

The Hong Kong Polytechnic University

**Zoning or Negotiation?
An Economic Analysis on Which
Way a More Efficient Planning
System would Result.**

Submitted for the Degree of Bachelor of
Science (Hons) in Building Surveying

Department of Building and Real Estate

By

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Hong Kong, April 2001

Acknowledgements

The author would like to express his deepest gratitude to those who have generously given their advice and help for the dissertation. First of all, I would like to thank my dissertation supervisor, Dr. Stanley Yeung, Assistant Professor of the Department of Building and Real Estate in The Hong Kong Polytechnic University, for his patient guidance, instructive opinions, critical comments and valuable support throughout the course of my research.

Specials thanks should also be given to Mr. C.P. So, the Principal of Wah Yan College, Kowloon, for his generous help in giving information on the proposed development project of the school, Mr. C.W. Lee, for his appreciated support and patience, the officers in the Planning Department, for their friendly reply to my request of matters of planning system in Hong Kong, and my parents, friends and colleagues for their unfailing support.

Abstract

This paper is written for the purpose of evaluating the planning system in Hong Kong by making use of the economics of transaction costs. After reviewing the thoughts of Pigou and Coase on the matter of town planning and the implementation of planning concepts into real-world practices in the United States and Britain, a cost benefit approach is selected for the analysis of the costs of transaction involved in the local planning system. A model of two extreme systems, the "pure zoning system" and the "pure negotiation system" is established for better comparison of the costs of transaction entailed in Hong Kong's planning system. After the assessment of the transaction costs in the aspects of preparation of zoning plans, formulation of planning rules, adoption of relevant regulations, enforcement of the planning ordinance, amendment of the zoning plans, planning application and matters of rezoning, a conclusion that the "pure negotiation system" is less efficient than the "pure zoning system" could

be achieved, provided that the benefits brought by both systems are the same. Since the planning system in Hong Kong is gradually changed from a "pure zoning system" to a "pure negotiation system", areas of discretion are becoming larger, especially during the process of planning application, thus more uncertainty is produced, which resulting a greater costs of transaction. The author is not suggesting that Hong Kong should adopt the "pure zoning system" to implement its zoning policy, as the assumption of similar benefits would be resulted from the two different systems could be rebutted by the fact that the "pure negotiation system" would bring a better urban form because it could reflect the market needs to a greater extent than the "pure zoning system". If that is the case, what is recommended is that there should be a change to the present arrangement of the planning application procedure: rejected reasons given by the Town Planning Board and the Town Planning Appeal Board shall be made statutory. In the case where objections from the developers shall arise, the Court has the power to interpret the ordinance, i.e., the

planning rejection reasons, and the case shall become precedent. It could remove the unclearness of the present planning system so that applicants could have more understanding on the situations under which planning approval would be granted in order to minimize the costs of transaction involved and therefore a more efficient planning system could result.

Lists of Abbreviation

A	approved without conditions
AC	approved with conditions
AX	temporary approval with or without conditions
C	commercial
C/R	Commercial or Residential
Cap.	Chapter
CDA	Comprehensive Development Area
D	deferred
DPA Plans	Development Permission Area Plans
EN	Enforcement Notice
G/IC	Government / Institution and Community
GB	Green Belt
HKPSG	Hong Kong Planning Standards and Guidelines
HKSAR	Hong Kong Special Administration Region
HS	Housing Society
I	industrial
IDPA Plans	Interim Development Permission Area Plans
L/U	loading or unloading
LDC	Land Development Corporation
LPAs	local planning authorities
LPs	Layout Plans
MLP	Master Layout Plan
MPC	Metro Planning Committee

No.	number
O	open space
ODPs	Outline Development Plans
OU	Other Use
OZPs	Outline Zoning Plans
R	residential; rejected
Rd	road
RN	Reinstatement Notice
RNTPC	Rural and New Town Planning Committee
s.	section
sq.m.	square metre
SN	Stop Notice
SRDS	Sub-Regional Development Strategy
ss.	sections
St	street
TCPO	Town and Country Planning Ordinance
TDS	Territorial Development Strategy
TPB	Town Planning Board
TPO	Town Planning Ordinance
UD	unauthorized development
UDCs	urban development corporations
U	Unspecified Use
U.S.	United States
V	Village Type Development

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Chapter 1

Introduction

1.1 Background

Economic analysis of urban planning did not emerge until Karl Marx, who suggested that government intervention was essential as market force was inefficient in solving some economic problems. In the research of Professor Arthur C. Pigou (1932), *The Economics of Welfare*, the introduction of the ideas of externalities and public goods contributed to a positive reason for the supporters of government intervention to the land market where market failure occurred. Since then, two schools of thought have been competing. The Pigovian paradigm suggested that visible hand from the government was necessary to rectify the market failure; while the Coasian paradigm suggested that allocation of resources by market would be always efficient provided that the property rights would be well defined and the transaction costs would

be zero. In his research paper entitled *The Problem of Social Cost*, the Nobel Prize Winner in Economics, Professor Ronald H. Coase (1960), highlighted the reciprocal nature of externalities and showed that in the absence of transaction costs, the free trade of pollution rights would lead to an optimal level of pollution. He demonstrated that the party to whom exclusive property rights were assigned in problems of external cost did not necessarily affect the resulting output equilibrium, so that externalities could be internalized.

In Hong Kong, the planning concept, as seen by the writer, is gradually changed from a "zoning approach" (in which the use of land should be in accordance with the zoning under the pre-determined planning scheme laid down in the statutory Outline Zoning Plans) towards a "negotiation approach" (in which change of land use could be done through section 16 planning application by any individuals to the Town Planning Board (Town Planning Ordinance, Cap. 131), with the

introduction of negotiation between various disciplines of professionals). Negotiation processes involved in land-use planning have been criticized of non-openness and low transparency by some scholars (Lai, 1987; Lai, 1994; Lai, 1996; Klosterman, 1985; Smith, 1990), thus unavoidably creating much uncertainty, raising transaction costs in the market. However some people believe that negotiation would enhance the planning process and increase land values by integrating the market situation at an early planning stage (Booth, 1996; Chan, 1998). In the light of this, assessing the role and performance of town planning is a need and is important to both policy makers and property developers. This is the objective of this paper, which aims to evaluate the two thoughts in the urban planning in Hong Kong.

1.2 Objective

This paper is written for the purpose of assessing the role and performance of town planning in Hong Kong for both policy

makers and property developers by applying the two schools of thoughts about the economic nature of urban planning into the Hong Kong context, thus providing the writer sufficient grounds to conclude which approach - the "zoning approach" or the "negotiation approach" - should be adopted in the territory.

This research paper is expected to achieve the followings:

1. To give a clear understanding of different paradigms of economic nature of urban planning and to discuss the economic rationale behind land-use zoning;
2. To apply the economic concepts of externalities, transaction costs and property rights into urban planning;
3. To identify the major components in the planning systems in the United States and in Britain;

4. To analyze the current planning control system adopted in Hong Kong;
5. To evaluate which one -- the "zoning approach" or the "negotiation approach" -- would result in a better allocation of land resources.

1.3 Methodology

The literature of economic nature of planning written by various scholars would be discussed in order to understand why planning is needed or not needed in a country. A literature review is conducted to demonstrate the two conventional opposing ideas towards land-use regulations: the Pigou and the Coase thoughts. From the Pigovian works, the merits and reasons for calling interventions is examined; while the review of the Coasian literature is used to tell a complete story about the advocacy for non-intervention. These two completely different philosophies are then to be

used as the basis for the analysis of the efficiency of the planning system in Hong Kong

As urban planning is not unique in Hong Kong, this research paper would also examine the current planning practice in the United States and Britain so as to compare how different countries react to different planning systems and how different countries implement their planning concepts. By applying the relevant economic theories into the Hong Kong planning context and comparing it with other developed countries, two case studies are studied in order to demonstrate the situation under which planning approval would be granted upon requesting the change of land-use.

1.4 Organization

This dissertation is divided into seven chapters.

Chapter One is an introductory chapter informing of the

background information concerning the different thoughts of planning from different economic scholars and the current trend of the planning system in Hong Kong. The objectives, methodology and organization of the dissertation are also explained.

In Chapter Two, literature is reviewed on what planning is and why it is needed. A review of the Pigou's and the Coase's thought is presented to establish the theoretical framework for the analysis. These two extreme views -- interventionism and deregulatory belief -- are assessed and criticized. Allocation of property rights, with its application in the land-use planning context, is also discussed.

An overview of the planning systems adopted in the Britain and the United States is briefly described to see how different countries in the world put the planning philosophy into practice in Chapter Three. The current planning system, the respective legislation, the authority concerned and the

planning process in Hong Kong is thoroughly studied.

In Chapter Four, a model of two "pure" planning systems -- the pure zoning system and the pure negotiation system -- are established by the author for analysis and comparison. A cost benefit approach is adopted to investigate the model.

Chapter Five presents a cost benefit analysis of the current planning system in Hong Kong, as compared with the two "pure" systems laid down in the previous chapter.

A planning case study -- the proposed redevelopment project of portion of Wah Yan College Kowloon -- is examined to evaluate the effectiveness and efficiency of the current planning system in Hong Kong in Chapter Six.

In the last chapter, a summary of findings is shown and the limitation of the research is examined. Room for further investigation is also discussed.

Chapter 2

Literature Review

Literature on the Pigovian and Coasian thoughts in the economic nature of planning, the concept of property rights, the current planning systems in attempting to eliminate externalities in the United States and the Britain, and the urban planning system adopted in Hong Kong is reviewed in this chapter.

2.1 Meaning of Planning

Karl Marx was a famous scholar suggesting the concept of Central Planning, which means that the government should plan all activities for any individuals in a country (Rima, 2001). In this dissertation, what planning means does not lie on this direction. The topic of the dissertation is so designed in such a way that what is conveyed or signified by the term "planning" is Town Planning, which is the concept of land-use

planning in a country done by the government. In the following paragraphs, planning is explicitly intended to mean Town Planning.

Planning is intervention with an intention to alter the existing course of events (Campbell and Fainstein, 1996). It is concerned with the long-term development (or preservation) of an area and the relationship between local objectives and overall community and regional goals (Cullingworth, 1993). Rydin (1998) suggested that planning has three key characteristics. First, it is a future-oriented activity. It seeks to devise strategies which will lead to desired end states. Second, it describes a process by which the public sector, at central, regional and local levels, seeks to influence the activities of firms and households through guidance, regulation and incentives. Third, the particular type of planning is focused on the physical environment, but not economic or social planning. Although planning may include social, environmental or cultural planning, what

planning, or more precisely, town planning means is a planning of the physical environment of the land, which is in association with drawings and layouts for buildings, sites and urban areas, and it is a devising strategies for reshaping or protecting the built and natural environment. He explained that the goals of planning may cover: the redistribution of resources to disadvantaged inner city groups; the longevity of the built stock; the conservation of wildlife; or the encouragement of urban development.

However, Greed had a different idea on what planning means. Greed (1996a) argued that in the current times town planning appears to be many "plannings" rather than just one "town planning". It is not just a planning of land. Apart from being concerned with the regulation of physical land-use and development, which has been implemented through development control and development plan procedures, the scope of town planning, as a form of government intervention, not only has been primarily spatial and geographical in nature, but also,

nowadays, been "aspatial", that is related to social, economical, environmental or cultural trends, issues and problems.

