香港建築師學會
The Hong Kong Institute of Architects

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By Post and By Email
sdev@devb.gov.hk

Mr. WONG Wai Lun, Michael, JP
Secretary for Development
Development Bureau
18/F West Wing, Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Michael,

HKIA's Views on Legislative Proposals to Streamline Development-related Statutory Processes put forth by Development Bureau

Regarding the legislative proposals to streamline development-related statutory processes put forth by the Development Bureau (DevB) in its discussion paper tabled at the LegCo Development Panel meeting on 22 March 2022, the Board of Local Affairs of The Hong Kong Institute of Architects (HKIA) has gathered views of its members and summarized into the following responses.

(1) Streamlining and Shortening Certain Statutory Time Limits

Town Planning Ordinance (Cap. 131)

On **proposals 1(a) and 1(b)**, we basically support streamlining departmental circulation and commenting procedure and mechanism. In addition to the streamlining of the objection hearing procedures, the Government shall also review and streamline their own internal procedures:

i) It is very often that, when commenting on planning submissions, government departments will be giving irrelevant comments outside their department's jurisdictions, e.g., Architectural Services Department (ArchSD) asking if Sustainable Building Design Guidelines can be fulfilled during rezoning application, or requesting details not at the appropriate timing, e.g., Fire Services Department asking for emergency vehicular access details. These kinds of detailed design issues should be handled during the General Building Plan submission stage. Quite often, planning applications to

香港銅鑼灣希慎道 1 號 19 樓
19th Floor, One Hysan Avenue, Causeway Bay, Hong Kong
T: 2511 6323
F: 2519 6011, 2519 3364
W: http://www.hkia.net E: hkiasec@hkia.org.hk

Planning Department (PlanD) are delayed or stalled due to such irrelevant comments. The Government should introduce concise guidelines and checklists for each department being consulted so as to define/confine the scope of comments and questions they should or can ask. Such guidelines and checklists shall make known to the public.

ii) Departments often make several rounds of comments along the application procedures, which have added to the length of the submission process. The aforementioned guidelines and checklists should specify the frequency and length of replying time for relevant departments. We suggest that departments are required to reply within a reasonable period of time, say 2 weeks, and can only give 1 round of comments during the application process.

iii) Departments sometime make conflicting comments against other departments or even internally. We suggest that each department shall have only 1 representative to consolidate all the departmental comments. Should there be conflicting comments amongst different departments, PlanD shall take initiatives to resolve the differences and make consolidated comments on behalf of the Government.

iv) Planning Submission Conference should serve as a means to smoothen the planning process for private applicants. Should there be important planning submissions, PlanD shall take initiatives to form task groups or conferences for direct communications amongst various departments of interests with the project proponents, with an aim to openly discuss and resolve conflicts and to work out any compromising procedures.

v) PlanD should be the lead in handling the application procedure for NGO projects and projects with public interests. (e.g. temporary low-income housing proposals by NGOs) For projects with public interests and NGO projects, a certain division within PlanD may take lead in the application process. We don't see the necessity of asking private practitioners to take lead. If necessary, PlanD may hire private practitioners with a reasonable fee to assist in such applications.

HKIA, in principle, agrees with the direction of streamlining the plan making process,

香港銅鑼灣希慎道 1 號 19 樓
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W: http://www.hkia.net E: hkiasec@hkia.org.hk

subject to satisfactory arrangement on protection of public's right to express views. To strike a balance between the civic rights of the public having the opportunity to be represented and comment on the plans, and the plan making efficiency so desperately needed, it is suggested that instead of a fixed “one size for all” type of gazettal and consultation period, a “sliding scale” of different period durations per the size and scale of the development should be considered. This would be appropriate in the sense that larger scale developments, being more complicated with wider social interfaces, may need more time for the concerned public to study and understand the implications before an educated representation could be made. Meanwhile, smaller sites may arouse more local and immediate concerns with less effect on district level.

It is suggested that PlanD being the Secretary to the Town Planning Board (TPB) should assume a stronger advisory role (not just a secretariat role) and offer a holistic government policy and professional view to TPB during deliberation, with larger discretionary power over all technical departments’ comments on issues deemed not appropriate to be addressed at master planning level so as to avoid over-indulging in inappropriate technical details.

