THE HONG KONG INSTITUTE OF SURVEYORS

Analysis & Report
on
Town Planning White Bill

CONTENTS

Note: Detailed commentary on individual Clauses of Bill - not enclosed

November 1996

PART A
INTRODUCTION

The Consultation Paper expresses the intention of "improving the existing statutory planning system".

Nowhere, however, does the Consultation Paper or the new bill identify exactly what constitutes "the existing statutory planning system" or the policy objectives which created it.

Without that information, it is difficult for the community, legislators or indeed ExCo to envisage how the massive procedural content of the new bill will bring about any improvements. It is a matter of concern that the ordinance has adopted an "office manual" type format, concentrating on "procedures" at the working level but failing to provide "top down" policy directives.

Accordingly, this Report summarises the existing statutory planning system and its policy origins; and thereafter summarises (in Part B) some of the major principles which we believe legislators should address before redrafting the new ordinance.

(From the outset, we would mention that the public outcry against lack of public consultation is well justified. It is not, however, a defect of the existing statutory planning system. It is the secretive attitude of the planning administration which has led to serious confrontations in recent years, eg. the Harbour Reclamation Policy, the Kowloon Density Report etc).

The Existing Planning System

The Existing Planning System was established by ExCo and LegCo by two major policy decisions:-

I. ExCo & LegCo

The planning system shall be based on THE SYSTEMATIC PREPARATION AND APPROVAL OF ZONING PLANS. (This has been written into the Long Title of the existing Planning Ordinance since its inception, and it is a matter of serious concern that this has now been removed).

II ExCo

The ExCo policy decision of 1966 was notified to the community by a letter in April 1966 which advised that ExCo had determined that IT IS IN THE PUBLIC INTEREST TO FOLLOW A POLICY OF SYSTEMATIC DENSITY ZONING. (This policy was originally implemented through lease conditions but later transferred to statutory plans. By an oversight the ordinance was not amended at the time, otherwise LegCo approval would have been required).

Arising from these two policy decisions, the following positive objectives are achieved:-

I. a) *The system requires the Town Planning Board to have in place a zoning plan and statutory notes which clearly spell out the planning intent for the locality.*

b) *The community is therefore able to ascertain the "planning intent" for the locality. Also, landowners know what is expected of them.*

c) *Development can proceed "as of right" in accordance with Column I and with "permission" under Column 2 in accordance with the prevailing zoning plan.*

d) *Amendments to the zoning plans can be introduced from time to time to meet the needs of the locality.*

II. a) *The systematic use of Density Zones provides a high degree of fairness and consistency of principle to all landowners within any particular zone, and the plot ratio/coverage content of the approved Density Zones is visible.*

b) *The plot ratio entitlements of the Density Zones are approved by ExCo, and the development industry was notified of the density zoning schedules. (Plot ratio is the primary planning tool for distributing the population throughout the Territory).*

c) *The shortage of land in Hong Kong makes it essential to maximise the plot ratio potential of land within each zone.*

d) *The plot ratio entitlements of the Density Zones are also used as a matter of financial policy and land policy as a means of maximising land revenues (lands sales, modifications, land exchanges incorporate the plot ratios decided under the "systematic zoning policy" into the land documents).*

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HKIS is of the view that the SYSTEMATIC PLANNING POLICIES and the objectives outlined above are equally important today, and should be written into the new ordinance to provide a policy directive identifying the type of planning system to be adopted and the policy priorities of that system, within which government planning officials, the community, the development industry and of course the Town Planning Board are expected to operate their skills. By this means, the POSITIVE and PRO-ACTIVE ingredients will be maintained to facilitate and promote development for the community.

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Crisis Amendments (1990) - Agricultural & Rural Areas

The crisis of 1990 related to the Agricultural and Rural Areas of the Territory where open storage on AGRICULTURAL LAND necessitated the introduction of emergency measures aimed at stopping misuse of agricultural land and giving a power of veto to the Town Planning Board on development proposals. Since that time the Town Planning Board has gradually introduced various types of plans in Agricultural and Rural locations. These are, however, predominately "broad brush" concepts only. This is further complicated by the different sizes and shapes of agricultural lands which are in multi-ownership. As a result the final "quantum" of development and its siting are frequently not known until after a submission is received from the developer and approved by the Town Planning Board.