Hobbs (1996) agreed with what Greed proposed. He pointed out that there are difficulties in defining the role of town planning because it has to change drastically over time. The continuous change has to occur despite the consistent promotion of formal planning goals to improve the "public interest" by shaping patterns of land-use.

Rydin (1993) provided a rationale for planning control, which is the improvement of the use and development of land in the public interest with emphasis being placed upon the openness of town planning to the demands of the general public. Pearce (1992) mentioned that this control over development can be categorized into strategic land-use allocations in terms of the quantity and location of land for different uses, and this control is in more detailed over the appearance,

arrangement and density of development, and relations between uses.

Adams (1994) thought that the welfare economics provides a rationale for town planning. This idea was also shared between Evans (1985), Harvey (1987), Reade (1987) and Rydin (1993), who believed that town planning was a way to rectify market failure and regulate various forms of externalities (The ideas of market failure and externalities is covered in the coming topics at a greater extent). The principles of welfare economics rest on the neo-classical presumption that governments should intervene to achieve improvements in efficiency or equity by rectifying market failures. The property market is seen as a special case: a market with a specific series of market failures, particularly associated with externalities, such as the provision of public goods and imperfect information. Keogh (1985) considered that town planning is seen as a response to these problems, designed to ensure an acceptable form and scale of development. This

is summarized by Evans (1985:195),

"From a land-use planning framework the most important cause of market failure is the existence of externalities of one kind or another, either external economies or diseconomies. With respect to land-use in an urban area external effects are endemic. Transaction between one party and another can rarely be "private" in the sense that they affect no-one not a party to the transaction. Any development affects others, in its construction, its appearance, and its use."

Reade (1987), in concerning the existence of externalities, argued that planning might be the process of maximizing the aggregate margin of positive externalities over negative ones, by rearranging land-uses.

Castell's work stressed the role of town planning in legitimizing the urban development process through its guise of rationality, technical neutrality and apparent concern for the public interest (Castells, 1977). The planning system was

understood to exist in order "..... to seem to be resolving social conflict equitably in a pluralist framework." The planning system helped "..... sustain a pluralist and participatory myth, especially at the local level....." (Edward, 1979: 23)

Barton (1996) argued that planning is for sustainability. The narrow view of planning -- as concerned with land-use plans and development control -- is no longer adequate (if it ever was). Planners now have an obligation to consider all the key environmental resources -- earth, water, air and atmosphere, energy resources -- and work with others for their sustainability. The goal is an improving and sustainable quality of life, for this and later generations.

In the local context, town planning is defined as the process of guiding and controlling the development and use of land, with the aim of promoting the health, safety, convenience and general welfare of the community. It lies on the principle that "planning is to encourage the right

development in the right place at the right time" (Planning Department, 1999).

After reviewing various literatures in explaining what town planning is, the author, having an understanding on the fact that different definition of town planning would be provided when it is viewed from different perspectives, would like to give his idea on what town planning should be. What the author suggests is that town planning should be a scheme of arrangement of land-use by the government in order not only to fulfill the future demand of land in the long run, but also to satisfy the current needs of the community in the short run, according to a "master plan" based on careful and comprehensive surveys and studies of present conditions and the prospects of future growth of the municipality, and embodying scientific teaching and creative experience. The so-called "plan" should be reviewed regularly for the purpose of trying to reflect what the public, or the market needs at a particular period in the future. What determines the

concern of the regulation and production of land-use plans and development control at different points of times should be an integration of not only physical and economic factors of a country, but also cultural, social, environmental, as well as political components of the community. Since the author believes that, by using an economic approach, the cost and benefits involved in town planning could be quantified and be easily compared, this dissertation is designed to analyze on whether zoning or negotiation would result in a more efficient allocation of land resources from the aspects of economics.

2.2 Transaction Cost Economics

After understanding what planning means, whether planning is needed is discussed in an economic sense. When talking about the economics of land-use planning, there are two competing paradigms, the Pigovian paradigm and the Coasian paradigm. In the following parts, the ideas under these two schools of thoughts are outlined in order to have a clear understanding of the economic nature of planning before we could go on to analyze the current planning system.

2.2.1 The Pigovian Paradigm

Arguments of “for and against planning” can be traced back to Adam Smith’s concept of invisible hand, which emphasized individual freedom and competitive force of the market. It was believed that, by the neoclassical economists, government regulation and planning was inefficient because it suppressed private initiative, impeded innovation and imposed

unnecessary financial and administrative burdens on the economy. Emphasizing individual freedom, reliance on the "impersonal" forces of the market, and the rule of law, the followers of Adam Smith called for minimal state interference in society's economic affairs to protect individual liberty and promote freedom of choice and action. On pragmatic grounds they argued that competitive markets could be relied upon to coordinate the actions of individuals, provide incentives to individual action, and supply those goods and services that society wants, in the quantities it desires, at the prices it is willing to pay (Klosterman, 1996). However, this "against planning" belief was challenged by Pigovian concept of social cost and externalities.

The Pigovian idea was originated from the research of Professor Arthur C. Pigou. In his thesis *The Economic of Welfare* (1932), the introduction of the ideas of externalities and public goods contributed to a positive reason for the supporters of government intervention to the land market where

market failure occurred.

2.2.1.1 Externalities and Social Costs

Social cost measures the value of the highest-valued alternative uses of the resources available to the whole society (Klein, 1977). In the circumstances where the equilibrium between the social costs and the social benefits does not equal to the equilibrium between the private costs and the private benefits, that means there is a divergence between private and social costs, externalities arise such that the society has to, in the case of negative externality, bear costs involuntarily, or in the case of positive externality, gain benefits without the need to pay for the compensation in return, due to individual actions which are made without taking consideration of the costs and benefits of the society (Samuelson, 1998). This market inefficiency is an indication of market failure (Pigou, 1932), which means that the market is not functioning well. Typical example of

negative externalities is pollution, in which the society has to bear the cost of pollution, such as medical treatment or anti-pollution measures, imposed by the individual who creates the pollution and is not required to pay for (all costs of) it. One example of negative externalities quoted in Pigou's article (1932) was the burnt woods caused by sparks emitted from an engine of railway nearby, in which the society could not but accept the cost of losing the woods, which was due to individual actions. Externalities do not only exist in the form of negative ones. The construction of Mass Transit Railway near the premise of the one who is not required to pay the total cost of it contributes positive externalities to this individual. Another example of positive externalities was quoted in Lai (1994). "..... where the benefits produced by one party are captured by another without compensation (such as a rose garden which is freely looked at by passers-by)" No matter which form the externalities are, according to the Pigovian economics, such uncompensated costs or unpaid benefits would result in economic inefficiency

and lead to market failure, where it fails to equate the marginal social benefits and marginal social costs since the market could only respond to private costs and private benefits.

In order to rectify the market failure induced by the presence of externalities, and due to the fact that the market is not able to regulate the said issue itself, Pigou (1932) argued that government intervention must be imposed.

A story of two roads as an example to show that government intervention is needed to rectify the market failure was raised in Pigou's *The Economics of Welfare* (1932).

"Suppose there are two roads ABD and ACD both leading from A to D. If left to itself, traffic would be so distributed that the trouble involved in driving a "representative" cart along each of the two roads would be equal. But, in some circumstances, it would be possible, by shifting a few carts from route B to route C, greatly to lessen the trouble of driving those

still left on B, while only slightly increasing the trouble of driving along C. In these circumstances a rightly chosen measure of differential taxation against road B would create an "artificial" situation superior to the "natural" one. But the measure of differentiation must be tightly chosen."

The conventional Pigovian solution to the problem is to pass a law, which may be in the form of taxation, incentive subsidy, production quota system or regulation, assigning some government agencies to regulate private firms creating the problems (Pigou, 1932).

2.2.1.2 Public Goods

The term "public goods" did not arise until Paul Samuelson, who argued that, by market mechanism, sufficient amount of the goods would not be supplied if the goods were public goods, the consumption of which by any one person did not reduce the amount available for the others for the reason that it could be consumed concurrently by many individuals simultaneously.

There would be no incentive, in such a case, for a free market to provide adequate amount (or none at all) of the public goods. Klosterman (1996) gave a precise definition of public goods, which is "jointed" or "nonrivalrous" (the goods, once produced, can be enjoyed simultaneously by more than one person); and being "nonexcludability" or "nonappropriability" (it is difficult or even impossible to assign well-defined property rights or restrict consumer access). Typical examples are streetlamps, roads and bridges. According to the Pigovian thought (1932), being the nature of concurrent consumption of public goods, the consumers, who actually have a demand for the goods, try to pretend to have no interest in them, so that they can escape the liabilities to pay for it and enable themselves to be "free riders". The market would not provide things free of charge. It results to the insufficient provision of the public goods, leading to market failure. Similar arguments can be made for the provision of education, public health programs, transportation facilities, and police and fire protection, which simultaneously benefit particular

individuals and provide shared, nonrationable benefits to the society as a whole.

Ratcliffe agreed with what Pigou suggested. In his book, *An Introduction to Town and Country Planning* (1981), he pointed out that:

"..... laissez-faire can all too often breed waste. The private developer seeking to maximize his personal profit frequently neglects the provision of both social services and public utilities"

One point should be noted is that the idea of public goods is also generally accepted by the planners and this, together with the problem of externalities, contribute to the rationale of the intervention of the local government in the land-use planning, in which the government tries to reserve land for community facilities, through planning regulations, in order to facilitate the production of sufficient amount of public goods and to eliminate the externalities which would otherwise

be created.

2.2.1.3 Application of Pigou's Thought in Town Planning

In the above Pigou's "two roads" example stated in Part 2.2.1.1, the government intervention is in the form of implementing a taxation system. When the intervention is put into the land-use planning context, it appears in the form of regulation. For example, suppose there is a factory which creates problems of air pollution to the nearby residential blocks. The residents as a result have got a poor health and have to pay for medical treatment or anti-pollution measures. Such land-use arrangement, with the imposition of zoning regulations, say, an introduction of a buffer zone, could be avoided so that the effect of air pollution created by the factory to the residents could be minimized. This kind of planning regulation -- zoning -- is the tactic that the local government is using in tackling the externalities, which lies on the Pigovian principle of planning.

Lai (1994) suggested that zoning has three key objectives, namely (a) to separate incompatible uses, which generate negative externalities which harm each other; (b) to integrate compatible uses, which generate positive externalities so that they are mutually beneficial; and (c) to interject public goods like roads and open space in suitable locations. In Lai's paper, *The Economics of Land-Use Zoning* (1994: 78-79), his example is best used for the illustration of the implementation of the Pigovian's concept in town planning.

"..... Consider three classes of activities: industrial, residential and commercial. In the absence of planning, we may imagine a "possible world" or "natural state" of random distribution of such activities Land-use planning is meant to prevent this natural state of random land-uses, and hence associated chaos, from occurring. Zoning is conceptually a two-step process. First, activities are grouped into classes, i.e. land-use zones, which are given certain identity labels like "industrial (I)", "residential (R)" and "commercial (C)" Secondly, such land-use zones are rationally arranged in spatial terms on a zoning plan

with the purpose of preventing uses which are considered incompatible for interfering with each other. Uses which are considered mutually beneficial and hence compatible, as in the case of residential and commercial, for instance, are put side by side The industrial zone is segregated from the residential zone in the upwind direction with a commercial zone as a buffer, with the objective of minimizing the environmental nuisance of the industrial zone It is easy to introduce a "public good" argument for zoning as well: zoning is a means by which the town planner reserves adequate land in suitable locations for development of, say, open space (zoned "O"). In addition, roads and mass transit railways are also treated as public goods the planner also seeks to reserve land via zoning or require planning conditions for uses such as open space and natural habitat which produce positive externalities."