To reduce the current rigidity on graphical indication on plans (e.g., arrows indicating pedestrian connections or linkages), it is suggested to authorise district planning offices a higher autonomy in judging for compliance and allow for larger flexibility in design implementation to suit site condition without the need to risk deviation from the approved plan.

It is suggested that the target of time reduction for the plan-making process should be set further down to some 6 months, possibly through the following means:

i) consolidating representations and hearings;
ii) accepting draft plan in part if the draft plan is agreeable in principle; and
iii) limiting the number of documents and supplementary materials that TPB has to proceed with when approving applications.

<u>Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127); Roads (Works, Use and Compensation) Ordinance (Cap. 370); Railways Ordinance (Cap. 519)</u>

On **proposal 1(c)**, amendments of the 3 Ordinances should be separately considered on their own merits rather than adopting a broad brush approach. This is especially the case for the Foreshore and Sea-bed (Reclamations) Ordinance, which covers various ecological and environmental concerns relating to land-based projects.

香港銅鑼灣希慎道 1 號 19 樓
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Similar to shortening the plan-making process under the Town Planning Ordinance, our target should be to reduce the timeframe on the objection handling process under the Foreshore and Sea-bed (Reclamations) Ordinance, Roads (Works, Use and Compensation) Ordinance and Railways Ordinance from the current 17 months to around 6 months. Allowing the two processes to proceed in parallel may accelerate the commencement of reclamation projects under the Foreshore and Sea-bed (Reclamations) Ordinance by at least 6 months (assuming the streamlined town planning process as suggested under Proposals 1(a) and 1(b) above would take 6 months) in their individual programmes.

Currently considerable time is required for referral back of the approved plans to TPB for gazetting of amendment after TPB's approval of Section 12A applications. Streamlining of the gazetting of amended plans to incorporate TPB's approved re-zoning applications should be considered so as to shorten the time of the re-zoning process.

On **proposal 1(d)** which suggests specifying the objection handling process in the law, the Government may want to consider setting up a certain mechanism to allow valid objections to be verified by a third party under the relevant bureau so as to avoid going through the lengthy ombudsman or court procedure.

Current legislations allow multiple departments to be the gazettal proponents, which may lead to cross-departmental arguments/referrals. The Government should consider clarifying and defining more clearly which department to be the gazettal initiator and under what conditions to avoid confusion.

To avoid gazettal technical errors and mistakes, the Government should simplify handover procedures and gazettal categories. At the same time, an electronic web-based template for such purpose should also be developed.

As to **proposals 1(e) and 1(f)** on "minor works", the Government should keep it simple with broad brush categories to allow easy identification of different "Classes" of "minor works". Works should be defined by the nature and principle/context of the works as well as the scale of such works rather than the actual technicality of the works. As such, the following should be considered as minor works:

i) Underground tunnelling works with no disturbance of surface roads or minor disturbance of surface roads (e.g., with traffic justification); and

香港銅鑼灣希慎道 1 號 19 樓
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ii) Aboveground footbridge works with minor disturbance of surface roads (e.g., with traffic justification).

(2) Avoiding Repetitively Executing Procedures of a Similar Nature

Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127); Roads (Works, Use and Compensation) Ordinance (Cap. 370)

On **proposal 2(a)** regarding identical objections in other statutory regimes, it is hard to define what "identical objection" means, and may lead to future legal challenges. The Government may consider pre-defining a set template of categories for the objecting public to fill in so as to group the questions/objections of similar nature in bundles for easier handling. By the same token, the Government may consider integrating statutory procedures so that public could express views in one go.

Town Planning Ordinance (Cap. 131)

Proposal 2(b) suggests dispensing with the need for inviting public comments when TPB gives initial consideration to a rezoning application. While the suggestion to shorten the process is generally welcomed, DevB should be mindful of the principle of fairness and transparency. We believe that any rezoning applications should still be announced in the usual manners such that the public, if seeing fit, can air their opinions via other means at the initial stage. It will be beneficial for TPB and government officials to listen to public opinions at the soonest.

Alternatively, it would probably make more sense the other way round, i.e., allowing objection/representation at the Re-zoning S12A stage, and if similar/duplicated objections are raised again at the subsequent S16 Plan making stage, then they should be regarded as already considered.