The Agricultural & Rural Areas are therefore a "different animal" from the Urban Areas. Individual project by project approach is frequently necessary because of the uncertainties and "broad brush" nature in some of the plans. The timing of public consultation may therefore affected in those particular zones.

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HKIS is of the view that the proposed ordinance has failed to make allowance for the major difference of planning system and planning circumstance between the Urban Areas and the Agricultural and Rural Areas. It has attempted to create procedures which amalgamate two diametrically opposed concepts and problems. In doing this, the procedures provide a "catch pit" for the worst case scenarios likely to arise in the Agricultural and Rural Areas. The "catch pit" is however "all encompassing" and the negative aspects of the procedures detrimentally affect the Urban Areas.

This is a case of the "TAIL WAGGING THE DOG". The pro-active development of the urban areas of the Territory should not be tied to the shirt-tails of the procedures necessary to deal with the Agricultural and Rural area problems.

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PART B

List of Policy Principles for Legislators to Consider *4-17*

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PART B
MAJOR PRINCIPLES REQUIRING LEGISLATORS' ATTENTION

1. Long Title - Policy Directives

a) It is quite alarming that all references to the "systematic zoning plans" and "systematic density zoning" philosophies have been deleted or omitted from the new ordinance because these two policy directives were based on very reliable legal principles and objectives (the antithesis of "systematic" is "chaotic").

b) Due to the omission of the POLICY DIRECTIVES set out at I & II (page 1 & 2 of Part A), the new ordinance fails to identify adequate limits, constraints, or directional guidance to government planners and the Town Planning Board.

c) The inherent danger of this situation is that "planning" as a public policy becomes isolated from other integrated public policies and the overall "balance of public policies" is undermined. In reality, the Planning Department becomes a "loose-cannon" working through the Town Planning Board and "parliamentary control" is diluted and ultimately lost.

d) HKIS considers it is essential for LegCo and ExCo to keep distinctive "parliamentary control" by incorporating policy directives in the new ordinance and particularly in the Long Title of the ordinance, which should be amended to read:-

To promote the health safety convenience and general welfare of the community and betterment of the environment by making provision for the SYSTEMATIC PREPARATION AND APPROVAL OF ZONING PLANS, and adopting A POLICY OF SYSTEMATIC DENSITY ZONING; and thereby promote the development of land and control the use thereof.

2. Public Consultation - Regional & Territorial Planning

Section 11 to 23 of the proposed ordinance combines the public consultation procedures on "planning studies" with the procedural provisions relating to the plan making process for local zoning plans.

HKIS believes this combination of events represents a major fallacy. It attempts to amalgamate two incompatible levels of planning (Policy Levels 2 & 3 on page 6), and creates confusion in the public consultation process:-

a) Planning Studies generally have wider implications relating to Territorial & Regional issues and the formulation of territorial and regional planning

policies.

b) Until these Territorial and Regional Policies have been opened for public consultation and the resulting policy decisions gazetted or otherwise made known to the public, it is both premature and inappropriate to ask the Town Planning Board to incorporate them into its zoning plans.

c) The overriding ExCo and LegCo policies at I & II (on page 1 & 2) have already been made known to the public. Accordingly, the public have a right to know in advance whether those ExCo or LegCo policies are likely to be detrimentally affected by the intended Territorial & Regional policies. Representation by the public at this higher level of government is outside the competence of the Town Planning Board.

d) At the local level (i.e. new or amended local zoning plans), the public consultation process for the local community becomes chaotic if Territorial & Regional policy issues are confused with arguments relating to the detailed planning layout on a local level, or the detailed planning intent of a local zoning plan, at the hearing of the Town Planning Board.

HKIS therefore proposes that

i) a new PART IX be introduced into the new ordinance to deal with public consultation on Territorial & Regional Planning Policies (see *).
ii) the existing PARTS IX & X be renumbered as X & XI.
iii) Section 11 to 23 be simplified and rewritten to allow 2 months prior consultation for new or amended zoning plans to allow the local community to fully understand the content of the plans and comprehend the statutory notes.

