

COMPREHENSIVE REVIEW OF THE TOWN PLANNING ORDINANCE

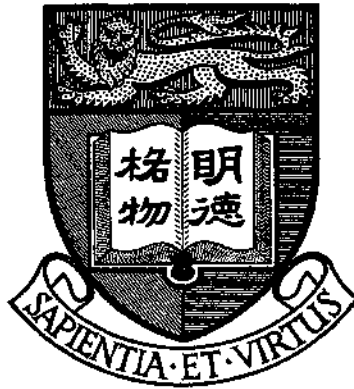
executive summary

JULY 1991

HKP
346.2045
C7 e EY

REF. NO.	ABF-4364
DATE REC'D	7 AUG 1991
VOLUME NO.	
ISSUE NO.	
REMARKS	

UNIVERSITY OF HONG KONG
LIBRARY



Hong Kong Collection
gift from
Planning, Environment and Lands Branch
Government Secretariat, Hong Kong

COMPREHENSIVE REVIEW OF THE TOWN PLANNING ORDINANCE

EXECUTIVE SUMMARY

1. INTRODUCTION

1.1 The Town Planning Ordinance (Cap. 131) (the Ordinance) was enacted in 1939. Until the enactment of the Town Planning (Amendment) Ordinance 1991 (the Amendment Ordinance 1991), there had been no fundamental changes to the Ordinance apart from a number of piecemeal amendments. With the significant changes in Hong Kong's political, social and economic circumstances in recent decades, the Ordinance is no longer able to provide the necessary degree of guidance and control for planning and development in Hong Kong. Accordingly, in September 1987, the Executive Council ordered that an overall review of the Ordinance should be carried out with a view to introducing a new piece of legislation to replace the existing one.

1.2 The overall review of the Ordinance has now been completed. The various changes proposed to the Ordinance are set out in a Consultative Document for public comments and summarized in this Executive Summary. References to paragraphs in the Consultative Document are given in brackets.

2. THE EXISTING STATUTORY PLANNING SYSTEM

2.1 The existing Ordinance provides for the preparation of statutory plans (comprising both outline zoning plans (OZPs) and development permission area (DPA) plans) by the Town Planning Board (TPB) and the operation of a planning application system. The statutory plans provide a reasonable degree of certainty to land owners and developers as to the types of use to which they can put their land or building, while flexibility is maintained through the planning application system to cope with changing needs.

2.2 The existing system of statutory plans and planning applications is regarded as generally flexible and efficient, but there is plenty of room for improvement, particularly in its working procedures. In the following sections, the problems of the existing system are analyzed and proposals for changes are discussed.

3. PLAN-MAKING PROCESS

Problems

- 3.1 The contents of statutory plans are presently specified under section 4(1) of the Ordinance. The detailing of such specifications in the main Ordinance is restrictive and not always flexible enough to cope with changing circumstances.
- 3.2 Under the existing Ordinance, the TPB is the authority to prepare and publish draft plans, hear objections and submit draft plans to the Governor in Council (G in C) for approval. In approving the draft plan, the G in C takes into account the objections not withdrawn but does not actually decide on individual objections. While the present system has the merit of providing a channel for direct dialogue and negotiation between the TPB and the objectors, it has been criticized as unfair in that the hearing of objections to draft plans is conducted by the same body which prepares the plans. The hearing procedure is also cumbersome, and there is no statutory time limit for the completion of the procedure.
- 3.3 Insufficient public involvement in the present plan-making process is another cause of public complaint. Apart from the exhibition of plans, there is no requirement under the Ordinance for public consultation before a plan is prepared, nor for interested parties to make representations or suggestions on the plan, other than in the form of objections. There is also no provision for the public to make application for amendments to a statutory plan.
- 3.4 Another concern relates to the commencement of development during the objection process. As a draft plan takes immediate statutory effect upon publication, development conforming to the plan can take place regardless of whether the development site is a subject of objection being considered by the TPB. As a result, the TPB's decision on the objection can be pre-empted.

