

**Specific Comments (on Government’s Proposal related to Town Planning Ordinance & OZP only)**

Government’s Proposal	Comments
<p>Streamlining and shortening certain statutory time limits(to reduce the time spent on a plan-making process from 17 months now to around 9 months in future)</p> <p><b>[Proposal 1(a)]</b></p> <p>A. Combining the different rounds of receiving representations and comments into one, i.e. inviting one round of representations in the plan-making process. The Board will also allow submission of representations in the form of pre-recorded videos.</p>	<ol style="list-style-type: none"> <li>1. <b>We have reservation to the proposal.</b></li> <li>2. In most cases, the plan making / amendment process will only take <b>11 months</b> (i.e. 2 months of gazettal period plus 9 months for Town Planning Board (TPB) to collect / consider representations &amp; comments received and submit the plan for CE in C’s approval). Only in exceptional cases, plan making process would involve extension of 6 months leading to a total of <b>17 months</b> (i.e. additional 6 months granted by CE in accordance to TPO). The exceptions usually happen when the proposed zoning amendments are complex and controversial resulting in large number of public submissions, and/or TPB decides to propose further amendment to the plan after considering the representations / comments, and inviting public (other than original representers / commenters) to make further representations on the further amendment. It is misleading and unjustified to state the statutory town planning process takes 17 months and use it as a benchmark to show the claimed time saved with the proposal. As such, we have question on the actual time actually can be saved from the proposal if we take the average <b>11 months</b> as the yardstick.</li> <li>3. Further, we should take an overview in the context of the entire planning and development process. As stated in the said Panel Paper, the whole statutory and administrative planning and development process to transform a piece of land originally not planned for housing purpose to a formed site ready for housing</li> </ol>

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	<p>development takes a total of at least 6 years to complete. We are obliged to point out that the statutory planning process within the current statutory planning timeframe (i.e. from normally 11 months even to exceptionally 17 months) only contributes to a small fraction of the total timeframe of the entire planning and development process of 6 years. The time saving at the expense of compromising public participation/consensus building and time / procedures to consider / refine the OZP amendments imbued in the statutory planning process is not justified, nor convincing.</p> <p>4. We have reservation to take away the publication and hearing of representations and comments that are stipulated in the 2004 TPO amendments. We should sustain the long tradition of TPO to respect the right to be know, participate and heard which is widely supported and respected in the community. "Inviting one round of representations in the plan making process", as proposed by DEVB, could mean comments on representations will no longer be allowed. Planning by its nature affects the representation site, its surroundings or even a wider area. The rights of parties injuriously affected by the representations will be deprived.</p> <p>5. An iterative process of plan making should be allowed to cater for adjustments. Deleting the hearing of representations on proposed amendments by the TPB to partially or fully meet the origin representation is depriving the right to be heard by parties injuriously affected by the adjustment, which is against natural justice. Confirmed proposed amendments made by the TPB to meet representations is part of the draft plan and legally effective under the TPO (e.g. for reference for vetting building plan submission). It is unfair, not open and not inclusive for those land interests or parties injuriously affected to be excluded. In view of this and points (2) – (4) mentioned above,</p>

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	<p>we have reservation on this proposal.</p> <p>6. We suggest exploring the deployment of appropriate and updated technologies, in particular communication and visualization technologies to facilitate a more effective and expedient communication between the TPB and the public in both the plan-making and planning application process with a view to compress the processing time and simplify the procedures. With due respect, the current practice of TPB which involves largely paper-based operation, i.e. papers/minutes as well as complex/time-consuming manual procedures is lagging behind the digital communication age of our society.</p>
<p><b>[Proposal 1(b)]</b> Empowering Town Planning Board to invite individual representers to come forward to a meeting to answer questions <b>only if board members wish to make inquiries</b> into individual representations received.</p>	<p>7. <b>We have reservation to the proposal. Instead, if the current Town Planning Ordinance (TPO) provisions are deemed not clear enough, legislative amendments can be made to the TPO to introduce explicit provisions to empower TPB to manage the hearing process more flexibly and efficiently in meeting situational circumstances. Whilst all representers should be allowed to attend the hearing, TPB should be legally empowered to be more flexible in conducting the hearing procedures such as in allocation of time for hearing, in arranging hearings in public/groups etc. (please see below for some detailed suggestions).</b></p> <p>8. Natural justice requires the affected people have a right to be heard. The TPO since 1939 has stipulated the right for representers to attend a hearing before the TPB. However, we understand that the TPB procedures to consider representations/comments must be practical, realistic and effective. We recognize that in some controversial planning amendments nowadays, thousands of representers will be</p>