2.2.2 The Coasian Paradigm

Even though the Pigovian economics provided a justification for planning in the way of market failure, the social cost caused by externalities and the need for the government to provide public goods were still questioned by the property rights economists. In the research paper entitled *The Problem of Social Cost* (1960), the Nobel Prize Winner in Economics, Professor Ronald H. Coase, refuted Pigovian theorization of social costs. Coase revealed that Pigou's analysis of social costs ignored the importance of transaction costs and private property rights.

2.2.2.1 Meaning of Transaction Cost

Coase (1960) gave what transaction costs mean in his famous paper *The Problem of Social Cost*.

"In order to carry out a market transaction it is necessary to discover who it is that one wishes to deal

with, to inform people that one wishes to deal and on what terms, to conduct negotiations leading up to a bargain, to draw up the contract, to undertake the inspection needed to make sure that the terms of the contract are being observed, and so on. These operations are often extremely costly, sufficiently costly at any rate to prevent many transactions that would be carried out in a world in which the pricing system worked without cost."

Steven Cheung N.S. (1987), in his essay, *Economic organization and transaction costs*, gave out a wider definition of transaction cost than what Coase suggested.

"In the broadest sense transaction costs encompass all those costs that cannot be conceived to exist in a Robinson Crusoe economy where neither property rights, nor transactions, nor any kind of economic organization can be found. This breadth of definition is necessary because it is often impossible to separate the different types of cost. So defined, transaction costs may then be viewed as a spectrum of institutional costs including those of information, of negotiation, of drawing up and enforcing contracts, of delineating and

policing property rights, of monitoring performance, and of changing institutional arrangements. In short, they comprise all those costs not directly incurred in the physical process of production. Apparently these costs are weighty indeed, and to term them "transaction costs" may be misleading because they may loom large even in an economy where market transactions are suppressed, as in a communist state."

Therefore, transaction costs refer to the costs incurred in a transaction, which may include costs of information, costs of negotiation, costs of drawing up and enforcing contracts and costs of establishing property rights etc.

2.2.2.2 The Coase Theorem

In Lai's research (1992), what Coase suggested was that the imposition of planning regulations might not only attenuate private property rights, but might also increase the costs of transaction. Coase (1960) highlighted the reciprocal nature of externalities and showed that in the

absence of transaction costs (including information costs, bargaining costs, costs for enforcement, costs for negotiation etc), the free trade of pollution rights would lead to an optimal level of pollution. He demonstrated that the party to whom exclusive property rights were assigned in problems of external cost did not necessarily affect the resulting output equilibrium.

The term "Coase Theorem" was not claimed by Coase himself; it was invented by Stigler (Cheung, 1990). Cheung (1990) identified three version of Coase Theorem. The first is found in Coase's paper on the *Federal Communications Commission* (1959):

"The delineation of rights is an essential prelude to market transactions."

Coase argued that clear delimitation of rights and low enough transaction costs are prerequisites to market

transactions.

A second version of the Coase Theorem is deduced from Coase's paper, *the Problem of Social Costs* (1960). It stated that if property rights are clearly delineated and if all costs of transactions are zero, then resource use will be the same regardless of who owns the property rights.

In Cheung's analysis (1990), what Coase's main concern was that, subject to the constraints that property rights are clearly defined and all transaction costs are zero, the aggregate (rental) value of the resources involved will be at maximum. Cheung (1982) argued that the dual specifications of clearly delimited rights and zero transaction costs are redundant. If there is a truly zero transaction costs, the delineation of rights can be ignored. He mentioned that, for the interpretation of resource use, the structure of rights and the nature of transaction costs are often two sides of the same coin: if one is specified, it is not necessary to

mention the other. Because "rights" are more abstract than "costs", if we have the option to choose one or the other, "costs" win.

A third version of the Coase Theorem (Cheung, 1990) states that if rights are clearly defined and transaction costs are zero, then economic efficiency will be satisfied.

As what Cheung (1990) stated, "A second version of the Coase Theorem is the most popular version of the theorem". The author, in his later part of the dissertation, would like to use this theorem in his analysis. The second version of the theorem is summarized as follows:

If: - (1) Property rights are well-defined; and

(2) Transaction costs are zero,

Then: - The allocation of resources will be identical, regardless of the initial assignment of property rights.

Since in the real world the costs of transaction would always be greater than zero, the way one chooses to attain efficiency should be as minimum as possible.

Coase (1960) used an example of conflicts between a cattle raiser and a wheat farmer growing on neighbouring land so as to demonstrate his theory. He illustrated that solving the problem of crops damaged by cattle, whether to put up a fence, or the cattle raiser to compensate the crops farmer, or the cattle were slaughtered, whichever the method was adopted by the raiser and the farmer, the aggregate loss would be kept minimum. What he tried to demonstrate was that the aggregate value of the resources involved would be at maximum, and the externalities would be internalized by the parties involved, without damaging the aggregate use of resources.

One essential note should be made to the Coase Theorem. What Coase was suggesting was not to absolutely object government intervention to the market, but was to wonder

whether the assumption made by the Pigovian economics that policy measures involved zero transaction costs was correct or not. He illustrated that there was an existence of transaction costs and it was the market mechanism to restrain the transaction costs while property rights evolved to reduce the costs of transactions. What his theorem tried to explain is to choose the best option in which the lowest transaction costs was required. In other words, if government intervention could result in a lower transaction costs than all of the other means, he would agree and accept the merits of government regulation.

The one follows the ideas of Coase is Lai. In his work, *The Economics of Land-use Zoning* (1994), Lai points out that:

"..... Government planning agencies are typical examples of firms that emerge to tackle transaction costs in the market. They do so in assigning, reassigning and attenuating rights of the landowners zoning as government intervention in the land market is it assigns incomplete or attenuates private property

rights The meaningful question is whether the cost of such attenuation is greater or smaller than the alternative of leaving the matter entirely to the unregulated market to compare the opportunities cost of alternative institutional arrangements, namely decisions made freely by individuals and firms, vis-à-vis decisions made by planners."

The idea of Lai represents the view of cost benefit analysis of the options available in implementing planning policies. This idea of cost benefit analysis would then be used by the author in Chapter Five to examine the current planning system exercising in Hong Kong.

In the research paper, *The Lighthouse in Economics* (1974), Coase, trying his attempt to criticize the Pigovian ideas of public goods, argued that private sector could produce public goods in a profit-making basis by means of direct pricing to fund public facilities.

"In those days, shipowners and shippers could petition the Crown to allow a private individual to construct

a lighthouse and to levy a (specified) toll on ships benefiting from it. The lighthouses were built, operated, financed and owned by private individuals, who sell the lighthouse or dispose of it by bequest. The role of government was limited to the establishment of property rights in the lighthouse. The charges were collected at the ports by agents for the lighthouses. The problem of enforcement was no different for them than for other supplies of goods and services to the shipowner" (Coase 1974: 375)

Coase (1974) did not assert that all public goods can be provided adequately by the free market. What he suggested was that public goods can be provided by private enterprises provided that there is a clear definition of property rights.

2.2.2.3 Application of Coase's Thought in Town Planning

As discussed in the previous part, what is the most useful in helping the analysis in later parts of the dissertation is the second version of the Coase theorem, which specifies that The allocation of resources will be identical, regardless

of the initial assignment of property rights, if there is a well-defined property rights and zero transaction costs are involved. When this theorem is applied to the issue of town planning, whether government intervention should be used is a matter of transaction costs: if the transaction costs involved in government invention is lower than that involved in a free market, then government invention should be needed, or vice versa. In this dissertation, the author does not aim to conclude whether government intervention should be needed; instead, on the basis of government intervention, the author would like to analyze on which way, zoning or negotiation, would result in a more efficient planning system, by applying the second version of Coase Theorem.

2.3 Property Rights

After introducing what the ideas of Pigou and Coase concerning town planning, another economic theory, the concept of property rights, as well as its application in town planning, is presented.

2.3.1 Meaning of Property Rights

Property Rights, as defined by Fisher (1923), are the liberty or permit to enjoy benefits of wealth while assuming the costs which those benefits entail. He stated that property rights are not physical things or events, but are abstract social relations - relations among men that arise from the existence of scarce goods and pertain to their uses.

Take the right of ownership of land as an example. The right of ownership of land does not define the relationship between the owner and the land he owns, instead, it defines

the relationship among the owner and all other people with respect to the right of use of the land he owns. Property rights specify the norms of behaviour concerning economic goods -- all persons must observe in their interactions with other people or bear the penalty cost of non-observance.

Cheung (1990) mentioned what Alchian meant by property rights. Alchian propounded an idea that when two or more individuals in a society each want more of the same economic good, competition is implied. The conflict of competition must be settled in one way or another. In Alchian's view, the rules which restrain competition are known as property rights. Given a set of property rights constraints, the criteria of determining winners and losers will appear, and these criteria will alter when the rules are changed. If the criteria become different, the winner / loser distribution will also change.

According to Professor Cheung (1978), private property rights should contain three components: (1) the right of

exclusive use of resources; (2) the exclusive right to receive income; and (3) the right to transfer all or some of rights specified under (i), and (ii) to others at a mutually agreed upon price, that is the right to make contract. From time to time, there is a potential conflict between private property rights of individuals and collective property rights. In a system of collective property, the problem of allocation is solved by a social rule that the use of material resources is to be determined by reference to the collective interests of society as a whole. Clearly, the individual choice depends on laws and regulations imposed by all levels of government. So theoretically any regulation measures may be seemed as a restriction imposed on the right to receive income.

By postulate, every individual will utilize his private property in the most efficient manner in order to generate the highest return. He may either employ the good or resource himself in what he believes to be its most valuable use, or to make contract with another individual to attain this use.

Therefore, the value of private property will decline because of either the restriction of its most valuable use, or constrain of its transferability by law. Cheung (1974) suggested that "when the right to receive income is partly or fully taken away from a contracting party, the diverted income will tend to dissipate unless the right to it is exclusively assigned to another individual".

It is argued (Cheung, 1974) that most of the regulatory measures on private property rights will cause "rent dissipation" for the reason that if no one has an exclusive claim to the value or rent of the property, the income derived from it becomes non-exclusive income. Its use will invite competition to the point where the competing users can earn only what their resources would have earned elsewhere. So, rent will be dissipated or absorbed by the costs of other resources which must be dedicated to win it.

2.3.2 Application of Property Rights in Town Planning

Knight pointed out that market failure as termed by Pigou was not due to the presence of externalities or public goods, instead, it was a result of the failure of the government to identify the private property rights (Cheung, 1978). Without a clear definition and allocation of property rights over lands, market failure would result. What he suggested, in order to rectify such inefficiency of market, the government should define the rights clearly.

To conclude, a well-defined private property rights under a free market mechanism may be regarded as an attempt to reduce the amount of transaction costs in a society.