Proposals

- 3.5 To provide more flexibility for introducing new zoning designations as and when circumstances so required, detailed zoning specifications would not be made in the new Ordinance but set out in the form of regulations to be made by the G in C (paragraph 3.3). Express provisions would also be incorporated in the new Ordinance to confirm the existing power of the TPB in controlling various aspects of development (paragraphs 3.4 and 3.5).
- 3.6 The existing hierarchy of planning organizations comprising the G in C, the TPB (to be retitled Planning Board (PB)) and its committees would be retained. To maintain negotiation and dialogue with representers, the new PB would continue the practice of the existing TPB in considering and hearing representations on statutory plans. Final decisions on the representations would be made by the G in C. An Appeal Board (AB) is proposed to provide separate independent consideration of appeals against decisions of the PB and the Planning Authority (i.e. the Director of Planning). There should be no overlapping in membership of the two Boards. The division of responsibilities among these various bodies would be:-
- (a) The G in C would remain as the approving authority for statutory plans. It would decide on all representations not withdrawn on draft statutory plans. The direction to prepare statutory plans would still be given by the Governor. In addition, the Governor might, if he considered the public interest so required, give directions to the PB in relation to the performance of its functions or the exercise of its powers under the Ordinance (paragraphs 3.15, 3.17 and 3.20).
 - (b) The PB would prepare, amend and publish statutory plans (including OZPs and DPA plans); consider and hear representations on these plans; submit draft plans and any representations not withdrawn to the G in C; make recommendations on resumption of land to implement proposals contained in the plans; consider and review planning applications; and might advise the Government on the overall planning of the Territory. Some of the functions of the PB would be delegated to its committees and public officers within the limits set down in the Ordinance. The Planning Authority would be the principal executive officer of the PB (paragraph 3.16).

- (c) The AB would be appointed by the Governor to deal with appeals against the PB's decisions on planning applications and the Planning Authority's decisions on other planning matters. It would also serve as a review body on representations on draft plans upon the G in C's referral. It would be served by a secretariat independent of the Planning Authority (paragraph 3.18).

3.7 The following provisions would be made in the new Ordinance for a greater degree of public involvement in the plan-making process ;-

- (a) There would be publicity before a plan was actually drawn up. A planning study would be published in the course of preparation of a draft OZP for public comments for a period of three months (paragraph 3.22).
- (b) Any member of the public would be able to submit representations (not just objections) on a draft plan **when** it was exhibited for public inspection for a period of two months. The representations received would also be publicized by the PB (paragraphs 3.24 and 3.26).
- (c) **The** exhibition period for amendments made to a draft plan would be extended from three to six weeks to allow sufficient time for the public to make representations (paragraph 3.34).

3.8 In order not to pre-empt the decision on objections **to a** draft plan, no new development would be approved on a site which was the subject of objection. The issue of planning certificates for all new building development within the area **covered** by the draft plan (for amendment plan, in the **area(s)** covered by the **amendment item(s)**) would be withheld and decisions on planning applications **submitted under the plan** would be deferred during the plan exhibition period **and, if there** were objections received, during the objection consideration **period** as well until all related objections were **decided** by the **G in C**. To avoid undue delay in the development process, all representations (including objections) received on a draft plan would be required to be submitted with the draft plan to the G in C within nine months of the expiry **of the plan exhibition period** (paragraphs **3.24, 3.25** and 3.29).

3.9 The objection hearing procedure would be streamlined. The PB would publicize details of all representations for public comments. Those who had made written submissions on the representations and the original representers would be informed of the PB's preliminary views on the representations before deciding whether or not to request a hearing before the PB. The PB would then hear the representations and make recommendations to the G in C for final decision (paragraphs 3.26 to 3.29).

3.10 The new Ordinance would allow the public to submit applications to the PB for amendments to a draft plan or an approved plan. Such applications should however not be related to any site which was a subject of objection yet to be decided on. There would be no right of appeal if such applications were not accepted by the PB (paragraph 3.33).

4. PLANNING APPLICATIONS

Problems

4.1 While being able to maintain a high degree of flexibility within the zoning control framework set by statutory plans, the existing planning application system has **drawbacks** in three main **areas** : public involvement, appeals and control of temporary uses.

