

**HKIP Position Paper on Government's Legislative Proposals to Streamline
Development-related Statutory Process: To change on all fronts.**

Background

1. DEVB submitted a Panel Paper to Panel on Development, Legislative Council on 22 March 2022 outlining Government's latest thinking in relation to a range of legislative proposals to streamline development-related statutory process, which forms part of Government's efforts to expedite the supply of developable land for meeting the needs of housing and other land uses. HKIP supports this policy initiative for a change, but is obliged to offer our professional views and suggestions with a view to ensuring that we change in all fronts and in the right direction for the common good.

General Comments

HKIP understands well societal aspiration for a more effective and efficient planning and development process to enhance our production of land for housing, economic and community uses for a sustainable, livable and healthy built environment for now and future. We strongly advocate that the whole statutory, administrative and implementation process should be reviewed, overhauled and expedited. The Town Planning Ordinance (TPO) may take up some processing time, which is meaningful spent and it is basically not a rate determining step and could not be said to causing "delay" as implicated; and a mere focus on TPO is not addressing the problem fruitfully, rightly and accurately, though a minor saving of processing time of TPO may be achievable.

2. At the outset, we agree that there is a clear voice from the community, almost a community consensus, to expedite the planning and development process in order to make available developable land for housing and other uses more efficiently and effectively. We thus wish to express our appreciation to the HKSAR Government for making a good attempt to start with expediting the statutory planning process in this relation. However, we have to point out that there are many other statutory, administrative and implementation procedures involved in the planning and development process that warrant equal attention to, including feasibility studies, land

assembly and resumption, lease administration, engineering and construction works, provision of transport and other infrastructures, and delivery and distribution of completed flats, etc. Efficiency in conducting the administrative process and carrying out implementation are in many instances even much more important than the statutory process. At this juncture, the political will of carrying out the actual implementation is to a great extent also the determining factor in delivery of developable land.

3. The Government should clearly explain the whole planning and development process, in order to enlighten people and to identify the crucial steps that need improvement. Taking the **Northeast New Territories New Development Area** (i.e. Kwu Tung North and Fanling North) as an example. Not counting the previous related studies, the whole NDA development process started in June 2008. The feasibility study took more than 5 years. The Environmental Impact Assessment Ordinance took about 6 months. The statutory planning process commenced in 2014 and took 17 months to complete. The detailed engineering design study and land resumption process extended over a few years and the statutory planning process was conducted in parallel and basically not in the critical path. Finally, after a prolonged process to obtain funding approval, the site formation and construction works started in 2019. The first occupation of completed flats in the NDA is expected in 2022 and the whole NDA may only be completed in early 2030s. We are obliged to highlight that in the over 10 year of statutory and administration processes prior to actual implementation, the statutory planning process, which was so meaningful and purposeful to the civic society of Hong Kong, only took **17 months**. Obviously, firstly, we should speed up the feasibility study, adopting a more effective public engagement process during the study and the Civil Engineering Development Department and the Planning Department should better manage the feasibility study process. Secondly, the land resumption process could be streamlined from over 4 years to some 2 and half years, as proposed in the Panel Paper. Thirdly, with the more effective communication between the Government and Legislative Council, the funding process is hopefully much more reasonable, effective and smooth than before.

4. We take another example, **the public housing project in Tsing Hung Road, Tsing Yi**, to the northwest of Rambler Crest, to illustrate the process in identifying individual sites for housing development. The Tsing Hung Road site was about 4 hectares in area and zoned “Open Space” originally. It was proposed to be rezoned to residential use for public housing. It took about 2 years to complete the engineering feasibility study prior to undertaking the rezoning exercise through the statutory planning process. When the rezoning proceeded in 2015, thousands of representations were received and after hearing and considering all the representations,

comments and further representations, the Town Planning Board (TPB) took a balanced view of all the relevant considerations and revised the zoning amendment and only decided to rezoning half of the site, i.e. about 2 hectares, for public housing. The rezoning exercise took 17 months. The site formation and construction works take about 6 years. The project is now near completion and the newly completed public housing units are expected to be occupied next year (2023). The current statutory planning process is again demonstrated to be vital for maintaining the credibility, public acceptance and long term sustainability of the planning system.