(*)The most important issue on public consultation has not been addressed in the new ordinance - namely the Policy Level decision making process. In this context, the proposed Section 15 of the new ordinance requires the Town Planning Board to take account of "statements of Government Policy", but there is no definition of "government policy", no indication at what level of government such "policies" are made, and no provision for public consultation. If such "statements of Government Policy" are to influence statutory plans, some form of statutory consultation is essential. The new Part IX should identify the existing system of policy level decision making:-.

Level 1 ExCo & LegCo policies at I & II above (which establish "planning" as a public policy in the context of public policies relating to finance and land).

Level 2 Policies relating to Territorial & Regional Planning. These are generally dealt with at LDPC and other in-house government committees as a result of Planning Studies and Administrative

Documents (such as MetroPlan, Development Statements, Planning Standards etc). These documents frequently bypass Town Planning Board objection hearings which defeats the right to object under the ordinance.

Level 3 Local zoning plans which together with statutory notes, identify the planning intent and local planning policies of the particular geographical location. These are determined by the Town Planning Board.

3. Downgrading of Landowners Rights

This is an area of major concern. The new ordinance is written in a manner which increases the unconstrained powers of planners, and ignores the systematic density zones which have been the backbone of the existing planning system. Some of the changes are highly questionable in the context of the Basic Law and the promise that the rights of Hong Kong landowners will remain unchanged for 50 years.

In the context of planning, the person most detrimentally affected by planning ideas is the landowner. The following major changes in principle have been written into the Ordinance.

i) a) The RIGHT OF OBJECTION has been removed. Historically this is a fundamental right of landowners created by the situation where planning plot ratios are sold at full market value and incorporated in land documents as part of the public land and finance policies.

b) The right to make an "adverse presentation" is a very different issue from the right to object. The general public may well have "adverse presentation" to make.

ii) The new Section 39 requires the landowner to dedicate land to government without compensation and make mandatory contributions to public facilities, and constructing and maintaining public facilities. This Section requires amendment/clarification.

iii) The Ordinance fails to distinguish between

a) land which is building status as a result of government selling planning rights with the land and
b) land which is in agricultural status and affected by the 1990 amendments.

(As a consequence, planning impositions which may be reasonable for group (b) lands may be discriminatory or penalising if applied to group (a) lands. Injustices to landowners will be created).

HKIS is of the opinion that:-

i) The landowners' right of objection must remain in the ordinance in view of the landowners' unique status in the Hong Kong system of government.

ii) Compensation provisions need to be built into the ordinance unless the excessiveness of the planners' powers is re-examined and amended.

iii) The ordinance needs to separate various clauses so that the problems in Agricultural and Rural areas are separately dealt with.

iv) A provision be made whereby the "density zoning schedules" are gazetted by Regulations for the community to see.

4. Fair Hearing Process - The Independence of the Town Planning Board

There are two general types of function carried out by the Town Planning Board:-

a) The preparation of zoning plans and

b) The "arbitration" function of

i/ hearing and deciding on objections against the zoning plans and
ii/ deciding on the Section 16/17 development proposals (existing ordinance)

In the majority of cases at (b)(i) & (ii) - especially in the Urban Areas due to the historic selling of planning rights at full market value, - the rights and interests of landowners are diametrically opposed to the interests of the planners who frequently attempt to erode the entitlements of landowners.

HKIS believes that the Town Planning Board must be independent and be seen to be independent, since there are diametrically opposed views to be resolved (at (b)(i) & (ii)).

For this purpose, HKIS proposed in 1994 that an Independent Secretariat be established, and that, inter alia, the Secretariat should be responsible for writing the papers of the Board in respect of group (b) functions.

The excuse given by government was that the Planning Department would have to transfer too many staff. HKIS believes that the secretariat does not need to be wholly staffed by planners. The majority of Town Planning Board members are lay-persons and highly technical planning papers are not necessarily the appropriate format in this connection.