4.2 At present there is little public involvement in the planning application system. Planning applications are generally not publicized and the public are not given an opportunity to submit their views on the applications directly to the TPB.

4.3 Another **drawback** relates to appeals against decisions on **planning applications**. Review of the TPB's **decision** is **conducted** by the TPB itself rather than a **separate** independent body, and there is **no** provision for review of the conditions of approval. Though the existing system allows the applicant to appeal by way of petition to the G in C, the G in C may not always give a **hearing** to the aggrieved applicant. Legislative amendments are proposed in the Town Planning (Amendment) Bill 1991 recently introduced into the Legislative Council to provide for the setting up of an independent Appeal Board to hear such appeals, and at the same time to allow the TPB to review the conditions imposed in granting planning permission.

4.4 On temporary uses, the present control through the Notes of the OZPs focuses on the duration rather than the nature of uses. It is however the nature of use which causes environmental problems and land use incompatibility. At present, no planning control is exercised over temporary uses which are expected to be five years or less in areas covered by OZPs. In DPAs, however, no distinction is made between temporary and permanent uses which are both subject to the same planning control.

Proposals

4.5 The broad structure of the existing planning application system is considered generally flexible and efficient and should be maintained. A number of modifications are proposed to make the system fairer and more efficient, including :-

- (a) If an applicant was not the owner of the land/premises under application, he should either have obtained the written consent of the owner or have served a notice on the owner (paragraph 4.10).
- (b) The PB should publicize planning applications for public inspection and comments prior to consideration. Two options were possible: either requiring the PB to publicize all planning applications, or allowing the PB the discretion to decide what planning applications should be publicized (paragraph 4.11).
- (c) To allow sufficient time for public notification and comments, the maximum statutory period for consideration of planning applications by the PB would be extended from the existing two months to three months under the full public notification option. Under the limited notification option, it would be necessary to extend the statutory period for all applications to four months, although applications which required no notification would in practice be processed in less than three months (paragraph 4.11).
- (d) An independent AB. would be established to consider appeals against the PB's decisions on planning applications. An appeal should be lodged by the applicant within sixty days of being notified of the PB's decision, and would be considered by the AB within three months (paragraphs 4.15 and 4.16).

- (e) Consideration of planning applications for any development on sites which were the subject of objections to a draft statutory plan would be deferred pending the G in C's decision on the related objections (paragraph 4.17).
- (f) The Governor should have the reserve power to transfer an application from the PB for his own decision where the subject development was considered to be of territorial or security significance (paragraph 4.18).
- (g) A register of all planning applications would be established and made available for public inspection (paragraph 4.20).

4.6 New provisions are also proposed to the effect that : -

- (a) The PB should be empowered to impose conditions of planning permission requiring an applicant to make a reasonable dedication of land for the provision of public facilities in a development scheme, to pay a monetary contribution for the provision, and/or to carry out actual construction of the facilities (paragraph 4.23).
- (b) An applicant should be allowed to apply for minor amendment to a development that had been granted planning permission under a fast-track approach (paragraph 4.24).
- (c) Control over development should be based on the nature, rather than the duration, of the development. All development, whether temporary or permanent, should be subject to the same zoning control. A list of temporary uses which could be exempted from planning application would be clearly spelt out in the Notes attached to statutory plans. Applications for any other development on land involving no permanent structure might also be made to the PB (paragraphs 4.25 and 4.26).
- (d) The Planning Authority might charge an administrative fee on a planning application (paragraph 4.27).