2.4 A Cost Benefit Analysis Approach

After reviewing different philosophy of town planning, the author would suggest that a cost benefit approach should be adopted in analyzing on whether town planning should be needed. It is indeed not a trade-off between government planning control and private involvement in land-use planning. Hayek, in his research, *The Road to Serfdom* (1944) and *The Constitution of Liberty* (1960) mentioned that:

"..... unless the various decisions take these effects (both property of individuals and city authorities) into account, there is little likelihood that total benefits will exceed total cost If they (planning activities) are to be beneficial, the sum of the gains must exceed the sum of the losses "

A cost benefit approach was implied by Hayek on whether there should be a need of planning. Simmie (1993) thought that it is preferable to let markets operate even if they are inefficient, if the costs of this inefficiency are less than

those of planning interventions.

Similar research was done by Cheung. In his paper, *The Myth of Social Cost* (1978), Cheung suggested that:

"..... let the price system deal with externalities wherever possible government intervention is best kept as a "solution of the last resort": to be used only when and where high and irreducible transaction costs prevent the internalization of externalities by private action"

It is definitely a cost benefit analysis between the costs of government intervention and the private actions, in which the lowest cost option shall be taken in principle.

Lai (1996) also pointed out that "..... land-use planning as a government regulatory activity is often justified on the grounds of social benefit or public interest. While such benefits and interests are essentially economic concepts whether zoning as a means used by government planners to

attenuate private property rights over the most valuable use of land is efficient is more of an empirical, cost benefit question"

Therefore, whether government intervention towards the allocation of land recourses is needed should be justified by cost benefit analysis. If a large transaction cost would be resulted by a free market in order to obtain the desired outcomes, then government intervention is necessary.

Chapter 3

Overview of the Planning Systems

Adopted in Different Countries

After evaluating various scholar's works on town planning, a brief account of the planning systems adopted in Britain, the United States and Hong Kong is given in this chapter for the purpose of helping understand the mechanism of how different countries implement their planning philosophy into practice.

3.1 Britain

Controlling development through the granting and refusing of planning permission came to occupy a central position in the British planning system created in 1947 (Booth, 1999). In this chapter, the roles of various participants involved in the planning system, the application process, and the enforcement power of the relevant department is introduced.

The contents of this part mainly derived from the book, *Aspects of Britain: Planning*, prepared by HMSO (1992), and the Town and Country Planning Act (1990), unless otherwise specified.

3.1.1 Introduction

The British planning system remains firmly founded in the Town and Country Planning Act (TCPA) 1947 (Appendix II). The system of town and country planning aims to secure the most efficient and effective use of land in the public interest, to ensure that facilities such as roads, schools and sewers are built where they are needed, to seek to reconcile the demands for land from industry, commerce, housing, transport, agriculture and recreation, and to enhance the environment by means of a comprehensive statutory system of development control in the public interest. The Act establishes the current definition of development subject to local authority's control and it limits severely what could be undertaken without planning permission. Most development

requires planning permission from the planning authority for the area concerned. Planning decisions must be made in accordance with development plans prepared by the planning authorities, which set out land-use strategies for each area on such matters as housing and industry and development control policies, unless material considerations indicate otherwise. Prior approval has to be obtained from relevant public authority acting in quasi-judicial manner. Therefore, development control is administrated within the context of planning intention which may be expressed with varying degree of explicitness in a development plan or zoning scheme. In Britain, each application is judged on its own merits based on a wide variety of factors when the development plan is the only one of the material considerations.

Overall responsibility for the planning system lies with the Secretaries of State for the Environment, and for Scotland, Wales and Northern Ireland. Responsibility for certain aspects of the system in England, such as the protection of

ancient monuments, lies with the Secretary of State for National Heritage. As well as preparing planning legislation and piloting it through Parliament, the Secretaries of State make some decisions on specific matters, such as on "called-in" planning applications (s.44, TCPA) and on appeals against refusal of planning permission by the planning authorities (ss.78-79, TCPA); they also issue guidance to the councils. In Great Britain, local councils have a statutory role as local planning authorities (LPAs); in Northern Ireland, the Department of the Environment for Northern Ireland handles planning matters through six divisional planning offices, which work closely with the district councils.

The fundamental planning principal in Britain is that development should always be permitted unless there are sound and clear reasons for conditional consent or refusal, which has been the subject of remainders decided by the British quasi-judicial appeal system.

3.1.2 Participants in the Planning System

This part examines the planning system in England and Wales.

There are mainly five parties involved in the planning system in England and Wales. They are the central government, the local planning authorities, the planning inspectorate, the public and other bodies

3.1.2.1 Central Government

Overall responsibility for the planning system in England lies with the Secretary of State for the Environment, whereas in Wales, the Secretary of State for Wales. His duties and powers with regard to planning include:

- responsibility for new legislation governing the planning system (s.38, TCPA);

- responsibility for the planning inspectorate;
- issuing guidance on a whole range of policy matters by means of departmental circular and Planning Policy Guidance notes;
- determining planning applications that he has "called in" for his own decision (s.77, TCPA);
- deciding appeals against the refusal of planning permission (s.78-79, TCPA);
- giving strategic or regional guidance to be taken into account by local authorities in drawing up development plans; and
- calling in development plan proposals for approval where his intervention is necessary (ss.17-19, 44-45, TCPA);
- securing adequate publicity and consultation of preparation of local plans (s.41, TCPA)

An application is usually decided by the relevant local planning authority. However, applications which have more than local interest are sometimes called in by the Secretary

of State, who determines the applications himself. This "call-in" power may be exercised in the case where a council proposes to grant an application for development involving a substantial departure from the provisions of a local plan. The Secretary of State also has the power to order a council not to decide an application until he has had time to consider calling it in. For instance, in February 1992, the Secretary of State decided to call in two applications relating to the redevelopment of Paternoster Square adjacent to the St. Paul's Cathedral in the City of London. The reasons were that the site is of national importance and there is a need to ensure that the redevelopment shall be done in a coherent way and to high standards. In this case, he had previously directed that the City Corporation should not decide these applications until he had had time to consider whether or not to call them in.

Apart from making decisions on specific cases, the Secretary of State has to issue guidance to local authorities

to assist them in their decision making. Some of the guidance explains new legislation and advises councils how they should implement it. In particular, the Planning Policy Guidance notes set our broad guidelines on how councils should treat broad policy subjects or particular issues. Guidance does not have statutory power, so does the circulars about new pieces of legislation. However, guidance is a material consideration to be taken into account by local planning authorities in determining planning applications and by the Secretary of State and his inspectors in determining appeals. To ignore it can give rise to awards of costs against planning authorities in appeal cases.

3.1.2.2 Local Planning Authorities

Being the local planning authorities (LPAs), the local councils have a number of statutory duties to perform. There are two kinds of local councils: one is governing the Metropolitan area such as the Metropolitan districts and

London; and the one is governing the non-metropolitan areas.

The local councils of the Metropolitan areas have to draw up a unitary development plan (s.12, TCPA); decide applications for planning permission for new developments and changes of use (ss.57-58, 63-64); and take enforcement action against breaches of planning control (ss.172-196, TCPA).

In non-metropolitan areas, planning responsibilities are split between country councils and district councils. The former ones are responsible for drawing up structure plans and local plans covering the country matters, principally, the permission for waste disposal and mineral extraction and for deciding planning applications for country matters; while the latter ones are responsible for drawing up district-wide local plans covering all except country matters, and deciding other planning applications (ss.31-45, TCPA).

A council with planning responsibilities maintains the services of a planning office, staffed by professional

planners and support personnel. The officers are responsible for administering the planning system, for example:

- maintaining statutory registers of planning applications and permissions affecting different sites in their area;
- drafting new development plan proposals and organizing the associated consultation process;
- meeting applications to discuss their development proposals and planning applications;
- consulting local residents about proposed developments;
- conducting site visits;
- preparing reports on which the elected councillors base their decisions on individuals planning applications;
- deciding certain applications themselves under delegated power; and
- preparing the council's case in planning appeals and called-in applications.

Officers of other departments might also be consulted about

planning applications, for instance, the highways department and the environmental health department.

The role of the elected councillors is to define the council's planning policies, to take decisions on the more important applications, and to decide whether to take enforcement action on breaches of development control and whether to adopt new development plan proposals. Besides, the elected councillors are responsible for being consulted by the residents who concern about a particular proposal for their assistance.

3.1.2.3 Planning Inspectorate

The main function of a planning inspectorate is for the determination of planning appeals in England and Wales, but it also:

- deals with enforcement appeals;

- handles public inquiries into local and unitary development plan proposals; and
- deals with highways orders and other cases, including appeals arising out of applications for discharge consents under the Environmental Protection Act 1990

3.1.2.4 The Public

Local planning authorities have to consult the public whether a development plan is proposed or an existing plan is amended (ss.13,20,33,39-40, TCPA). Once a plan is drafted, people can make comments and formal objections, which must be considered. There is a public inquiry if objections to a local plan are unresolved. Where changes are proposed after the public inquiry, people will again be given chances to make their views known.

From May 1992, all planning applications will receive publicity, which means that any member of the public may make

comments on any application (s.71, TCPA). All comments relevant to the planning issues in the case must be taken into account in determining any planning application.

3.1.2.5 Other Bodies

The regional conferences of planning authorities, the urban development corporations and the English Heritage (the Historic Buildings and Monuments Commission for England) are some of the other bodies which have a role to play in the planning system in the England and Wales.

Regional conferences of planning authorities have been established for the purpose of addressing the issues affecting the area of more than one planning authority jointly. They publish reports on the regional economy, housing, retailing, transport and waste disposal in the region and draft guidance to the Secretary of State before the Secretary of State issues regional planning guidance.

Urban development corporations (UDCs) have been established to reverse large-scale urban decline. In England, UDCs have taken over development control functions from the relevant local authorities. However, although the UDCs are responsible for deciding planning applications, consultation with the local authorities on planning matters continues; it means that the elected councillors still have some influences in the UDC areas. Planning applications within UDC area are reported to the local council for formal observation. In the case where the development plan proposal covers UDC area, the local planning authority has to consult the UDC concerned in the preparation of development plans.

3.1.3 Planning Application

The local planning authorities have to ensure that new buildings, changes of use of alternation of existing buildings in their areas are acceptable. Most forms of development require the consent of the relevant local planning authority (ss.55,57,63-64); this is generally known as "planning permission". Applications are decided by the local planning authority on the merits of each individual case in the light of development plans and other material considerations.

Not all forms of development need a specific planning permission. The General Development Order sets out a whole range of activities which are "permitted development", for which there is no need for a specific planning application, provided that the development should comply with certain requirements. These works include loft conversions and dormer windows, small extensions, garages and outhouses, porches, hedges and low fences, television aerials; and one

small satellite dish per dwelling.

If the development does not fall into the above categories, planning application is generally needed. Examples are the construction of significant buildings, extension which would add more than 15 per cent to the volume of the building, works which would affect a listed building, change of use from one category to another; and the display of certain advertisements and signs. People living in specially protected areas such as a conservation area or National Park are also more restricted in what they can do without planning permission.

Planning permission in Britain is said to "run with the land". It passes to anyone who buys the land. However, councils do, sometimes, apply a condition that planning permission (usually for change of use) shall be personal to the applicant. In this case, if someone else takes over the property, one has to revert the land to the previous use.

In England and Wales, the Use Classes Order categorizes different uses to which a building or piece of land can be put. Planning permission is generally needed to change from one use to another while no permission is needed to change use within a class. The following table lists the classification of uses under the Use Classes Order.