HKIS suggests that to increase the fairness of the hearing process and the independence of the Town Planning Board the following are necessary:-

i) An independent non-official Chairman and Deputy Chairman.

ii) An independent Secretariat to serve the Town Planning Board.

iii) Professional Institutes skilled in the development process should nominate their own representatives instead of being selected by Government.

iv) A "Tribunals and Inquiries Ordinances" should be introduced simultaneously to govern the principles and procedures of Tribunals and Statutory Boards in Hong Kong including the Town Planning Board.

In June 1991, SPEL acknowledged in LegCo that as a matter of principle there is a need for a hearing which is not just fair but seen to be fair. The new ordinance makes no such provision. The proposals at (i) to (iv) above will greatly improve the "fair hearing process".

5. The Planning Certificate - Judge Jury & Executioner Syndrome

HKIS totally rejects the proposal for a Planning Certificate.

The fair hearing process is established in the statutory system as a LEGAL PROCESS to ensure that a fair and objective decision is made independently by the Town Planning Board.

At the plan making stage, when that legal process is complete and the Town Planning Board has finalised its decision at the objection hearings, the interpretation of the rights of the landowner under the resultant finalised zoning plan is a matter for the law and the Courts. It is not a matter for the Director of Planning (who first prepared the zoning plans) to interpret. **This would create an absurd Judge, Jury & Executioner syndrome**.

Similarly, after hearings of the Town Planning Board on a "permission application", the Town Planning Board issues a formal letter stating its decision. The interpretation of that letter is, again a matter of the law and the Courts, and not the Director of Planning, whose department is an adversarial party to the proceedings.

In practical terms, a professional town planner may be regarded as an expert in the day to day planning activities. It is the Courts, however, who are experts in interpretation.

In legal phraseology, Gifford & Gifford (Town Planning Law & Practice) summarises the position as follows:-

[2-32] It is not for a town planning expert, but for the courts, to determine the meaning of the planning controls. A town planner's evidence as to the meaning of such controls "would be quite inadmissible" in court.[1]

1 *Toy Warehouse Ltd v Hamilton CC* (1986) 11 NZTPA 465 at 467-468; [1987]TPG par 1068 (NZHC). See also *Matthews v Ringwood CC* (1963) 60 LGRA 175 at 188; [1987] TPG par 1224 (Vic SC); *Reese v Rin right of Alberta* (1992) 7 CELR (NS) 89, McDonald J at 112; [1994] TPG par 368 (Alta QB).

6. Site by Site Discrimination

Section 9(1)(a) brings in a new concept delegating powers to the planners and the Town Planning Board allowing them to discriminate on a site by site basis within the same zone by imposing different heights on different sites in the same zones.

This is in direct conflict with the principle adopted by ExCo - **"that it is in the public interest to follow a policy of systematic density zoning"**. HKIS is opposed to the principle of allowing government planners to discriminate between different sites in the same zone and proposes that the standard density zones approved by ExCo should be gazetted and incorporated into Regulations under the new ordinance for the whole community to see. This would assist with public consultation when the zoning plans are published.

It is dangerous and unpredictable to allow planners to discriminate on individual sites by arguments relating to very subjective issues such as heights, appearances etc. **Compensation should be payable for urban sites if this principle is adopted**.

The whole concept of discriminating on heights, and other subjective issues together with the whole concept of urban design was disputed at length and subjected to considerable criticism in the LBAC Sub-Committees and main committee meetings, when government tried to introduce this principle by a new chapter under the Planning Standards. The proposals were rejected by the private sector representatives.

HKIS totally rejects this proposal insofar as urban areas (land in building status) is concerned because planning rights have already been sold with the land documents, based on the systematic density zoning policy.

In the Agricultural and Rural Areas where government has still not finalised or sold the planning rights (lands in agricultural status), there may be some scope for this principle - provided the justifications are identified in advance by a specific zone. Nevertheless, HKIS objects in principle as it is the thin end of the wedge, and the systematic zoning plans and systematic density zones have proved their worth to the development of this community and the fair and consistent treatment of landowners.

The planning system exists for the community, not as a toy for the planners.