5. DEVELOPMENT CONTROL

Problems

- 5.1 Until recently, development control in Hong Kong is carried out mainly through the Buildings Ordinance and conditions in the land leases. Under the Buildings Ordinance, development control is achieved mainly through the rejection of building plans if such plans contravene the provisions of a statutory plan (section 16(1)(d) and (da) of Buildings Ordinance); or will result in a building differing in height, design, type or intended use from buildings in the immediate neighbourhood (section 16(1)(g)); or if the buildings are used for both domestic purposes and dangerous trades (section 16(1)(n)); or if the building works are to be carried out on site with no adequate connexion to a public street (section 16(1)(p)). Also, any change of use can be prohibited if the building is not suitable by reason of its construction for its intended use (section 25). Development control through the Buildings Ordinance is, however, only effective where the development involves building works and where submission of building plans is required. Indirect control of planning matters through the Buildings Ordinance also results in a blurring of the purpose of the Ordinance and an overlapping of responsibilities and functions between the Building Authority and the Planning Authority.
- 5.2 Building (Planning) Regulations impose control on development density. Regulations 19 to 23 restrict the plot ratio and site coverage of any building to the level specified in the First Schedule of the Regulations, which is designed to control development density in high density (Zone 1) areas. For medium and low density (Zones 2 and 3) areas, more restrictive density control has to rely on the lease conditions and statutory OZPs. This has resulted in a dual system of statutory control on development density.
- 5.3 The land lease cannot provide an effective and satisfactory means of development control either. It is inflexible because once a lease is executed, it cannot be modified without mutual consent of the lessor and the lessee. Many old leases are virtually unrestricted and require no lease modification for redevelopment or change of use. Even for restricted leases, the user restriction is often not definitive. When a breach of lease conditions occurs, enforcement action is time-consuming and cumbersome.

5.4 A direct means of enforcement has become available since the commencement of the Amendment Ordinance 1991. The Amendment Ordinance defines unauthorized development and provides a system of enforcement against such development in DPAs. Such enforcement provisions are not applicable in areas already covered by OZPs (mainly the main urban areas and the new towns). In view of the existing inadequacy in development control through other legislation and the lease, there is a strong case to extend the enforcement provisions to cover the entire Territory.

Proposals

5.5 The following provisions are proposed : -

Enforcement Provisions

- (a) There would be enforcement provisions for areas covered by a statutory plan, whether an OZP or DPA plan. No person should undertake or continue development unless (a) the development was an existing use; (b) the development was permitted under the plan; or (c) the necessary planning permission had been obtained (paragraph 5.16).
- (b) Existing use would be defined as a use of a building or land that was in existence immediately before the first publication of the subject DPA plan or OZP. In areas already covered by OZPs when the new Ordinance was enacted, existing use would be the use of a building or land that had been in existence immediately prior to the commencement of the new Ordinance (paragraph 5.16).
- (c) The procedures for the serving of Enforcement Notices, Stop Notices and Reinstatement Notices in areas covered by statutory plans would be as set out currently in section 23 of the Ordinance in relation to DPAs (paragraph 5.17). Any person who failed to comply with the requirement of such a notice would commit an offence and be liable to a fine (paragraph 5.19).
- (d) The Planning Authority might enter the land and take such necessary steps, if considered necessary, to remedy the breach of development control and costs should be recoverable from the offender (paragraph 5.20).

- (e) Any person aggrieved by the Planning Authority's decision to serve a Reinstatement Notice would be able to appeal, within thirty days after service of the Notice, to the AB which should consider the appeal within three months (paragraph 5.21).
- (f) All Enforcement, Stop and Reinstatement Notices would be registered in the Land Office and kept in a register to be set up in the Planning Department for public inspection (paragraph 5.23).

Planning Certificate

- (g) Based on the principle that planning matters should be dealt with under the Planning Ordinance and that the Buildings Ordinance should be confined to matters relating to the construction of buildings, it is proposed that the planning related provisions in the Buildings Ordinance should be consolidated in the new Planning Ordinance (paragraph 5.24).
- (h) To prevent the possibility of building works being carried out in contravention with planning requirements, a planning certificate would be required for all new building development, and would cover matters contained in section 16(1)(d), (da), (g), (n), (p) of the Buildings Ordinance and regulations 19 to 23 of the Building (Planning) Regulations. To obtain a planning certificate, only sketch/concept plans setting out the planning aspects of a development would be required. The certificate would be issued by the Planning Authority if the proposed building development satisfied all planning requirements under the new Planning Ordinance. The certificate would be a **pre-requisite** for the Building Authority's approval of building plans under the Buildings Ordinance (paragraph 5.25).
- (i) Applications for planning certificates would be considered by the Planning Authority within sixty days (paragraph 5.25).
- (j) Any person aggrieved by the Planning Authority's refusal to issue a planning certificate could appeal to the AB (paragraph 5.26).
- (k) Consequential amendments to the Buildings Ordinance would be required (paragraph 5.27).