5. In sum, the Town Planning Ordinance process should not be viewed as a cause of “delay” in land supply and delivery as implicated. We recognize that some members of public may criticize the statutory planning process being lengthy and ineffectively probably without giving a balanced consideration to the facts and justifications as mentioned above. We wish to reiterate that the TPO serves as an open, transparent and independent statutory planning mechanism and procedures for public participation and building consensus in the entire planning and development process, as compared with other more specific procedures such as land administration procedures. This is critical and facilitating for the successful and smooth implementation of projects. Thus it is essential to review the whole planning and development process in the holistic manner in order to truly expedite the land supply without upsetting our fundamental values and social justice.

Statutory planning principles must be upheld in reviewing the statutory process and it is important to keep the statutory planning process intact for the civic society and long term sustainable development of Hong Kong. Streamlining proposals must be well justified.

6. Typically, as mentioned in the Panel Paper, the running of whole statutory process for making available development land will take at least **6 years**, whilst the whole statutory, administrative and implementation process may take **at least 10 and up to 20 more years**, depending on the scale of the development. Out of the 6 years of the statutory process, it is important to point out that the statutory planning process usually takes only a small fraction of this timeframe, i.e. 11 months and at most 17 months in complex case. Only in unusual circumstances, including complex and controversial zoning amendments, and with a large number of representations/comments received, an extension of 6 months of the statutory planning process will be needed.

7. **Procedural fairness, natural justice and public engagement are of significant civic values and indeed all along are important statutory planning principles** that should continue to be upheld in any streamlining of the statutory planning process under the Town Planning Ordinance (TPO). Expedience and progress should not be the pretexts for overriding these important principles embraced by TPO since its first enactment in 1939 and subsequent rounds of amendments, arriving at today's well respected open, fair and inclusive statutory planning system. Indeed The TPO provides the only statutory process available for all members of public to voice out their views in the planning and development process. Therefore, it is essential to keep this avenue for public participation intact to facilitate public engagement. Unreasonably restricting public's rights will create grievances leading to frequent legal challenges and affect long term sustainable development of Hong Kong.

8. To quote an example here, relating to the handling of TPO s.12A process, the proposal in the Panel Paper to do away with publication for the s.12A rezoning application for public comments can only save 1 month, but it will be at the expense of collecting public comments for TPB's consideration of the rezoning application. **The proposal is clearly unjustified, unreasonable and have a significantly negative impact on public engagement.**

9. Instead, we support the Government to speed up the whole statutory, administrative and implementation process to provide developable land, and for instance, one of the proposals in the Panel Paper is to speed up land resumption and clearance process by **18 months**, which is much more meaningful in terms of time saving.

The Government should respect and sustain public engagement imbued in the planning process of Hong Kong as a Civic Society

10. Public engagement is an important and integral part of a credible and sustainable planning system, and with no less importance for building consensus and facilitating a smooth implementation process. . Public engagement is important for gathering essential information on the ground situation and people's concerns, preferences and ideas. Public engagement could also promote innovative solution approaches and building social consensus, and it should be well managed to achieve inclusiveness, effectiveness and timeliness. Public engagement must not be compromised unjustifiably and unrealistically, solely and simply for shortening development time. This will create undesirable outcomes and affect the credibility of the planning system, even lead to judicial reviews. The recent proposed OZP amendments relating to Ma On Shan housing sites is a good example that the TPB gives due account to public

views and comes up with a fully deliberated and good planning decision. We urge the government to strike a good balance on shortening time and maintaining the quality of public participation in the development process, taking into account all relevant views. In order to make available developable land earlier, timely government efforts in proceeding with planning early can be much more effective than artificially shortening the time of statutory planning procedures by a small margin.

Natural Justice – the right to be heard be ensured with practical and flexible legal provisions

