [Section 28(1)]

This prohibits the Board from amending any part of a plan which is the subject of an adverse representation prior to submission to the Chief Executive in Council ("CE in C"). Amendments to other parts can however be made. The relevance of this provision is doubtful as the resolution of the objection process by CE in C's consideration should be done before any new changes are made. This provision appears to be in conflict with the requirement in Section 25 (4) to complete the process within 9 months, which could affect the approval of building plans.

Whilst acknowledging the need to resolve adverse representations as soon as possible, further amendments to the plan may be necessary and there should be provision to allow such amendments so long as the new amendment(s) does not prejudice the processing of the previous set of adverse representation or extend their 9-month objection period The simultaneous processing of two sets of plan should be allowed.

17. Amendment to Plan by the Board on application of any person [Section 29]

This section provides a legal basis for the processing of rezoning requests, a system which is currently undertaken by the Board as an administrative process, but as proposed it provides no extra rights to the applicant. It should be considered as part of the Plan review or plan making process and a right of representation before the Board be provided for the applicant to present his own case.

(1) There is no provision for the situation where the Board rejects the submission in sub-sections (a) and (b). A sub-section (c) related to rejected submission should be added. Further, applicants should enjoy the same right of a hearing as representers under the objection process.

Please also refer to Item 5 of General Comments

18. Revocation, replacement and amendment of an approved plan [Section 30]

It is stated in sub-section (2) that an approved plan or any part thereof that is revoked by the Chief Executive in Council shall cease to have effect.

It is not clear that upon revocation, whether an earlier plan, if any, may be revived. The provisions in Section 26(8) relating to the refusal by the Chief Executive in Council to approve a draft plan should be adopted.

19. Transfer of Development Potential (Section 31)

Please refer to Item 6 of General Comments

20. Applications for planning permission [Section 32]

(4)(b) During several consultation sessions between the Planning & Lands Bureau and REDA prior to the publication of the blue bill, the Bureau stressed that the proposed Interim Development Control (IDC) would not apply under circumstances where the adverse representation is made by the applicant himself or the adverse representation is frivolous or vexatious. This was to ensure that planning applications and building plan applications would still be considered and approval be given under the above-mentioned circumstances.

In the context of this mutual understanding we presume that Section 32 (4)(b)(i-ii) has been drafted to reflect such a policy. However, the language of the clause is so complicated and ambiguous that the true intention is not adequately demonstrated. The same problem has also been found with Section 45 (6)(a-c). We urge the rewriting of these Sections.

There is also no clear statement of what the Board should do on refusal to grant an application, when a letter should be provided and if rights to a hearing exist. REDA finds it unacceptable to allow the Board to sterilize development without giving reasons.

(4)(b)(iii)(A) Whether the value of any property owned by the representer will be reduced or not is not a planning matter. This should not influence the Board's decision.

Please also refer to Item 7 of General Comments.

21. Publication of planning applications for Inspection and Comment [Sections 34 and 35]

Please refer to Item 8 of General Comments.

22. Determination of application for planning permission [Section 36]

(1)(a) The Board can defer the application for 3 months under no obligation of giving a reason. Could the applicant request a deferral?

(2) We recommend that both the Board and the Applicant should each be given the right to request deferral once.

(4) There is no existing definition as to what is taken to be "commencement of the development" and this has been omitted from the Bill.

Please also refer to Item 9 of General Comments.

23. Conditions relating to the provision of Public Facilities which may be imposed on grant of a planning permission. [Section 37]

Please refer to Item 10 of General Comments.

24. Procedure for review [Section 40]

(2)(b) Under this clause papers are provided only upon the request of the applicant. The current process is that the Board provides all documents at the initial consideration without request and this should be included in the new Bill, especially for those who may not know the system well.

2(f) The sentence "any submission made less than 6 weeks before the Review date may be treated as having not been made" should be deleted in order to allow the Board to fully consider all the materials related to the case in the hearing. Should the Board find it necessary, the hearing can be deferred.

2(g) The Board can defer hearing "without reason". Can the applicant also request that the hearing be deferred?

(4) Under this provision, the Board can treat a written submission in support of a review application as a new planning application under Section (32), and effectively cancel its status as a review case, if it considers that the submission has a material departure from the original intent of the planning application.

This is totally unnecessary, as at the hearing the Board could reject the proposed submission as being unrelated to the application or at least hear the reasons as to why it should be considered. It could then decline to consider the new information and reject the application on the basis of the original submission. The applicant should be the one to decide if the new information should be submitted as a new application under Section 32.

(5) The original commenters are given the opportunity to comment on supplementary information and their further comments will be passed to the applicant. There is no stipulated time at which these will be provided.

(7) This section gives the Authority the power to provide copies of any submission or comments thereon, but it does not specify as to whom these copies will be given – could it be the Press or any one else.

25. Board may review Building Authorities determination under section 45 (Section 46)

Please refer to Items 11 & 12 of General Comments.

26. Prohibition and enforcement against unauthorized development [Section 50 and 51]

Under Sections 50 and 51, it seems that the Authority has a choice of enforcement actions. Section 50(2) provides that a person will commit an offence and be liable to a fine if he contravenes the matters set out in Section 50(1). On the other hand, under Section 51, a person will not commit an offence until and unless he fails to comply with the notices served thereunder. It is not clear as to why the Bill provides for two different enforcement actions and in what circumstances they will be invoked. For the sake of certainty and avoiding any potential abuse of power, it is proposed that Section 50(2) and related clauses be deleted.