A1	Shops	B8	Storage or Distribution
A2	Financial and Professional Services	C1	Hotel and Hostels
A3	Food and Drink	C2	Residential Institutions
B1	Business	C3	Dwelling Houses
B2	General Industrial	D1	Non-residential Institutions
B4-B7	Special Industrial Groups B-E	D2	Assembly and Leisure

Table 1: a Classification of Uses under the Use Classes Order

There are also uses of "*sui generis*", which fall outside the provisions of the order. These include theatres, amusement arcades, launderettes, car sales and taxi businesses. Changes to or between these uses require planning permission if they amount to a material change of use.

3.1.4 Planning Application Process

Applications can either be in detail or in outline (s.62, TCPA). An outline permission establishes the principle of a particular development on a site, and is then followed by a further application once the detailed design has been worked up. Developers may, however, apply for full permission without going through the outline stage.

Once submitted, most applications should be dealt with within with weeks, or sixteen weeks if environmental assessment is considered necessary. If the local planning authority does not give a decision within this period or has

not agreed an extension, the applicant is entitled to appeal to the Department of the Environment on the ground of non-determination (s.77, TCPA). Once an appeal has been made, it has to be determined by the Secretary of State or one of his inspectors (s.79, TCPA).

Upon any planning application, the local planning authority has to carry out public consultations by means of placing advertisements in local newspaper, putting up notices on the site or informing neighbours directly (s.71, TCPA). Agendas and reports of the meetings in which planning application is discussed must be made available for inspection. Those who wish to comment on a scheme can write to the Planning Department, or attend the meetings to express one's view.

Sometimes, the planning application is not determined by the local planning authority. It may be called in by the Secretary of State, who determines the application himself. (For details, please refer to Part 3.1.2.1) The Planning and

Compensation Act 1991 requires that all applications are determined in accordance with the development plans unless material considerations indicate otherwise.

If an application is refused, a "decision letter" must be sent by the local planning authority to the applicant setting out the grounds on which this refusal has taken place. Where an application is refused, the applicant has the right to appeal to the Secretary of State for the Environment in England (s.78, TCPA). If a planning application is permitted, a decision letter is sent to the applicant stipulating the grant of the permission and any conditions that have been attached to it with reasons. If the applicant does not agree with the imposition of a particular condition, he can appeal, just as if the application had been refused.

There are three ways in which an appeal can be handled: written representations, public local inquiries, or hearings.

The written representations method is the simplest. The appellant, the council, or interested parties submit his case in writing to the inspector, who would then conducts a site visit and determines the appeal on the basis of the written submissions, or makes a recommendation to the Secretary of State if the appeal is "recovered" for his determination.

Alternatively, the case may be presented in person to the inspector at a formal public local inquiry. After hearing the evidence, the inspector decides the case and gives a decision in writing to the parties or make recommendations to the Secretary of State, who determines the application.

Where either of the principal parties wished to be heard, a hearing may be offered to them. It is a rather informal method and creates a more relaxed atmosphere then a formal inquiry. The hearing procedure entails a discussion led by the inspector regulated by a code of practice rather than statutory rules.

3.1.5 Enforcement

There are two notices which the local planning authority can serve to the person who does not comply with the planning regulations, namely, the enforcement notice (ss.172-182, TCPA) and the stop notice (ss.183-187). An enforcement notice is issued to the contravener where there has been development without planning permission, or where conditions attached to a planning permission have not been complied with (s.172, TCPA). The notice cannot come into force until at least 28 days after it has been served. Within this period, the recipient of the notice may appeal to the Secretary of State (s.174, TCPA). If there is no appeal, or if the appeal upholds the notice, the notice takes effect and the breach of planning control becomes a prosecutable offence. The maximum fine in a magistrate's court is £20,000 (s.179, TCPA).

In general, it is necessary to take action within ten years of a breach. Thus, if a development takes place without

permission but is not noticed by the local planning authority for at least ten years, then enforcement action cannot be taken if the breach later comes to light (s.326, TCPA).

A stop notice is served when a remedy to a planning breach requires urgent action (ss.183-184, TCPA). It cannot be issued if an enforcement notice has not been served at an earlier time. It takes effect virtually at once, and cannot be appealed against. However, if the linked enforcement notice is quashed on appeal, the stop notice is also void. If the stop notice is overturned, even on technical grounds, the local planning authority may be liable to pay compensation for loss of profits (s.186, TCPA).

In addition to the enforcement notice and the stop notice, the local planning authority is empowered to issue the planning contravention notice and the breach of condition notice. The former notice gives the local planning authority the power to obtain information about activities on land where

a breach of planning control is suspected. Failure to comply with such a notice within 21 days is an offence and can be punished in the magistrates' court. The latter notice is issued to the site where there is a breach of planning condition, requiring compliance with the condition. Failure to comply within the time limit is again an offence.

3.2 United States

Previous chapter have shown that Britain explicitly operates a flexible system, but how about the American? This chapter aims to give an introduction to the current planning system in the United States. The contents of this part, unless otherwise specified, is mainly obtained from the book, *The Political Culture of Planning: American Land Use Planning in Comparative Perspective*, by Cullingworth (1993).

3.2.1 Introduction

In America few regulations existed on the use of land due to the seemingly endless amounts of it. As society shifted from a rural to an urban form, public land regulation became essential especially to city governments trying to manage industry, commerce, and housing surrounded by its boundaries. In 1916, New York City enacted the first comprehensive zoning ordinance which separated incompatible

uses into different districts. The ordinance specifically created residential, business and unrestricted districts. In 1920, the New York Court of Appeals, in *Lincoln Trust Co. v. Williams Building Corp.* upheld the zoning ordinance as constitutional and as a "proper exercise of the police power". Other states soon followed New York, typically dividing permissible uses into a number of districts, usually residential, business and industrial. By 1926, over 500 local municipalities had adopted similar zoning ordinances.

In addition to planning and zoning regulations, government also imposes many other types of restrictions on the use of land. Some examples include:

- ✧ environmental laws regulate or limit how certain industrial and other activities are conducted in particular areas
- ✧ agricultural laws regulate how land may be farmed

American land-use controls are essentially a local affair. Over most of the United States, local governments are not required to run any system of land-use control and, though most do have a zoning system, some have none at all. Only in a few states are local governments subject to any kind of control by the state government (Wakeford, 1990).

There is a low degree of administrative discretion in the United States as the American system embraces the doctrine of the separation of powers (Fishman, 2000). In brief, a zoning ordinance is passed by the legislative body; applications for rezoning or variances are reviewed by an independent commission; and appeals are to a board of adjustment, and sometimes to the legislative body, and finally -- on legal or constitutional grounds -- to the normal courts. The role for discretion is strictly restricted. The zoning ordinance and the zoning map would spell out the permitted land-uses in such clarity and detail that there would be little room for doubt or discretion. Thus "policy"

is seemed definitely as the responsibility of the legislative body, while the commission deals with its execution through the issuance of permits and the occasional variance or exception. The role of the courts is to hear appeals against local decisions and act as a type of policy-imposing body.

Today, federal, state, and local governments regulate growth and development through statutory law. Local governments carry out their zoning and planning powers within the framework of powers conferred on them by the individual states, either by constitutional home rule authority or by a specific enabling Act. The majority of controls on land, however, stem from actions of private developers and individuals. Three typical situations involving such private entities and the court system are:

- ✧ suits brought by one neighbour against another;
- ✧ suits brought by a public official against a neighbouring landowner on behalf of the public; and

✧ suits involving individuals who share ownership of a particular parcel of land.

In these settings judicial determination and enforcement of private land-use arrangements cannot only reinforce public regulation but also achieve forms and levels of control zoning.

3.2.2 Zoning Ordinances and Regulations

Zoning ordinances and regulations are enactments specifically establishing exactly how a property may be used in a particular area, as well as particulars concerning the size and location of buildings on the property and the manner in which they are maintained. In order to be legally effective, zoning ordinances and regulations must be authorized by some enabling authority such as a state statute or constitutional provision.

Typically, a local governing body (a town or city) adopts a zoning ordinance after the governing body has adopted an official plan or map. A zoning regulation may also be adopted by another kind of government body, such as a regional planning authority, if authorized by state law (Punter, 1999). For example, in New Jersey, the Pinelands Commission has the authority, under state law, to adopt a plan and to enact and enforce zoning regulations controlling land use in the million-acre Pinelands area in the southern part of the state.

Classifications of zoning are not the same from state to state. The most frequently used groups are commercial, industrial, residential, and agricultural. These groups may be used in various combinations.

Within each of these general categories are more narrowly defined divisions. For example, a residential zone might be segregated into separate zones for single-family homes on one acre, single family homes on a half acre, hotels,

boardinghouses, mobile homes, low-rise apartment complexes, high-rise apartment complexes, or institutional housing. An industrial zone may be zoned "heavy", "light", or "research". A commercial zone can be divided into small stores, shopping centres, gas stations, restaurants, drive-in facilities, adult-entertainment districts, and warehouses.

Zoning District	Description of Use
R-1AA	Single family, large lot
R-1A	Single family, mid-size lot
R-1B	Single family, small lot
R-2	Two family residential
R-3	Multi-family residential
B-1	Highway business
B-2	Convenience shopping
B-3	Neighbourhood business
B-4	Central business district
O-1	Office buildings
L-1	Industrial uses
A-1	Agricultural uses

Table 2: Selected U.S. Zoning Classifications

Source: Staley, (1994) *Planning Rules and Urban Economic Performance: the Case of Hong Kong*.

Once a zoning ordinance or regulation has been adopted, uses of land must conform to the requirements of the ordinance. For example, if a zoning ordinance provides that a particular area within a town is reserved for residential use, a factory may not be constructed within the area that is specified as residential. Similarly, a zoning ordinance may (and typically does) prohibit homeowners in residential areas from operating businesses from their homes. Often, however, a zoning ordinance will permit businesses to operate from homes in residential neighbourhoods if the business operation does not change the character of the neighbourhood. For example, a consulting business conducted by mail and telephone from an extra bedroom might be an acceptable use, while a contracting business involving commercial vehicles and heavy traffic might not be acceptable.

Zoning ordinances also specify the height and overall size of buildings, their proximity to one another, what percentage of the area of a building lot may contain structures, and what

particular kinds of facilities must be included with certain kinds of uses. For example, zoning ordinances will typically limit the number of stories and total height of a building, require a certain number of parking spaces for a commercial building, and require a driveway and garage on a suburban residential property.

There are two requirements in a zoning ordinance, the use requirement and the bulk requirement. The use requirements in a zoning ordinance refer to the types of uses to which property may be put, such as residential, commercial, industrial, or recreational. The bulk requirements of a zoning ordinance refer to the height and size restrictions on buildings including the number of stories in a building, the square feet of space which a building provides, the percentage of area it covers on a building lot, the minimum lot size requirements, if any. The setback and side-yard requirements of a zoning ordinance refer to the distance between the front and back property lines and the distance

from the side property lines, respectively, to any structure on the property.

3.2.3 Subdivision

A subdivision is the division of a single piece of property (or group of properties) into individual blocks and lots. Other areas of subdivision development include parks, schools, and streets. A subdivision usually entails the development of land for residential use.

Most zoning ordinances place limitations on the subdivision of land and require a separate process of notice, hearing, and consideration by zoning authorities before permission will be given to subdivide property for development.

The limitations include requirements that the lots be of a particular size; the streets be of a particular width and

quality; and the water, gas, and sewer lines of a particular type be supplied. Some states permit local governments to require developers who are subdividing property to pay for some portion of the municipal improvements that are necessary for residential use, such as sewers, schools, and roads.