From a practical and realistic point of view, it is highly questionable whether planners should be allowed to step into the shoes of the architectural profession in Hong Kong which has built some of the finest buildings in the

world. If government planners have time to involve themselves in architectural detail, it means that the wider issues of planning are not being addressed (or there is a surplus of staff). **The costs to the community of government planners involving themselves in architectural matters should be assessed.**

HKIS is opposed to site by site discrimination within the same zone. Systematic Zoning Plan philosophy places a discipline and obligation on government planning officials to justify their actions at the plan preparation stage under the plan preparation procedures. This is a more visible procedure for public consultation purposes. Whimsical and idealistic concepts become more open to public scrutiny under the systematic zoning plan disciplines.

7. Delays and Deferments of Projects

Section 34(3)(d) & (e) of the new ordinance proposes that the Town Planning Board should refuse to process "permission applications" under the circumstances listed. It provides a "catch-pit" for the worst situations in the Agricultural and Rural areas, but fails to recognise that the "refusal to process" may lead to extensive and unnecessary delays in project development in the Urban Areas.

Section 34 is wrong in principle and should be deleted. (Except, possibly, for Agricultural & Rural areas where it should be rewritten to make it clear that delays and deferments are not permitted for "administrative expediency" or because the planners are waiting for a new study or are thinking of introducing a new policy or new zoning plan). The application should be judged on zoning plans in existence at the date of application (see (iv) below).

The wide ranging detrimental impact of this Section would be reduced by:

i) Separating the Rural and Agricultural Areas procedures from the Urban Area procedures. (Similarly with Section 38(2)).

ii) Separating the public consultation on Territorial & Regional policy issues (as addressed at item 2 on pages 4 to 6) from the local consultation process for zoning plans.

iii) Adopting the principle of prior public consultation on Urban Area zoning plan amendments, instead of holding the consultation period after the amended zoning plan becomes law.

iv) Stating in Section 34, the fundamental principle - "that any 'permission application' shall be judged in accordance with the planning intent of the zoning plan in existence at the date of application".

In particular, Section 34(3)(e)(iii)A is a major new principle, which in the Urban Area could bring developments to a halt. Loss of views is a reduction

in values. Is it seriously considered that new developments should be delayed or rejected when this occurs? It is highly questionable whether loss of value is a planning consideration.

8. Public Consultation - Zoning Plans

When "systematic density zones" and "systematic zoning plans" are adopted and the zoning plan is adequately prepared, public consultation is simplified, since the intentions of government planners and the Town Planning Board within the geographical locality can be ascertained by the community from content of the zoning plans and the statutory notes attached thereto.

The plot ratio content of the plan, together with Column 1 uses, indicate clearly what can be developed on the site. Column 2 indicates the "optional extra" uses and again the community can identify these uses.

Generally speaking, therefore, 2 months should be adequate for public consultation of local zoning plans, and in view of the "certainty" of the zoning plans, only one public consultation period is necessary. It is not necessary to re-gazette the Section 16 applications (existing ordinance).

It is however, suggested that any controversial uses in Column 2 such as billiard halls, ballrooms etc, could be given a "Column 3" classification, and a further reminder to the public be gazetted if the Column 3 option is adopted.

In Agricultural and Rural areas, however, for reasons already mentioned, the zoning plans are "broad brush" only and the "quantum" of development cannot be identified until a detailed submission is made by the private sector. In this instance, the public consultation procedure may require additional exposure in the same manner as a "re-zoning" application in the Urban Area.

In Comprehensive Development Areas, a similar argument may arise. However, HKIS has dealt with this separately as we believe that the CDA zoning is much abused by government planners.

Public consultation is a double-edged sword if it is not clearly defined, and public education on the contents of the zoning plans is advisable. For example, if a flat owner successfully objects because his views will be affected, the policy of maximising land use in accordance with Density Zones approved by ExCo would be defeated and the whole system becomes unpredictable. This is one reason why the policy objectives outlined on pages 1 and 2 of this Report relating to "systematic zoning plans" and "systematic density zones", should be incorporated in the ordinance or its regulations. The ordinance needs to be very clear on such principles.