27. Appeal against requirement of reinstatement notice [Section 52]

(1) Unauthorised development is taken to include non-compliance with conditions of approval to an application. There is no venue for an appeal until the advanced stage of a "reinstatement notice" being received. There should be some opportunity to appeal against a "stop notice", especially if it relates to satisfaction of a condition which could be a debatable point.

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22 March 2000

香港地產建設商會的信頭

Letterhead of THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

21 March 2000

The Honourable James To
Legislative Councillor
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Town Planning Bill

I am pleased to enclose a copy of REDA's response to the Town Planning Bill. You will note that there are several issues that are of major concern to our members.

What is of even greater concern is the likely consequences of a poorly drafted Bill being enacted as this will inevitably lead to uncertainty and delay to the development process.

The current planning system, whilst not perfect, is operating reasonably well. In the past there has been much criticism over the lack of public involvement in the planning process. As a result of Government's response to the public's objection to reclamation proposals for the Harbour, administrative measures have been introduced such that the professional institutes, community groups and the general public are consulted on new planning studies and other planning initiatives. The urgency to replace the existing legislation has therefore diminished.

With the current arrangements for public consultation, the Town Planning Bill largely seeks to place an administrative process into a statutory framework. REDA will fully support such an approach provided the legislation is clear and avoids ambiguity. Sadly this is not the case with the current Bill which is very confusing and in our view unnecessarily complicated.

For a piece of legislation which will have significant impact across all sectors of the community, we believe a full and detailed debate within the community is justified. Only through such a debate can we achieve the common goal of ensuring that the needs of community are fully catered to in our town planning system.

Yours sincerely,

Keith Kerr
Chairman

Enclosure

26th November, 1999

Appendix A

Mr. Gordon Siu
Secretary for Planning, Environment & Lands
PEL Bureau
9/F Murray Building
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Central
Hong Kong

The Town Planning Bill

I refer to our letter of the 17th June, 1999 which provided you with our comments on the proposed changes to the Town Planning Bill, and also to the subsequent briefing of REDA members by staff of the PEL Bureau. During that discussion we were advised that the comments made would be taken into consideration before the Bill proceeded to LegCo. It was also pointed out by the PEL staff that there would be a further opportunity to raise points at the Bills Committee Stage.

While we appreciate the opportunity given to discuss the various matters, there were still some instances where the responses given by the administration did not remove our concerns. To make it very clear, we feel that we must re-state our position on two significant issues before the Bill proceeds.

Interim Development Control ("IDC") Measures

It is accepted by the administration that the IDC measures will potentially delay all development for up to 9 months if an objection is made to any gazetted change to a zoning. During this period, all new building plans within a zone under objection will not be approved, effectively blighting all new development for this period. Whilst it has been suggested that 9 months did not constitute a prolonged delay to the development process, REDA considers that this represents an extremely significant interference with the normal development process, one which is unnecessary and expensive.

In comparison, the present legislation and practice allow the approval of building plans that comply with the permitted uses under the new zoning. The proposal under the Bill is therefore a major change.

REDA's Proposal

It is considered essential that under any new system, the building plans for a development which is not in conflict with both the new zoning and the objection should be approved.

Proposal 1

During the objection processing period a "Conditional Approval" could be granted to Building Plans which complied with the Outline Zoning Plan but did not comply with the objection. Consent to Commence Work could also be given but would be conditional on the zoning being confirmed. This Conditional Approval and Consent would enable the developer to proceed, at his own risk, with detailed design of the project and site works but would prevent any actual building works conflicting with the objection. If the zoning was not confirmed the approval would be cancelled. Appropriate amendments could be made to the Buildings Ordinance.

Proposal 2

Where a proposed development conformed with both the gazetted changes and the objection, then the Building Plans should be approved and work allowed to commence. For instance, where a plot ratio of say 12 was introduced in an area where previously 15 had been permitted and the objection was for the reinstatement of the 15 plot ratio, then Building Plans for a plot ratio of 12 could be approved as they would conform with all situations. However, Building Plans for a plot ratio of 15 would only be "Conditionally Approved".

The approach proposed here is similar in concept to that which applied to Kowloon during the period before the Airport Height Limits on Kowloon were changed to those relating to the Chek Lap Kok Airport.

Public Comment on Planning Applications

The proposed public notification of development applications remains a matter of concern. Government has proposed that a list of selected uses be published to limit those applications which require public notification. As there is no indication of the type of use or basis upon which this list will be drawn up, there would appear to be no opportunity to object to the uses on the list.

As this notification requirement will inevitably delay the development process and result in disclosure of the applicant's information which is currently correctly treated as being private, we believe the list should be restricted to exceptional cases and suggest these uses requiring public notification be transferred from column 2 to a new column 3 in OZPs.

It may also increase the public's anticipation of a greater say in the private development process to a level greater than the law could reasonably provide, creating public frustration with the whole process. In turn, this may result in public intervention and protests, beyond the level currently envisaged as being reasonable. We therefore consider this whole notification process one which needs to be handled with great care, or possibly excluded.

We trust you will consider our proposals favourably and we would welcome any opportunity to discuss this issue with you in due course.

Yours sincerely,

Keith Kerr
Chairman, Executive Committee

cc Mr. Bosco Fung