(3) Providing an Express Mandate for Government Departments to Proceed with Different Procedures in Parallel

Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127)

On **proposal 3(a)** which aims to provide a statutory mandate for reclamation before the completion of a statutory plan, we agree in principle with the proposal subject to details of the proposed arrangements, especially with regard to the protection of public's right to express views.

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The logic of knowing what the land uses are before reclamation plan approval is a valid reason to keep to the existing sequence of approvals. However, to streamline this process, it is suggested that reclamation plan could be considered as provisionally approvable when the statutory plan under TPO is submitted, not approved. The full approval status would become automatic once the statutory plan under TPO is officially approved.

Also, we would like to remind the Government that without first confirming the needs and design of the area being reclaimed, there is a risk of over reclamation in order to maintain flexibility for the eventual approved scheme. The profile of reclamation might also be pre-empted by engineering considerations rather than environmental, planning and urban design concerns.

Lands Resumption Ordinance (Cap. 124)

On **proposal 3(b)** advancing the objection handling procedures leading to the authorisation of land resumption and **proposal 3(c)** allowing land resumption and payment of compensation to commence before funding approval, we agree in principle with those two proposals. Our initial estimate is that the two proposals taken together may advance the completion of resumption and clearance process by around 9 months. Nonetheless, more details of the proposals would enable us to provide more conclusive comments.

(4) Rationalising Obsolete or Ambiguous Arrangements

Town Planning Ordinance (Cap. 131)

On **proposal 4(a)**, the idea of approving a draft plan in part is generally supported, which will avoid other items of a draft plan being held up by the items with objections. Nonetheless, public review should not be omitted, with review time being shortened to 2 weeks.

If draft plans are to be approved in part, there should be a contingency plan in case the whole plan of a certain submission cannot be implemented (i.e., the part plan can still work independently from an urban design and planning standpoint). Also, the Government needs to take care of combined effects, e.g. individual project traffic impacts may be acceptable, but the combined effects may exceed the capacity of the district.

On **proposal 4(b)** restricting the scope of parties allowed to make a section 12A rezoning application to the current landowner (or any person with the consent of the current

香港銅鑼灣希慎道 1 號 19 樓
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landowner), or a relevant public officer or public body, we have reservation with this suggestion. We are afraid that the rezoning processes will be slowed down should there be some minor lots holding up the rezoning processes regardless of whether such applications are initiated by private individuals or the Government.

We also believe that the public may sometimes propose something that is good to the society at large while being overlooked by the landowners or the Government (e.g. turning environmentally sensitive area into conservation zone).

When considering **proposal 4(b)** together with **proposal 3(c)**, there seems to be an inequality of the proposed changes. Land resumption is proposed to start earlier when the Government has put forth rezoning application for land which belongs to private owners, but such rezoning process would not be available for others not yet owning the land.

There may be situations that a project proponent needs to secure certain level of assurance and certainty in planning development scale or uses before making any commitment to the project. As such, allowing for non-landowner applicants may have its necessity.

The restriction of only the landowner being able to make 12A rezoning application could slow down the urban renewal process. This may be similar to the case of realistic prospects of controlling for general building plan submissions.

Besides, since the site boundary of a re-zoning application may very often be difficult to be clearly demarcated (esp. in the New Territories) during the planning stage, requesting landowner's consent for any re-zoning application may set a major barrier for some re-zoning applications.

We have no opinion on **proposal 4(c)** as this is outside of town planning and urban design matters.

<u>Lands Resumption Ordinance (Cap. 124); Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127); Roads (Works, Use and Compensation) Ordinance (Cap. 370); Railways Ordinance (Cap. 519)</u>

We have reservation with **proposal 4(d)**, especially when it is difficult to define what legal interest is. Rezoning may affect those living on or owning land adjacent to the land being proposed for. Public interest groups, environmental interest groups, and professional

香港銅鑼灣希慎道 1 號 19 樓
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institutes could often provide invaluable advice to TPB and/or the Government during the objection process.

The proposal may force the affected public to accept unfair compensations. To strike a balance, there could be provisional approval subject to the condition that the compensation issues must be fully resolved within a certain period, say 3 months. The provisional approval thus enables the plan making process to continue to proceed without stalling, buying time for the final agreement on compensations to be reached.