9. Dangers of Planning Isolation - S.16(1)(d) of Buildings Ordinance

Since the time of 1990 amendments, there has been a trend towards isolating

"planning" as a public policy from the overall development of the Territory. This is considered to be a disruptive influence in terms of the development of the Territory. We have seen government put in breach of its own land contracts in Kwai Chung. We have seen confrontation in the Harbour Reclamation, and other disruptive issues such as buildings under construction brought to a standstill in Midlevels and Tsuen Wan.

The historical evolvement of planning in the Territory has - by ExCo policy and LegCo decisions - moved forward side by side with the public land policy, and the Buildings Ordinance speciality. Any abrupt re-writing of this history will lead to further disruptions and injustice. Why is there an assumption that the earlier policy-makers in ExCo and LegCo did not have foresight or wisdom in formulating a balance of professional disciplines incorporating Land - Building - Planning?

LegCo originally introduced (what is now known as) Section 16(1)(d) of the Buildings Ordinance in order to provide the necessary procedural and policy link between the Buildings Ordinance and the Planning Ordinance in order to implement more fully the statutory zoning plans.

At a later date, the Centralised Processing System for Building Plans was specifically introduced to improve efficiency and for more than 20 years it has provided a streamlined decision-making process. It is a simple and efficient procedure understood by everyone and enables the landowner to be aware, within the 60/30 day statutory period, of all requirements of various government departments, including confirmation or otherwise that the proposed building plans are considered acceptable under the zoning plans. This is in accordance with the Government and LegCo intention when (the original) S.16(1)(d) was introduced. **The proposal to delete S.16(1)(d) from the Buildings Ordinance is therefore unacceptable.**

Planning cannot be done in a vacuum. It needs to recognise the wider implementation specialities necessary to promote development for the Territory.

10. Comprehensive Development Areas

This is a much abused classification when applied to urban sites in building status. These are basically "redevelopment areas" not "development areas". At present the government planners adopt the attitude that they can "do anything they want" in a CDA simply because the zoning is referred to as CDA. HKIS considers that Regulations should be introduced to govern the use of CDA's including:-

a) i/ the landowner should have the right to object to the inclusion of his site into the zone, the effect of which is to sterilise his site and prohibit any development unless other owners of adjoining sites are willing to redevelop simultaneously.

ii/ if the landowner can show he is in a position to "go it alone" and commence redevelopment within two years then his site should be excluded from CDA. Alternatively, government should resume immediately. This will become even more important if Urban Renewal policy intends to extend the use of CDA zones and stagnate private redevelopment pending an urban renewal scheme by public corporations such as LDA, Housing Society etc.

iii/ Urban renewal goes beyond "planning". It effectively identifies private land for resumption when LDC or similar organisations are "the agency".

b) The regulations should further clarify

i/ that the plot ratio and development potential of any site under a CDA shall be judged on the same fundamental planning criteria (eg. infrastructure) as other Density Zones.

ii/ if the CDA is downgraded in plot ratio because the planners want it for a "solution site" or other public purpose, compensation should be paid.

iii/ if land is required for road widening or public right of way purposes, the principle of bonus plot ratio under B(P)R's should be available or compensation paid. There is no justification for excluding such entitlements simply because the land is described as CDA.

iv/ the identification of "site" for counting plot ratio should be in accordance with the Buildings Planning Regulations.

11. Special Design Areas -Environmentally Sensitive Areas
- Designated Areas

For Special Design Areas, see Item 6. If these are applied in Urban Area lands, compensation should be payable.

For Environmentally Sensitive Areas, if these interfere with land in building status, compensation should again be payable.

As a general principle, both of these classification should be restricted to lands in agricultural status.