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	<p>involved and <b>repetitive views are not uncommon</b>. In many past instances, the attempt to allow equal time to every and each representers take up substantially valuable time of the TPB, in particular for those repetitive views. On the other hand, regarding some of 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 time to present the relevant details for TPB's consideration.</p> <p>9. To address the problem, TPB should have the authority to better manage its procedures to effectively discharge its legal duty and there are many possible streamlining proposals to speed up the hearing process instead of pursuing selective hearing. Whilst TPB need to invite all representers/commenters to the hearing, there is in fact no need to hear repetitive views. Giving equal time to each and every representer and hear all out is too rigid, time consuming and ineffective, thus not justified in today's societal circumstances. TPB should therefore be explicitly empowered with provisions in the TPO to manage the process more effectively, yet still respecting the right to be heard.</p> <p>10. TPB is a statutory body to discharge its legal duty to conduct hearing on a legal, fair and reasonable basis. It would be complicated and demanding substantial efforts to implement the selective hearing proposal. We are of the view that selective hearing runs the real risk of being challenged on grounds of natural justice as well as not being fairly and reasonably exercised in actual execution. Thus it may ultimately turn out to be counter-productive and prolonging the plan making process.</p>

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<p>Avoiding repetitively executing procedures of a similar nature:</p> <p><b>[Proposal 2(b)]</b></p> <p><b>B. Dispensing with the need for inviting public comments</b> when Town Planning Board gives initial consideration to a rezoning application submitted under section 12A. This can save one month of the processing time.</p>	<p>11. <b>We have reservation on the proposal.</b></p> <p>12. According to the proposal, as the public cannot submit comments on the rezoning application during the s12A stage, opinion from the public, whether it is supporting and opposing views, would not be taken into consideration and the decision would be solely subject to Town Planning Board members' view. This will to a great extent compromise the ability and credibility of TPB to make informed decision under a transparent town planning process, let alone the public image of TPB. Also, the one month of processing time being saved which is at the expense of the public's right to know and the right to raise ideas/ concerns is not desirable, nor justified, particularly in a balance consideration of the time saved is relatively trivial.</p> <p>13. For rezoning applications without going through public comments, and agreed by the TPB, if there are subsequent solid opposing public comments during the OZP amendment stage, this will place the TPB and planning authority in a difficult position. Supposedly, further amendments to revert the agreed OZP amendments would be expected of the TPB. The matter will compromise the ability for an informed decision and credibility of TPB and waste the time and efforts of all parties.</p> <p>14. To reduce processing time, a possible alternative is to require</p>