Density Control

- (l) Control on development density would be consolidated in the new Planning Ordinance by transferring regulations 19 to 23 and the First Schedule in the Building (Planning) Regulations to the new Planning Ordinance (paragraph 5.29).
- (m) New schedules setting out the maximum plot ratio and site coverage for Density Zones 2 and 3 areas would be incorporated as regulations in the new planning legislation (paragraph 5.30).

6. COMPENSATION AND BETTERMENT

6.1 Planning can totally remove or reduce, as well as increase, value of private property. Under the existing system, compensation is payable for total removal of private development right but no compensation is payable for restrictions imposed through statutory plans which reduce such right. There is no betterment charge on any increase in property value arising from planning actions.

6.2 The issue of compensation for loss and betterment for enhancement of property value arising from planning actions is highly complicated and controversial. In order to maintain a fair balance of public and private interests, the issue will be referred to a Special Committee commissioned for the purpose. The Consultative Document only sets out the broad principles of compensation and betterment, and the arguments for and against compensation to provide a basis for the public to comment on.

7. AREAS OF SPECIAL CONTROL

7.1 To supplement general zoning control, special controls are needed in three major areas - environment, conservation, and landscape and civic design.

Assessment of Environmental Impact

Problems

7.2 Assessment of the environmental impact of a development constitutes an integral component of planning. There is no specific statutory provision in

the existing Ordinance to require the inclusion of an assessment on environmental impact in the plan-making process nor in the planning application system.

Proposals

- 7.3 (a) Environmental considerations should be taken into account at the stage of plan-making and processing an application (paragraph 7.3).
- (b) Environmental considerations **should** be set out in the planning study published before a draft plan was drawn up (paragraph 7.3).
- (c) A statement on environmental implications should be included in all planning applications (paragraph 7.3).
- (d) Regulations would be made to declare specific class or description of development as 'designated development'. Planning application for such development should be accompanied by a full environmental impact assessment (paragraph 7.4).

Conservation

Problems

7.4 There is existing legislation to provide for the preservation of an individual place, **building**, site or **structure** of special architectural or historical interest as a monument but there is no control over the built environment surrounding the **monument**. There is a need to protect our built heritage and to **ensure** that development is in harmony with a nearby monument.

Proposals

7.5 Areas which were of special architectural or historical interest would be designated as '**Special Design Area**' (**SDA**) on a statutory **plan**, within which planning permission would be required for all developments **to** ensure that they were in harmony with the conservation objectives of the designated area (paragraphs 7.8 and **7.10**).

Civic Design

Problems

7.6 Civic design improves the quality of the built environment. Existing control is possible **only** when a development **falls** within a comprehensive development area, or where there are special landscape and design, disposition and height clauses in the lease, or in a limited manner, through section 16(1)(g) of the Buildings Ordinance. The existing means of control also tend to focus on individual buildings rather than the totality of the wider area. In areas of special civic design interest, there is a need for a comprehensive civic design framework to ensure that individual buildings and the public spaces surrounding them properly relate to one another.

Proposals

- 7.7 (a) To ensure that the layout and design of buildings in areas of special civic design interest would conform to the broad design objectives specified in a statutory plan, such areas would be **designated** as SDA, within which planning permission would be required for all developments (paragraph 7.15).
- (b) The planning intention behind designating a SDA would be set out in the planning study. The public would be **able** to make **representations** on the designation of the SDA and the design objectives when the plan was **gazetted** for public inspection (paragraphs 7.9 and 7.15).

8. NON-CONFORMING EXISTING USES

Problems

8.1 Under the existing practice, uses already in existence before the publication of a statutory plan are permitted to continue to exist, even if these uses do not conform to the statutory plan. Conformity is required only when there is a material change of use or upon redevelopment. These non-conforming existing uses **are**, very often, causes of environmental nuisance, physical or social incongruity, and public health and safety problems.

8.2 Various means of eliminating non-conforming existing uses have been examined, which include planning incentives such as upzoning to a 'higher-value' use, land administration measures (e.g. land exchange, transfer of development right, resumption), licensing and designation for comprehensive redevelopment. These measures, however, can only be applied in limited circumstances.