For Urban Lands, we find it wholly illogical for government to sell land with planning rights for building purposes and having received full market value, to suggest some years later that "environmental sensitivity" should sterilise the land or seriously interfere with its development. Similarly with Special Design Areas. More clarification should be sought on the meaning of

"Designated Developments".
We believe it is worth repeating two principles:-

i) In the urban areas, the planning rights have, over many years, been identified by the systematic density zone policy, and sold to landowners. Therefore, the administrative powers of planners to interfere with development should be kept to a minimum and based on systematic principles, bearing in mind that the opposite of "systematic" is "chaotic". Consistency of principle is a fundamental principle of planning, and it is particularly important in the urban areas of Hong Kong due to the relationship between planning rights and land documents.

ii) In the rural and agricultural areas, however, the planning rights are still being formulated, and in the majority of cases, the land is still agricultural, and government has not yet sold the planning rights. In these circumstance an element of flexibility for planning powers may be arguable.

12. <u>"Moving the Goalposts"</u>

The legal concept for (S.16) "planning applications" is shown at (i), (ii) & (iii) below and these requirements fall in line with "systematic zoning plan" principles.

i) At the Zoning Plan Preparation Stage, and after the hearing of objections and public opinion the Town Planning Board finalises its "planning intent" and identifies this on the Zoning Plan itself or in the Statutory Notes.

ii) If a "planning application" (S.16) is subsequently submitted it shall be judged on its merits in accordance with the "planning intent" of the zoning plan in existence at the time of application.

iii) This provides consistency of principle between the "as of right" developments under zoning plan, and the "planning application" developments under the same zoning plan.

Government departments are, however, bypassing the hearing process at (i), and distorting the principles at (ii) & (iii) by writing or re-writing Administrative Documents at the Territorial & Regional level and quoting extracts from these documents (as if these were statutory policy) when individual "planning applications" are being considered at the Town Planning Board.

Examples of this in the 16 Kowloon Zoning Plans are:-

i) Quoting references to "heights" from Development Statements, when the Town Planning Board has not adopted the height principle as a

"planning intent" in the zoning plans, and the Development Statements were not in existence at the date of the zoning plans.

ii) Re-writing the Residential Planning Standards without prior consultation, after finalising the Zoning Plans, and introducing restrictions to 6.5 plot ratios on CDA's in contravention of earlier consultations on CDA zones.

iii) Processing Planning Briefs, with artificial constraints, through the Town Planning Board in the absence of the Landowners, and after the hearing at (1) above.

iv) Introducing arguments relating to 2011 traffic patterns when individual applications are submitted, when the whole of the Zoning Plans were based on 2006 traffic patterns.

v) Attempting to introduce new principles of Urban Design "through the back door" by incorporating these principles into a new chapter of Planning Standards. (This was rejected by the private sector during LBAC discussions).

We consider it is essential to bring all Administrative Documents at Territorial & Regional level into a "new PART IX" of the proposed ordinance as suggested on page 6 of this Report. Gazetting of the resultant "policies" for the public to see is essential, and prior public consultation is necessary. Otherwise, the planners are effectively "writing their own law" because the statutory system does not encompass the policy making instruments at Territorial and Regional level.

The effect of "moving the goalposts" is that whereas some 12,000 or more sites are dealt with on a uniform basis in Kowloon, some projects requiring a S.16 application are dealt with on a discriminatory basis - a major move away from the systematic policies established by ExCo and LegCo and the general "consistency of principle" in planning law.

If the Government Planners wish to bring in new policies, HKIS considers that the Zoning Plans need to be revised before such policies are put into practice, and that such revised zoning plan should not have retrospective effect.

13. Costs

The Consultancy Paper provides no estimate of costs to the community of the new proposals. As a result HKIS is unable to make comment. However, it is self-evident that to meet the community's needs a sensible balance is required to ensure that the development industry (who has purchased planning rights from government through the land system), is allowed to implement development if the development proposals comply with the "planning intent" of the zoning plans - without over zealous bureaucratic interference.

In any profession, it is possible for professionals to get so obsessed with their own professional disciplines and opinion that public money is wasted on unnecessary arguments. ("Put 4 architects - or surveyors - or planners into a room to discuss subjective issues and you will get 5 opinions"?!!). The "sensible balance" and cost to the community is clearly an important issue to be determined at LegCo/ExCo level when considering introducing new legislation. Clarity of intent is most important and in this respect the SYSTEMATIC PRINCIPLES of the existing system have considerable merit.