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	<p>the applicant to conduct a public engagement beforehand and submit a public engagement report to the TPB for consideration.</p>
<p>Providing an express mandate for government departments to proceed with different procedures in parallel</p> <p><b>[Proposal 3(a)]</b>  C. <b>Allowing</b> gazettal of a reclamation scheme under the Foreshore and Sea-bed (Reclamations) Ordinance to <b>proceed in parallel</b> of gazettal of a statutory plan under the Town Planning Ordinance.</p>	<p>15. <b>We need more details before we can come to a view on the proposal.</b></p> <p>16. At the outset, we must stress that the reclamation works by nature will be <b>irreversible</b>. Moreover, the extent and form of reclamation would be highly related to the future land uses. That said, it is expected that there must be some development planning or feasibility study conducted for the proposed reclamation to identify the likely land uses, layout and extent and/or form of reclamation before proceeding with actual reclamation works.</p> <p>17. More importantly, for reclamations to go ahead, there must be sufficient socio-economic and planning grounds to justify the reclamation to go ahead. In particular, it is envisaged that large scale reclamation such as Lantau Tomorrow will be very controversial and a credible authorization process is very important. <b>It is unclear what statutory or administrative planning process is available to establish the authorization and justifications to go ahead with the reclamations. Whether strategic planning process, such as Hong Kong 2030+, will provide the needed authority for the reclamation to go ahead, could be further explored.</b> In contrast, the planning process of preparing OZP provides such authorization</p>

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	<p>process, which has been the prevailing practices and proved to be legally sound.</p> <p>18. Allowing different statutory procedures to proceed in parallel may put the Government in a difficult situation, in particular when procedures under a statutory regime could be completed, but procedures under a separate regime could not be completed timely for the same development proposal. Government will be in a dilemma if there are no specific principles to determine when the proposal can be proceeded.</p> <p>19. In view of Government's intention to expedite the supply of developable land, Government should also review if statutory procedures under Environmental Impact Assessment Ordinance can be proceeded in parallel with statutory procedures under the Town Planning Ordinance.</p>
<p>Rationalising obsolete or ambiguous arrangements</p> <p><b>[Proposal 4(a)]</b>  D. Exploring the idea of including provisions in the law <b>enabling the approval of a draft plan in part</b>. This may enable developments in the sites ready for approval to proceed without having to wait for issues concerning other amendments in the same plan to be satisfactorily resolved.</p>	<p>20. <b>We support in-principle the proposal to speed up amending the OZP in part to facilitate development. The proposal will speed up the amendment items not subject to judicial review, which holds up the approval of the relevant amendment plan.</b></p> <p>21. Details should be supplemented to define the timeframe/ procedures for resolving the outstanding issues of other amendments in the same plan, and how the remaining unresolved amendments will be eventually incorporate into the OZP.</p>
<p><b>[Proposal 4(b)]</b>  E. Restricting the scope of parties which may be allowed to make a section 12A rezoning application to a</p>	<p>22. <b>We have reservation on the proposal.</b></p>

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<p data-bbox="232 188 1028 293"><b>current landowner of the application site</b> (or any person with the consent of the current landowner), or a relevant public officer or public body.</p> <p data-bbox="185 1075 412 1107"><b>[Proposal 4(c)]</b></p> <p data-bbox="185 1114 1028 1362">F. We wish to make it clear that the plan-making process is mainly concerned about land use planning and development parameters. Accordingly, we hope to put beyond doubt that representations relevant to compensation may not be regarded as valid representations, as far as the TPB's consideration is concerned.</p>	<p data-bbox="1055 188 2018 368">23. The proposal would be considered as a retrogression of public participation, as the members of the public will not be given an opportunity to take the initiative to present their planning vision for the TPB's consideration. The current provision is important for promoting Hong Kong as a civil society and international city.</p> <p data-bbox="1055 411 2018 810">24. One of the primary functions for a section 12A rezoning application is to provide bottom-up opportunities for public to review current land use zoning and to propose OZP amendments in meeting societal aspirations and generating innovative landuse proposals for the common good. The proposed arrangement will terminate such "paricipatory channel" which is proved to be useful for the authorities, or even the landlords, to understand the public sentiments and societal aspirations towards the stipulation on a piece of land and to keep the OZP stipulations updated based on the ever-changing socioeconomic circumstances.</p> <p data-bbox="1055 853 2018 1034">25. Moreover on the practical side, as land titles may be quite dispersed, a landowner's s.12A application may quite commonly involve some lands not yet under his ownership. This proposal will create difficulty to the landowners to secure a rezoning to facilitate his development.</p> <p data-bbox="1055 1150 2018 1406">26. In theory, this proposal is reasonable. However, in practice, the majority of representations received during our planning process are not compensation related. The representer(s) could also hide his/her true intention by raising the representation under other non-compensation related ground easily. While we have no objection to this proposal, we question the effectiveness in time-saving under our plan making process.</p>