3.2.4 Site Plan

A site plan is a comprehensive map showing the planned use of a particular property in detail, including the topography, the location of all proposed structures, engineering and design features such as curbs and walkways utilities. A site plan may also include elevations showing the height and relationship of proposed buildings and other features required by the local zoning ordinance or applicable enabling authority.

3.2.5 Uses under the Zoning Ordinance

There are three categories of uses listed under the zoning ordinance. They are the permitted use, conditional use and non-conforming use.

3.2.5.1 Permitted Use

A permitted or "as of right" use is one which is permitted under the zoning ordinance or regulation without any limitations or required proceedings.

3.2.5.2 Conditional Use

A conditional use is a use which is permitted under a zoning ordinance, but which must meet certain conditions. For example, a zoning ordinance may permit professional offices in a residential zone, if at least four off-street parking places are provided. When a use is conditional, the zoning

ordinance often will require the property owner to file an application with local officials so that they may determine whether the conditions have been met.

3.2.5.3 Non-Conforming Use

When a zoning ordinance is validly adopted, all future development in the locality governed by the ordinance must conform to its requirements. However, existing properties in a locality are often used in a manner inconsistent with a new zoning ordinance. Such uses are referred to as "non-conforming" uses because they do not "conform" to the requirements of the zoning ordinance. A use may be non-conforming because the nature or characteristics of the building itself do not conform to the zoning ordinance; or the activity going on in the building does not conform. For example, a factory located in a residential zone is a non-conforming use; a two-story building located in a one-story zone is a non-conforming use.

Generally, an existing non-conforming use is not required to cease and may continue after the adoption of a zoning ordinance. However, the right to continue a non-conforming use may be lost if the non-conforming use is abandoned. For example, if a fast-food restaurant is operated in a storefront in an area that is later zoned in a manner excluding all food-related operations, the restaurant may continue to operate. If the restaurant closes, the right to continue the use may be lost if the same restaurant is not re-opened, or if some other similar food-related use is not begun within a certain period of time. If the building itself is non-conforming, the right to be non-conforming may be lost if the building is completely, or even partially, destroyed. Amortization is another device used to limit the duration of non-conforming uses. Under this approach, a non-conforming use may be permitted to continue for a specific period of time, after which it must be converted to a conforming use.

3.2.6 Discretion

Although there is low degree of flexibility in the planning system in the United States, there are some areas provided for discretion.

Local land use plans and zoning ordinances usually contain provisions imposing limitations and requirements on land uses uniformly in specific areas (or "zones") delineated in the plan or ordinance. Once a plan and ordinance has been adopted, property owners may seek to obtain exceptions to the requirements and limitations, either through an amendment to the plan or ordinance, or through an application for a Variance or Special Use Permit. In both cases, the amendment or application may be opposed on the ground that permitting special exceptions for specific properties is inconsistent with the overall land use plan or ordinance, and constitutes illegal spot zoning. Whether or not a particular exception constitutes illegal spot zoning, or is merely a permissible

exception, greatly varies according to:

- ✧ the facts of the property use
- ✧ the provisions of the applicable enabling statute
- ✧ the land use plan in question

Depending upon the laws of the state and the local government, it may be possible to change the zoning on a particular property through a variance. A variance is permission to depart from the literal requirements of a zoning ordinance. A variance is granted or denied by administrative action.

The so-called area variance concerns a permissible use presenting a problem of ill fit. For example, one wishes to add an enclosure to one's home that would violate the minimum setback requirements of the zoning regulation. To proceed, one would need to obtain an area variance.

By contrast, the use variance pertains to a use that, without the variance, would be impermissible in the given zone. For example, one wishes to build a convenience store in a locality exclusively zoned for residential purposes. To proceed, one would require the more-exacting use variance. Generally, the proponent of the variance must show that undue hardship has not been self-imposed and that the variance would not be contrary to public welfare or surrounding property values.

Most statutes permitting the adoption of zoning ordinances specify the circumstances under which variances may be granted. Usually, some kind of hardship must be shown to justify the grant of a variance. Some examples of hardship are:

- ✧ an under-sized lot on which a variance is needed to construct any useful structure; or
- ✧ an odd-shaped lot cannot satisfy the side-yard and setback requirements for the construction of a residence that would

otherwise be permitted in the zone.

Special Use Permit should be obtained when special uses are provided. These special uses include hospitals, funeral homes, cemeteries and schools, etc, which are omitted from the zoning codes. These uses cannot be provided if a special use permit and the permission of local zoning authority is not granted.

3.2.7 Application Process

The enabling authority usually sets the nature of the application process for approval of a subdivision or site plan, or for obtaining a variance or conditional use permit. The enabling authority may be a state statute or zoning ordinance, which imposes the land use requirements in question.

The process of review may begin when a property owner applies to a local government authority for a building permit.

The zoning ordinance, or other regulation, may require a property owner to obtain a building permit before beginning any significant alteration of a property.

The building inspector, or other officer with the authority to issue building permits, then reviews the application to determine whether additional information is needed, or whether some approval proceeding, such as site plan review, subdivision review, or a variance application is required. If the use is permitted, and if no further review or information is required, a building permit will usually issue. In some cases, the property owner may start the review process by filing a site plan or a subdivision application.

If further proceedings are required, the matter is often referred to a local or regional board that:

- ✧ reviews the information supplied by an applicant
- ✧ suggests modification if needed

✧ then grants the approval if appropriate.

The review process may require a hearing at which the public may comment on the application and express any objections. Depending upon local law, more than one application may be required for a particular land use permit. For example, both local and county approval may be required for certain types of development applications.

If approval of an application for a building permit, subdivision, site plan, or other land use application is denied, the applicant may appeal the decision. Depending upon the provisions of the zoning enabling statute or other authority, the appeal may be to another land use authority or ultimately, to a court. In some cases, neighbours or other interested parties may have the right to appeal from the grant of a permit.

A court will usually uphold the decision of a land use

authority if it conforms to the enabling statute and applicable laws, ordinances, or regulations, and if it involves an exercise of judgment, unless the exercise of judgment is "arbitrary, capricious, and unreasonable."

3.2.8 Rezoning

Not all rezoning proceedings are alike. But key features are consistent. It begins with an application (and payment of a fee), followed by notice to all nearby property owners. Several open public hearings at the neighbourhood level are held so that area residents and government agencies can speak out their opinions and concerns.

Most people seeking a rezoning retain an experienced attorney to assist them. At the public hearing, she or he would present the case and be prepared to handle the objections that might be expected from those who oppose the request. A lawyer will also be prepared to allay the fear of opponents

that the requested zoning change could hurt property values or be incompatible with the surrounding uses of nearby areas and the goals of the city's comprehensive community plan.

3.3 Hong Kong

After interpreting the planning systems of Britain and the United States, the local planning system is presented. The information stated in this part is mainly found from the publications of the Planning Department and the Town Planning Ordinance, Chapter 131 of the Laws of Hong Kong.

The purpose of town planning in Hong Kong is to guide and control the development and use of land, with the aim of promoting the health, safety, convenience and general welfare of the community. It lies on the principle of promoting the right development in the right place and at the right time so as to bring about a better organized, more efficient and more desirable place in which to live and work (Planning Department, 1999). In Hong Kong, non-statutory control and statutory control on the use of land are employed by the Government.

3.3.1 Non-Statutory Control

In this part, two issues are introduced: the three tier planning system, which governs the concept of planning in Hong Kong, and the government lease, which is a mean of development control by the local government.

3.3.1.1 The Three Tier Planning System

In Hong Kong, planning is carried out at a three-tier planning system comprising the territorial development strategy, the sub-regional development strategies and the district plans (Figure 1). Guiding the preparation of these plans is the Hong Kong Planning Standards and Guidelines (HKPSG) (Planning Department, 1995).

Territorial Development Strategy (TDS) (Figure 2) is a policy statement in the territorial tier. It concerns broad and long-term development strategies and provides a

conceptual framework of future development in Hong Kong in terms of population, land-use, transport, environment as well as land-use infra-structural pattern (Appendix III). TDS is used as a guideline to prepare for sub-regional and district plans.

Sub-Regional Development Strategy (SRDS) (Figure 3) translates the territorial goal into more specific planning objective for Hong Kong's five sub-regions: North-East New Territories, North-West New Territories, South-East New Territories, South-West New Territories and the Metropolitan Area (Figure 4).

Plans prepared at the territorial and sub-regional tier do not have any statutory effect to the public.

District Plans are detailed land-use plans which translate the broad planning principles identified in the TDS and SRDS to the local level through the designation of various parcels

of land for different uses (Planning Department, 1995). There are two types of district plans: Outline Zoning Plans (OZPs) (scale 1:7,500 to 1:20,000) (Figure 5) and Development Permission Area (DPA) Plans (scale 1:5,000) (Figure 6). Both of these two plans are prepared by the Planning Department under the Town Planning Ordinance and are approved and published by the Town Planning Board. In the local district tier, OZPs are incorporated into the legislative framework under the Town Planning Ordinance (which would be further elaborated in part 2.6.2.2).

Under the layer of district plans in the three tier planning system, Departmental Plans are made in larger scales with more details. Unlike OZPs, they do not possess any statutory influence on the public. They are prepared for administrative purposes such as the levels and scope of land formation (by reclamation or terracing); the alignments of roads, sewers, and drainage reserves; and the delineation of major land parcels and their broad land-use zoning. They are said to be

administrative because they bind the land authority in the drafting of lease documents for new land to be allocated and in the consideration of lease modification for land already allocated. They do not legally alter any existing rights over land. There are two types of Departmental Plans, namely the Outline Development Plans (ODPs) (scale 1:2,000) (Figure 7) and the Layout Plans (LPs) (scale 1:300 to 1:2,000), which are prepared within the framework of Territorial Development Strategy, Sub-Regional Development Strategy, Outline Zoning Plans and Development Permission Areas Plans.

Guiding the preparation of these plans is the Hong Kong Planning Standards and Guidelines (HKPSG) (Figure 8), which are government manual of criteria for determining the scale, intensity, location and site requirements of various land-uses and facilities. They are applied in planning studies, preparation / revision of town plans and development control. Furthermore, they provide guidelines for improving the environmental quality, conserving landscape and heritage,

with a view to raising the quality of life of Hong Kong residents (Planning Department, 1999).

3.3.1.2 Government Lease

Lease is a contract between the government and an individual, where the right of use of a particular land is transferred from the government (the lessor) to the individual (the lessee) (Sarah, 1997). Being the contract nature of a lease, it is actually a private treaty between the government and an individual, where both parties are governed by the law of contract. This means where one party (party A) has failed to exercise his obligation stipulated in the contract, the other party (party B) has the right to sue for the damages he suffered due to the act of the party A in the court, wherein judgment on which parties shall be liable and how much the compensation would be shall be determined.

Usually the Government would add lease conditions in the

government lease in order to control the development of the land. The lease conditions might include restrictions on the use of land, site coverage, building height, or environmental protection requirements (Roger, 1998).

3.3.2 Statutory Control

Apart from the non-statutory control by the government to control the local planning, statutory control also plays an important role in governing the local planning systems. The major ordinance which is responsible for planning in Hong Kong is the Town Planning Ordinance (Chapter 131) of the Laws of Hong Kong.