Proposals

8.3 A variety of approaches to deal with non-conforming uses are proposed :-

- (a) The majority of non-conforming uses which did not cause serious problems would be permitted to continue to exist under the new Ordinance (paragraph 8.7).
- (b) Non-conforming uses on open land or occupying parts of conforming buildings that critically frustrated the planning intention and had deleterious effects would be designated as 'Amortization Area' on statutory plans and set out in the Notes attached to the plans. These non-conforming uses would then be required to terminate or change to conform to the zoned use within certain amortization periods as specified in the Notes. Amortization would form part of the plan-making process and would be subject to full public representation and hearing procedures (paragraph 8.10(a)). An 'Amortization Notice' would be served by the Planning Authority on the owner of a non-conforming use that was subject to amortization. In the Notice, certain performance standards might be specified which should be complied with during the amortization period in order to mitigate the harmful effects caused by the non-conforming use. Appeals against these requirements could be made to the AB (paragraph 8.10(b)). The amortization period would be site-specific or use-specific and long enough for the owner/occupier concerned to recoup his investment and prepare for the change (paragraph 8.10(c)).

- (c) The concept of amortization would not apply to substantial non-conforming buildings which involved heavy private investments. To eliminate these non-conforming buildings, other measures would be used, such as upzoning, designation for comprehensive development, land exchange, transfer of development right and possibly resumption (paragraph 8.9).

9. OTHER ISSUES

9.1 There are a number of issues that have been studied in the review of the Ordinance but for which no specific proposals are made in the new legislation. Two such issues are tree preservation and control over advertisement signs. Additional control over these aspects in the Planning Ordinance is not considered necessary because adequate control has already been provided in other legislation.

9.2 Another issue studied relates to private participation in comprehensive development. As site assembly problem is one of the biggest constraints to comprehensive development, one possible way to encourage and facilitate private comprehensive development could be for the Government to carry out compulsory acquisition of minority interests for private developers who managed to acquire the majority of land holdings, provided certain public planning gains could be demonstrated from the comprehensive development. Since this issue involves the transfer of development rights from one private party to another in the name of public interest, public views on the issue are necessary before any legislative proposals can be made. Views from the public on the issue are welcome.

10. FINANCIAL IMPLICATIONS

10.1 The proposals made in the Consultative Document would generate a considerable amount of planning work. It is, however, not possible to assess accurately the financial and staff implications arising from the new planning legislation at this stage. Areas which would likely require additional resources are mainly in the operation of the PB and AB and their secretariats, exhibition of planning studies, publicity of objection sites and all representations, public notification of planning applications, and carrying out of enforcement

actions. Proposals have **been** made to streamline procedures, and to recover costs incurred in certain aspects of **planning** work such as the processing of planning applications. Certain aspects of implementation could be undertaken in phases so as to spread out the demand for resources. On compensation and betterment, it **is** impossible to estimate the financial implications involved until the Government has made a decision based on the recommendations of the Special Committee.

11. How You Can Help

11.1 To facilitate the Government in making a decision on the provisions of the new Planning Ordinance, views from the public are very important. All comments from the public on the proposals set out in the Consultative Document are **welcome** and should be sent by **30 November 1991** to : -

Town Planning Ordinance Review Unit,
Planning Department,
Murray Building,
Garden Road,
Hong Kong.

Written submissions and/or requests for a hearing on the issue of compensation and **betterment** should be made direct to the Special Committee at the following address : -

The **Secretary**,
Special Committee on Compensation and Betterment,
7th Floor, Club Lusitano,
Ice House Street,
Hong Kong.

The consultation period for this special issue will also end on 30 November 1991.

11.2 At the conclusion of the consultation **period**, the Government will take account of **all** the views **collected** before drawing up the new Planning Ordinance for Hong Kong.



X01366568

[HKP]346.2045 C7 e

X01366568



HKP 346.2045 C7 e

Comprehensive review of
the Town Planning
Ordinance : executive
summary. [1991]

Date Due	
- 2 SEP 1991	