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<p><i>[Lands Resumption Ordinance, Foreshore and Sea-bed (Reclamations) Ordinance, Roads (Works, Use and Compensation) Ordinance, Railways Ordinance involved]</i></p> <p><b>[Proposal 4(d)]</b></p> <p>G. Exploring whether we can specify in the law that objections would be invalid if they could not describe the <b>legal interest of the objector</b> and the manner in which the objector alleges he would be affected.</p>	<p>27. <b>We have concerns on the proposal.</b></p> <p>28. It would be difficult for the objectors who are public bodies, such as green groups, to describe their legal interest or standing in the matter. For example, who has legal interest of the sea? If no one, then there will not be any valid objection for reclamation proposal. It is important for the Government to understand the environmental concerns on proposals involving reclamation and areas of high ecological value.</p> <p>29. This will encourage the planning decisions of relevant authorities to be confined within the “legal interest” of the “relevant stakeholders” and neglect the general well-beings of the public and sustainable development. Indeed town planning is ultimately for the common good of all citizens, not just for the selected privileged ones with legal interests.</p> <p>30. Extra efforts will be spent for the authorities to explain to the public and to defend their definitions of “legal interest” and “relevant stakeholders”. More conflicts will arise in defining which and whose objections are valid or not.</p>
<p>Streamlining miscellaneous processes for more effective usage of public resources</p> <p><b>[Proposal 5(a)]</b></p> <p>H. Requiring the applicant to <b>set out the grounds for lodging the review</b> for a planning application.</p>	<p>31. It should be noted that the applicant has the legal right to apply for review.</p>

**[Proposal 5(b)]**

I. We intend to effect better time management for TPB to clear the caseload, and ensure that the submission of FI will not cause unreasonable delay in decision making. We propose making a clear time limit after which TPB will not accept any FI and has to proceed with deciding the application. It is always an applicant's responsibility to ensure that any application made is of sufficient quality and clarity to enable TPB to appraise the application accordingly.

**[Proposal 5(c)]**

J. We propose empowering Secretary for Development to refer any approved plan to TPB for amendment. The saving of making a separate submission to the Executive Council may speed up the process by around 2 months. In any event, the Chief Executive in Council will in due course make a final decision on a draft plan that incorporates the amendment recommended by TPB.

32. Quite often, the FI are submitted by applicant as per concerned government departments request / comments. As such, co-operation from government departments is important for efficient decision making by TPB. Should DEVB wish to implement this proposal, a set of guidelines that is clear, reasonable and well-accepted by departments as well as the public are required.

33. **We support the proposal.** The delegation of the power of CE in C to SDEV for such matter could save the time and resources for ExCo submission.

**Other Observation:**

(a) The Government also proposes in Annex B to the Panel Paper to enhancing enforce-related provisions of Town Planning Ordinance on areas cover by OZP but not DPA. The proposal is to designate certain areas with high ecological values but subject to development pressure and environmental degradation to be an "Enforcement Area". Obviously one such area is South Lantau. The Government's proposal is well supported and appreciated.

(b) In addition to Government's proposals, HKIP have observed that there is no time limit on determination of planning appeal by Town Planning Appeal Board. As a matter of fact, it is not uncommon that it could take years to fix a hearing date of the appeal, then another several months to conduct the appeal hearing, and finally another several months to hand down a decision on the appeal in connection with an application for planning permission. It is not only a long wait, with circumstance changes, but also a wait with great uncertainty and unfair to parties concerned. A time limit should be set so to reduce uncertainty and delay of a decision on the planning appeal, which to certain extend can streamline our town planning process.