3.3.2.1 Town Planning Ordinance

Town planning in Hong Kong is mainly governed by the Town Planning Ordinance (Chapter 131) (Appendix IV), which was first enacted in 1939. It was originated from the English Town

and Country Planning Act 1932 (Bristow, 1984). It established a legal framework through which various planning bodies exercise their particular planning functions.

Nowadays, the Planning Department (Figure 9), established in 1990, is the central department responsible for enforcing the Town Planning Ordinance, which provides for the Chief Executive to appoint the Town Planning Board to prepare statutory plans (s.3(1), TPO). Once gazetted, the Outline Zoning Plans and Development Permission Area Plans acquire statutory effect.

3.3.2.2 Outline Zoning Plan

Outline Zoning Plans are prepared in accordance with the Town Planning Ordinance. They show the proposed land-uses and major road systems of individual planning scheme areas. They are empowered with statutory function, which means that the development of land has to follow the rules laid down in the

OZPs concerned. Areas covered by the plans (Figure 10) are zoned for various uses. Under s.4(1) of Town Planning Ordinance, the zonings are classified as Residential (R), Commercial (C), Commercial or Residential (C/R), Industrial (I), Open Space (O), Government / institution and community uses (G/IC), Green Belt (GB), Village Type Development (V), Comprehensive Development Area (CDA), Other Use (OU), Unspecified Use (U). For each and every OZP, there is an attached Schedule of Notes, stipulating, in Column 1, the uses which are always permitted, and in Column 2, the uses which require planning permission from the Town Planning Board with or without conditions (Appendix V). In addition to these two Columns, sometimes there is a Remarks Column, which states the special building restrictions, for example, the height limit, plot ratio, site coverage and submission of master layout plan for development within a Comprehensive Development Areas.

As mentioned in part 2.6.1.1, the planning system in Hong

Kong is a three tier planning hierarchy, under which OZPs are prepared for the local district tier. Apart from OZPs, Interim Development Permission Area (IDPA) Plans (s.26, TPO) and Development Permission Area (DPA) Plans (s.20, TPO) are also prepared. By 1991, all IDPA Plans were replaced by DPA Plans (by s.4 of Town Planning (Amendment) Ordinance 1991), which provide interim planning control over the areas which are not previously covered by Outline Zoning Plans. DPA Plans may show areas zoned for conservation or protection of the environment, village type development, agriculture or other rural uses, and open storage uses as well as unspecified use. They are effective for 3 years and will be replaced by OZPs (s.20(5), TPO).

For every DPA plan, there are two annexes. Annex A stipulates the uses which are always permitted in the "Unspecified Use" area whereas Annex B stipulates, in Column 1, the uses which are always permitted, and in Column 2, the uses which require permission from the Town Planning Board.

Temporary uses in any building or land less than 5 years are permitted in all land-use zones under OZPs. However, all uses, whether it is permanent or temporary in nature, require planning application under DPA Plans.

3.3.2.3 Plan Preparation Process

Under s.3(1) of TPO (Cap. 131), the Town Planning Board shall undertake the systematic preparation of (a) draft plans and (b) draft development permission area plans of such areas of Hong Kong as the Chief Executive may direct. During the preparation of the plans, the Board shall make such inquiries and arrangements (including, if it thinks fit, the taking of any census of the occupants of any buildings or of the users of any thoroughfares or spaces) as it may consider necessary for the preparation of such drafts (s.3(2), TPO). The Board's draft plans may show or make provision for (s.4, TPO) (a) streets, railways and other main communications; (b) zones or districts set apart for use for residential, commercial,

industrial or other specified uses; (c) reserves for Government, institution or community purposes; (d) parks, recreation grounds and similar open spaces; (e) zones or districts set apart for undetermined uses; (f) comprehensive development areas; (g) country parks, coastal protection areas, sites of special scientific interest, green belts or other specified uses that promote conservation or protection of the environment; (h) zones or districts set apart for use for village type development, agriculture or other specified rural uses; (i) zones or districts set apart for use for open storage, and any matter as the Board thinks appropriate.

After undertaking planning study of the site concerned and plans shall be drawn up and circulated to relevant government departments and utility bodies for comments. Appropriate amendments shall be incorporated in the plans by the Board upon receipt of comments. Then the plans shall be submitted to the Metro Planning Committee (MPC), or the Rural and New Town Planning Committee (RNTPC) for preliminary consideration

and presented to the District Board for consultation (Planning Department, 1995). Once the MPC or RNTPC makes an agreement for gazetting the draft plans, they shall be exhibited for public inspection for 2 months (s.5, TPO).

Any person affected by the draft plans may within the period of 2 months send to the Board a written statement of his objections to anything appearing in the draft plan (s.6(1), TPO). Upon receipt of a written statement of objection, the Board may give preliminary consideration to an objection in the absence of the objector and may propose amendments to the draft plan to meet the objection (s.6(3), TPO), or reject the objection in whole or in part (s.6(9), TPO).

In addition to the power of amendment, the Board may, at any time after exhibition of a draft plans and before approval by the Chief Executive in Council, make amendments to a draft plans. Every amendment to a draft plan shall be exhibited by the Board for public inspection for 3 weeks. Any person

affected by an amendment to a draft plan may object within the said period of 3 weeks (s.7, TPO).

After consideration of all objections, the Board shall submit the draft plans, with or without amendments, to the Chief Executive in Council for approval (s.8(1), TPO). If the plans are approval, the "approved plans" (s.8(3), TPO) are published for public inspection (s.11, TPO). If the plans are disapproved, the Board shall further re-consider or amend it by re-undertaking planning study (s.10, TPO) (Figure 11).

Once gazetted, the plans acquire a statutory power. Approved plans shall be used by all public officers and bodies as standards for guidance in the exercise of any powers vested in them (s.13, TPO).

3.3.2.4 Comprehensive Development Area

Comprehensive Development Area (CDA) is one of the uses specified in the Outline Zoning Plans. The idea of CDA was first introduced into outline zoning plans in 1976 (Planning Department, 2000c), for the purpose of ensuring redevelopment on a comprehensive basis and avoiding the hazard piecemeal development, which may occur where subdivision of land is not restricted.

When a street block is zoned as a CDA, an individual cannot redevelop his own site unless an approval of the Master Layout Plan (Figure 12), which is a planning scheme for the whole street block, is obtained from the Town Planning Board (s.4A(2), TPO). It implies that redevelopment cannot proceed in a CDA freely unless agreement among all owners of the CDA concerned is acquired.

3.3.2.5 Town Planning Board

The Town Planning Board is a statutory body (Appendix VI) established under section 2 of the Town Planning Ordinance with a view to promoting the health, safety, convenience and general welfare of the community through the systematic preparation of plans, as well as the types of buildings suitable for erection therein (s.3, TPO). The main functions of the Board are:

1. To prepare statutory plans for the layout of Hong Kong for approval by the Chief Executive in accordance with the object of the Ordinance. (ss.3-4, TPO)
2. To recommend resumption of land which interferes with the layout of a statutory plan or mater layout plan. (s.4(2), TPO)

3. To conduct inquiries and consider representations made by objectors to the draft statutory plans and amend the plan when appropriate. (ss.6-8, TPO)
4. To consider the plan and review planning applications for individual sites. (ss.16-17, TPO)
5. To approve the Development Scheme Plans prepared by the Land Development Corporation (LDC). (s.14, Land Development Corporation Ordinance, Cap. 15)

3.3.2.6 The Planning Application Process

When people talk about the planning application process, they usually refer to the section 16 application of the Town Planning Ordinance (Cap. 131). The author does not have the intention to re-define what planning application process means, but, for the purpose of academic analysis, this part would be divided into two sub-sections: the planning application process for change of land-use as laid down in section 16 of the Town Planning Ordinance (Cap. 131); and the administrative request for change of zoning.

3.3.2.6.1 Change of Use

If the use is listed in Column 2 in the Schedule of Notes in an Outline Zoning Plan, the redevelopment cannot proceed before the acquisition of the planning permission from the Town Planning Board (Appendix VII). Upon the submission of the planning application in accordance with s.16 of Town

Planning Ordinance, the Town Planning Board has the power to approval, reject or impose any other conditions as the Board would consider reasonable and suitable on any submission of changes of land-uses (ss.16(3), (5), TPO).

Submissions are required to be made in writing by the applicant in the prescribed form through s.16 planning application of the Town Planning Ordinance. The relevant committee considers the application without the applicant being present or oral submissions being made by the applicant or his representatives. The Town Planning Board may grant or reject the application within 2 months with or without conditions (s.16(3), TPO).

If the Board refuses to grant permission or imposes conditions which the applicant does not accept, the applicant may, within 21 days, make a written request to the Board to review the committee's decision pursuant to s.17 of the Town Planning Ordinance. The applicant may make further

submissions to the Board and may also make oral submissions at the hearing before the Board but may not make material changes to his scheme to assist him at the review, which is considered within 3 months.

If the review decision is still not acceptable to the applicant, he may, within 60 days, lodge an appeal in the prescribed form to the Town Planning Board pursuant to s.17B of the Town Planning Ordinance. The appeal is a rehearing of the merits of the proposal and the Appeal Board may hear oral testimony (including expert evidence from the applicant's and Board's consultants) and receive further documentary evidence at the hearing of the appeal. These proceedings are conducted in a manner more similar to court proceedings than the relatively informal s.17 reviews and are often conducted by legal representatives of the applicant and the Government's Chambers on behalf of the Board (Lai, 1999). The decision of the appeal is final and only subject to judicial review of the subject matter.

3.3.2.6.2 Change of Zoning

Once a statutory plan is gazetted, there is, under the existing system, no statutory provision for planning application of change of zoning covered by the plan. Application of re-zoning may only be made as an administrative request by writing a statement addressed to the Director of Planning Department. The Authority does not have any legal responsibility to reply the administrative request, so follow up actions are only governed by the Planning Department's performance pledge (Appendix VIII).

3.3.2.7 Enforcement

The enforcement power of the Planning Ordinance (Cap. 131) and its subsidiary legislations is exercised by the Planning Department (s.22, TPO). The power is different in different areas and in different land-uses.

3.3.2.7.1 Urban Areas

Although the current Outline Zoning Plans (OZPs) and Development Permission Area Plans (DPA Plans), once gazetted, acquire statutory effect, not both of them have the direct planning enforcement power. The Town Planning Ordinance (Cap. 131) does not contain any provision for enforcement in urban areas covered by OZPs. Section 13 of TPO merely provides, "Approved plans shall be used by all public officers and bodies as standards for guidance in the exercise of any powers vested in them". Under the existing system in Hong Kong, planning control in urban areas rely mainly on the Buildings Ordinance

(Cap. 123), Building Planning Regulations (Cap. 123F) (Since the dissertation is to analyze the current planning system, so the details in the Buildings Ordinance would not be covered) and lease conditions. This implies that planning control in the urban areas can only be implemented when redevelopment of a site or material change of use of a building is conducted.