14. Public Land Policy

Until comparatively recently, the public planning policies were documented partly in zoning plans (land uses only) and partly in land documents. With the transfer of Density Zone Plot Ratios into the statutory zoning plans, the residual role and objectives of the Public Land Policy should now be reviewed and more clearly defined. The Public Land Policy should be opened to the public for greater visibility, and Land Instructions be incorporated into Circular Letters to Practitioners.

15. Compensation

i) Agricultural Lands

The landowner has not yet purchased any urban type planning rights. These will be sold by government to the landowner after the planners have established the plot ratio entitlement. Accordingly, the question of compensation does not arise.

ii) Urban Lands

a) Where the lease is specific in entitlement, compensation should be paid if the planners reduce these entitlements.

b) Where leases are not specific, it is essential that the planners act consistently within any development zones (systematic density zones). If the planner singles out an individual landowner (or landowners) for discriminatory treatment within any zone, compensation should payable.

c) Where the planners demand land for public purposes, public user, or require provision of public buildings (in excess of those required to specifically serve the development on the site), compensation is justified - or resumption if appropriate.

d) Heights - or other "appearance" controls are discriminatory if these will reduce plot ratio entitlement permitted by the Density Zones established under systematic density zoning principles. Compensation should be paid.

e) Solution Sites - compensation should be paid when plot ratios are reduced, because the planners regard the site as a solution to general planning-ills in the locality.

f) The Resumption provisions in the ordinance should be mandatory if the Town Planning Board zones private lands for public purposes (roads etc) unless an agreement to the contrary, is entered into between Government and Landowners in respect of the land.

iii) General

Different countries have adopted different approaches to general compensation when introducing severe planning powers. See example (a) & (b) below. However, general compensation is unrealistic in Hong Kong provided that the planners' powers are restrained to systematic principles and/or specific compensation provisions are identified when the planners' powers are determined by LegCo (see (ii) above)).

a) UK - Paid compensation in 1947 in order to nationalise the development rights of landowners (and thereafter redistributed those planning rights free of charge).

b) Singapore - The Singapore Improvement Ordinance was in place some 30 years with general compensation provisions which allowed settlement of outstanding claims. Thereafter, the Planning Act was introduced.

- END -

Note: To avoid excessive detail, a clause by clause analysis of the proposed ordinance is not included in this report. HKIS considers that a wide range of other detailed issues will need to be examined when the fundamental principles at Items 1-15 above have been determined. Some miscellaneous aspects are at Appendix B/1.

1. **New "Part IX" of Ordinance** (see Item B2 on page 4, 5, 6)

HKIS considers it is important to place the Territorial and Regional level of planning on a statutory basis and establish a high level Statutory Forum to hold inquiries when formulating Territorial & Regional policies.

Territorial and Regional "Policies" need be specifically identified and gazetted for public consultation together with a statement of how they are intended to affect local zoning plans or amendment plans prepared by the Town Planning Board. Following the inquiries the approved "Policies" should be formalised and gazetted.

The structure of the Statutory Forum and its relationship with ExCo/LegCo level of policy making should be set out in Part IX. Similarly its relationship with the Town Planning Board (and in the latter context it could take on the responsibility for "Inquiries" under S.21 of the proposed ordinance).

HKIS considers that the membership of the new Forum would need to include representation from ExCo/LegCo level, representation from Town Planning Board level as well as from LDPC level. Together with appropriate members from the public and professional institutes.

2. **Definitions** are required for:-

"Statements of government policy"
"Findings of studies" } Section 15 & 38

"Site" (Section 2) - *For land with building status under the lease, the meaning of "site" for the purpose of plot ratio shall be determined in accordance with the principles of the Building (Planning) Regulations (Cap. 123 sub-leg).*

For land in agricultural status under the lease and intended to be converted to building status, the meaning of "site" for the purpose of plot ratio shall be determined by the Town Planning Board.

"Solution site" (MetroPlan)

3. **Deletions**

All references to Planning Certificates.
All references to Criminal Penalties.
S.10(1) Delete "unless otherwise directed by the Governor".
Delete S.6(4).
Delete S.4(5)(c).