Lands Resumption Ordinance (Cap. 124)

We welcome **proposal 4(e)** to institutionalise requirements under the Lands Resumption Ordinance but we would like to learn more about the related details before making any further comments. One preliminary suggestion is to make the prescribed timeframes in Lands Resumption Ordinance (Cap. 124) as statutory "performance pledges".

On **proposal 4(f)** allowing the Government to use the resumed/acquired land for a public purpose different from the original purpose, we generally support this proposal and agree that there should be a mechanism to ensure that there is balance and check. Public utilities could also be considered as a form of public uses, provided that they are to serve a wider public rather than any specific development.

(5) Streamlining Miscellaneous Processes for More Effective Usage of Public Resources

Town Planning Ordinance (Cap. 131)

On **proposal 5(a)** requiring the applicant to set out the grounds for lodging the review application, very often when applying for Section 17 procedure, applicants will provide grounds on public interests and legal rights based on precedent cases. Henceforth, this proposal will only help if a certain set of guidelines or criteria specifying various circumstances for any objection to be heard.

As the window to apply for Section 17 is very short, it will have tremendous impact to the industry, and consultants will be under extreme pressure to meet the deadline, especially when adjustments on the scheme are required.

On **proposal 5(b)** setting a clear time limit after which TPB will not accept any further information (FI), we notice that FIs are in fact usually late requests from various

香港銅鑼灣希慎道 1 號 19 樓
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departments. Very often, these late comments come about due to changes in government policies. To ensure that the applicants are being treated fairly, any comments due to new government policies enacted after rezoning applications should be prohibited from inclusion in departmental comments, or there should be an automatic extension of time for proponents to respond to changes in government policies.

In addition, PlanD should give their comments to the applicant all in one-go at an early stage, rather than waiting for the applicant to resolve all other technical comments e.g., traffic, environmental, ecology, AVA, sewerage, drainage, etc. through rounds of supplementary information submission before they finally notify the applicant that the proposal might need to be amended, or even not acceptable from town planning or other "material" considerations. This would save the applicant and consultants much more time and efforts, and speed up the application process significantly.

The Government should establish time limits and definitive scopes for commenting in order to reduce FIs. Besides, as suggested before, planning task forces and conferences can be very helpful in resolving differences. The sole act of limiting FIs could be counter-productive.

The Government should also consider ways to streamline the administrative procedure for processing planning applications. Very often, comments received from other consulted departments are irrelevant to the subject of the planning application, which leads to considerable efforts in preparing response to comments and FIs.

We generally support **proposal 5(c)** empowering the Secretary for Development to refer any approved plan to TPB for amendment.

(6) Enhancing Enforcement-related Provisions of Town Planning Ordinance

We agree with the suggestion in general but the Government should consider setting up a mechanism to handle challenges to Secretary for Development's decisions other than via ombudsman or court.

(7) Other comments

Although development control by government land leases is not a statutory process for development control, the processing of land grant, lease modifications and approval under

香港銅鑼灣希慎道 1 號 19 樓
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lease has been a major time-consuming element of the development process. It is suggested that the Government should critically review the land lease process from land grant (incl. surrender and re-grant, lease modification, premium assessment, etc.) to approval of development proposals under lease (esp. Design Disposition and Height Clause, and tree preservation and removal proposals) to streamline the process up to the granting of approval under lease.

All in all, our members would appreciate an opportunity to discuss with your bureau further on how we can work together to make the development-related statutory processes more efficient and effective. As always, you can rely on HKIA to contribute our expertise to make Hong Kong a better place to live.

Yours sincerely,

Donald CHOI Wun Hing, *FHKIA, R.A.*
President
The Hong Kong Institute of Architects

Cc: Hon TSE Wai-chuen, Tony, BBS, JP
HK LegCo, Functional Constituency (Architectural, Surveying, Planning and Landscape)

Ms. LINN Hon Ho, Bernadette, JP
Permanent Secretary for Development (Planning & Lands), Development Bureau

Mr. LAU Chun Kit, Ricky, JP
Permanent Secretary for Development (Works), Development Bureau

香港銅鑼灣希慎道 1 號 19 樓
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