11. Natural justice requires that the affected people have a right to be duly heard. Since 1939, the Town Planning Ordinance has stipulated a right for representers to attend a hearing before the TPB to express his/her views and suggestions on town planning matters as citizens, with no restrictions on grounds of explicit legal or land interests. Having said that, we agree that without sacrificing this principle, the TPB procedures prepared under the statutory framework for consideration of representations/comments must be practical, realistic and effective. With no less importance, they must be adjusted and tuned in order to keep abreast of societal aspirations and changes. Given that in controversial planning amendments with significant public interests nowadays, it is not uncommon that thousands of representers/commenters will likely be involved. It is a real problem that there may be numerous repetitive views being expressed in the hearing. In many past instances, the attempt to allow equal time to each and every representer/commenter would take up substantially valuable time of the TPB. On the other hand, regarding some informed representers/commenters, e.g. local groups, green groups, professional bodies, etc., who have in-depth local or expert knowledge in certain aspects pertinent to the proposed development, it would be useful and justified for TPB to allow those parties sufficient time to present the relevant details for TPB's consideration. As a matter of fact, it is a challenge to effectively conduct the hearing of all representers/commenters under the prevailing TPB procedures in the interest of time and resources. In sum, the Government should consider enhancing the TPO with a view to empower that TPB can properly exercise its authority to better manage its procedures to effectively discharge its legal duty by giving due consideration to the situational circumstances, yet without sacrificing the afore-mentioned important principle of public participation for all. Provided that TPB acts in good faith and allows all representers, as they wish, to attend the hearing and gives thorough consideration to the points raised, TPB should be able to discharge its legal duty. Whilst each and every representer/commenter should be given a right to attend the hearing, the legal requirement should not be rigid to require the TPB to give everyone equal time and listen the repetitive views out. TPB should conduct its hearing legally, fairly and reasonably.

Other possible and practical proposals to improve the whole statutory, administrative and implementation process for developable land

12. We are all for streamlining and providing adequate supply of developable land for housing and other uses. We have taken every opportunity in the past and now grasp this opportunity again to make suggestions for speeding up and streamlining the entire planning and development process for more effective and expedient land supply, ultimately for the earlier and expedient delivery of a sustainable and liveable city for our citizens.

13. All along, we advocate the setting up a **Land Supply Commission**, similar to the Harbourfront Commission, comprising representatives from all sectors of the society to actively monitor the land supply situations and related policies, programmes and projects and creating a **land reserve** ahead of expected demand and allowing flexibility to meet unexpended demands for lands. The Land Supply Commission can provide a forum to tap the wisdoms of the public and build social consensus to support the Government's work in planning and development.

14. The hearing and consideration of an enormous amount of representations/comments can take a long time, the TPB can set up **sub-committees**, which could involve a smaller and selected number of TPB members, to conduct the hearing procedures and save the valuable time of TPB members as a whole. The TPB can also consider delegating the powers to senior planning officials of the Planning Department to approve planning applications for temporary uses and other simple cases.

15. We understand that there is currently a strain on professional manpower resources in various government departments. In particular, to ease such strain, we suggest that the Government can **outsource** professional work in statutory planning, e.g. in processing representations and planning applications, to planners in the private sector. With assistance from outsource, the Planning Department retaining the management function can better cope with the sudden surges in workload. This approach is not substantially different from employing consultants to undertake feasibility studies and should be practical.

16. We are of the view that the planning process of **reclamations** can be reviewed in a holistic and comprehensive manner. However, we suggest that a more formal strategic planning framework, with feasibility study conducted and outline development plan prepared, has to be established to properly building social consensus and giving adequate authority to proceed with reclamations, addressing in

view of the prevailing societal consciousness on environmental protection and global warming. In view of the above, we consider that the outline zoning plans, which provide for sufficient details for the planned uses and layout for the reclamation, could then be prepared and finalized during the progress of reclamation works, which may take a few years. This would speed up the whole development process. More details have to be provided by the Government in this regard before we can come to a view on the proposal.

17. The statutory town plans should be updated in response to the changes in socio-economic circumstances. The definitions of terms, the uses permissible under the covering notes, the Column 1 and Column 2 of the notes to a particular zone, should be reviewed and updated. Obvious examples include mixed uses, data centres, agriculture use in buildings, temporary uses, etc. With such updates, the workload of the TPB, the professional resources and development lead time can be saved to a large extent. For planning applications which are numerous and standardized, simplifying processing procedures and delegation of authority from TPB to the Planning Department will definitely save the time of TPB and all involved parties.

18. The planning application process and procedures should be reviewed and refined to minimize the processing time and repetitive and prolonged procedures in handling the submission of further information for planning applications. This is also important to save professional manpower resources. We believe that the wider deployment of appropriate and updated technologies, in particular communicative and visualization technologies could be one fruitful area to identify improvements and solutions.

Specific Comments on the Proposals in the Panel Paper

Please refer to **Annex** for specific comments on Government's Proposals.

Public Affairs Committee, HKIP

June 2022