3.3.2.7.2 Rural Areas

For those areas covered by DPA Plans, planning control can be exercised in a direct way. Under the Town Planning (Amendment) Ordinance 1991, there is a provision allowing the Planning Authority to exercise the power to enforce any contravention in rural area through the statutory DPA Plans or their subsequent OZPs. Under s.20-26, no person shall undertake or continue unauthorized development unless:

1. It is an existing use (in existence before gazetting the DPA or IDPA plans), or

2. The development is permitted under the DPA plans, or
3. Permission has been granted by TPB under s.16 of TPO.

Unauthorized developments are subjects to the enforcement actions under both s.21 and s.23 of the Town Planning Ordinance (Appendix IX). The person who undertakes the unauthorized development is liable, in the case of first conviction, to a fine of \$500,000 and, in the case of a second or subsequent conviction, to a fine of \$1,000,000 (s.21, TPO). Under section 23 of the Town Planning Ordinance, the Authority, that is the Director of Planning Department, may serve an enforcement notice to the person who undertakes the unauthorized development, specifying (a) the matters that constitute the unauthorized development; and (b) a date by which if the unauthorized development has not been discontinued, the Authority requires (i) it to be discontinued; or (ii) permission for the development to be obtained under section 16 (s.23(1), TPO). Where the Authority considers that continuance of unauthorized development could (a) constitute

a health or safety hazard; (b) adversely affect the environment; or (c) make it impracticable or uneconomic to reinstate the land within a reasonable period, the Authority may serve a stop notice, specifying (i) an earlier date for discontinuance of the unauthorized development; and (ii) the steps, if any, required to be taken by a date specified in that regard to prevent anything related to the unauthorized development from causing any effect (s.23(2), TPO). Where an enforcement notice has been served planning permission under section 16 (a) has not been obtained by the date specified in that regard; or (b) has been refused and all rights of review or appeal under section 17 have been exhausted, abandoned or have expired, the Authority may serve a reinstatement notice, requiring the person who undergoes the unauthorized development to reinstate the land, by a date not earlier than 30 days after service of the notice, to the condition it was in immediately before the publication of the development permission area plan or the interim development permission area plan concerned (s.23(3) and (4), TPO). Where, by the date

specified in the notice, (a) the development has not been discontinued; (b) steps have not been taken as required under s23(2); or (c) land has not been reinstated as required by ss.23(3) or (4), (i) the person is liable, in the case of a first conviction, to a lump sum fine of \$500,000; and to a daily fine of \$50,000 for non-compliance with the notices; and in the case of a second or subsequent conviction, to a lump sum fine of \$1,000,000; and to a daily fine of \$100,000 for non-compliance with the notices (s.23(6), TPO); and (ii) the Authority may enter the land and take possession of, remove, detain and dispose of property that is on the land (s.23(7), TPO). The expenses incurred in entering the land and taking such steps may be recovered from the person concerned (s.23(8), TPO).

3.3.2.7.3 Temporary Uses

After discussing the planning control over urban areas and rural areas, control of temporary uses are considered. Temporary uses in any building or land less than five years are always permitted in all land-use zones under Outline Zoning Plans. However, all uses, whether it is permanent or temporary in nature, require planning application under Development Permission Area Plans, i.e., there is no distinction between temporary and permanent uses in the rural areas.

3.4 Comparison of the Planning Systems of the Three Countries

In this part, the author would like to compare the planning systems of Britain, United States and Hong Kong in terms of the certainty / flexibility that the planning systems provide. Their levels of certainty / flexibility are of the most concern to this dissertation as they reflect the costs of transaction involved as well as the efficiency of the systems.

The difference between these three countries is the degree to which discretion is given to the planning agencies. In the United States this is relatively small. Discretion implies differential treatment of similar cases, and therefore runs foul of the equal protection clause of the Constitution. The Bill of Rights guarantees that individuals are to be free from arbitrary government decisions. This is a major constraint on planning and is the reason why in the United States so much emphasis is placed on zoning: a technique which is intended

to determine the uses of land to which owners have a right (Cullingworth, 1993). What the government officers involved in the United States planning system have to do is to, according to the relevant laws and regulations, approve applications. If the applications are disproved, one can go to the court to have a final jurisdiction. The system of case law, as well as the procedures involved in the application process, provides certainty to the developer in the development process.

By contrast, the British planning system provides for a great deal of discretion. Although there is a zoning system, virtually all developments have to submit their application to the local planning authorities for seeking permission. All applications are decided on its own merits. As Booth (1996: 117) asserts "Britain with its emphasis on flexibility has offered its local authorities wide discretion in the control of development". Further he observes, with the Town and Country Planning Acts, local authorities are in principle

entirely free to determine the material considerations that are relevant to a particular planning application and the same section of the Act allows them to impose such conditions on planning permission as they think fit (s.40, Town and Country Planning Act 1990) (Booth, 1996: 117).

The British planning system may provide much uncertainty to the developer as compared to planning system of the United States. Cullingworth (1993) also argued that since the preparation of local plans and implementation of these plans are carried out by the same local government, the role of the administrator is enlarged to decide a specific case; whereas the American situation is different, with great emphasis being placed on the separation of powers. (Typically the plans is prepared by the legislative body -- the local government -- but administered by a separate board.)

Hong Kong, unlike both Britain and the United States, has its own rigid approach (zoning) as well as the discretion

approach (planning application). On the one hand, clear guidance of planning procedures is published to the public. On the other hand, the Planning Department is willing to show its discretion upon request of rezoning or increase of plot ratio if provisions for public interest are made available. The planning system in Hong Kong, as long as the issue of certainty is concerned, is somewhat lying in-between that of Britain and the United States.

Therefore, what the author suggests is that the British planning system provides uncertainty at the highest level while that of the United States provides uncertainty at the lowest level, and Hong Kong is lying in-between them, if these three countries are to be compared in terms of certainty / flexibility that the systems provide.

Chapter 4

Analysis of the Pure Zoning System and the Pure Negotiation System

It is not the intention of this dissertation to argue whether, in explaining planning phenomenon, the Pigou's paradigm is more powerful than the Coase's paradigm or the vice versa. In many occasions, Pigovian and the classical economics are regarded as two utmost extremes that the former supports government intervention while the later supports free market economy. In fact, there is no evidence to show that, in Pigou's papers, he had intention to prove that the market failed at all times; and Coase did not rule out the function of government intervention. In the paper, *The Federal Communications Commission* (1959), Coase mentioned that:

"..... if many people are harmed it is more difficult to reach a satisfactory solution through the market Even the enforcement of rights through the courts may

be not easy As a practical matter, the market may become too costly to operate. In these circumstances, it may be preferable to impose special regulations"

What has been selected for analyzing the current planning system in Hong Kong is the cost benefit approach, through which whether a planning measure is beneficial or efficient could be compared. The second version of Coase Theorem would be adopted for such comparison. The theorem states that if property rights are well-defined and transaction costs are zero, the allocation of resources will be identical, regardless of the initial assignment of property rights. In other words, if transaction costs are not zero, the lower is the transaction costs involved in one method, the higher is its efficiency, providing all methods lead to the same level of benefits.

In the following parts, a model of two "pure" planning systems is established in order to analyze the costs of transaction involved in the planning system in Hong Kong. The

assumptions of this model are:

1. There are only two methods in implementing the concept of town planning -- they are the "pure zoning system" and the "pure negotiation system"
2. Both systems aim at the same result - the result of providing a healthy, safe, convenient and general welfare of the community.
3. Both systems can lead to the same result at the same level of benefits of urban form.

What the author aims to analyze is the costs involved in these two systems. If the transaction costs involved in the "pure zoning system" is lower, it should be chosen as the mean to control planning in a society, or vice versa.

In the following subsections, the author would present the details of his model and the application of transaction cost economics in the analysis of the model.

4.1 Assumptions

In this part, the rationales behind setting the three assumptions are explained.

Assumption I: There are only two methods in implementing the concept of town planning -- they are the "pure zoning system" and the "pure negotiation system"

There are, if not thousands, hundreds of planning systems which implement the planning concept in practice in the real world. Different countries operate their own planning systems, which are, to a certain extent, differ from each other. What the author would like to suggest is that there are only two extremes of planning systems: one is the "pure zoning system" and the other one is the "pure negotiation system" (What zoning and negotiation means will be discussed in the following subsections). In fact, there are no "pure" systems existing in the world -- most of them are lying in-between

the two extremes. The British planning system, as seen by the author, is somewhat a "pure negotiation system" whilst the American planning system is much like a "pure zoning system".

Therefore, in order to analyze the transaction costs involved in any planning system, the two extremes should be defined as the only two planning systems. Should there be any in-between system, it could easily be used to compare to the two extremes for analyzing its efficiency.

Assumption II: Both systems aim at the same result -- the result of providing a healthy, safe, convenient and general welfare of the community.

This result is the aim of the planning system in Hong Kong. In order to examine the local planning system, the benefits brought by the two "pure" systems should be preset as this. Indeed, this assumption, or more precisely, the results that would be achieved by the "pure" systems, could be anything,

as long as assumption III is satisfied.

Assumption III: Both systems can lead to the same result at the same level.

The heart of this assumption is the word, "same". If the two "pure" systems could achieve the "same" result at the "same" level, the benefits produced by these two systems could then be defined as the same, so that the costs of transaction involved in the systems are the only components that should be considered in analyzing on the efficiency.

In the following subsections, what the author means by the terms "pure zoning system" and "pure negotiation system" is elaborated in more detail.

4.2 Pure Zoning System

Before the term "pure zoning system" is defined, the meaning of zoning would be given first.

Zoning is the division of a local area into districts which are subject to different regulations regarding the use of land and the height and bulk of buildings which are allowable. Hollander (1988) suggested that zoning separates land use according to their function and is usually applied to existing uses. Similar meaning of zoning was specified by Brunswick (1999): zoning is a separation of the municipality into districts, and the regulation of buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land.

Instead of interpreting zoning physically, Cullingworth (1993) explained it in a political way: zoning is an exercise of the police power: the inherent power of a sovereign

government to legislate for the health, welfare, and safety of the community. It is a process by which the residents of a local community examine what people propose to do with their land, and decide whether or not they will permit it.

To sum up, zoning is the division of an area into zones within which uses are permitted as set out in the zoning ordinance, which details the restrictions and conditions which apply in each zone.

The "pure zoning system" is defined to include the following components:

1. formulation of the ordinance texts and maps by a local zoning commission;
2. adoption of the draft texts and maps by the local governing body;
3. enforcement of the planning ordinance by the relevant planning board; and

4. amendment of the existing ordinance texts and maps when necessary.

What the plans shown in the "pure planning system" is only the uses which are always permitted (which is alike the Column I of the Outline Zoning Plans in the planning system in Hong Kong). If the use of development is listed in the plans, it is not necessary to proceed for any application to any government bodies. If the use of development is not listed in the plans, neither the use is accepted to develop in that particular lot, nor any request for rezoning would be accepted. There is, by definition, no request for rezoning, either legislatively or administratively, in the pure zoning system.

In this system, rezoning does exist, but it must be initiated by the government. The zoning could be re-zoned once the government thinks it fits after reviewing the existing use as well as consulting the affected community in the locality. The rezoning proposal must pass through a

series of public inspection and comments so as to reflect the market situation before it comes to parts of the law. Not only is there public involvement in the amendment of plans, but they also exist in the case before drafted plans are adopted to become approved plans.

4.3 Pure Negotiation System

Before discussing what the author means by the term "pure negotiation system", literature on what negotiation means is reviewed.

The seminal work on the subject was undertaken by Strauss (1978) in studies in psychiatric institutions. He considers negotiation as a means of getting things accomplished when different groups or organizations need to consider each other's viewpoints to get things done.

Gresch and Smith (1985) have identified negotiation as

a contributory activity to conflict management in national planning legislation. Claydon (1996) distinguishes negotiations as the process whereby parties attempt to reach agreement and distinguishes this from ideas of bargaining (the trading of benefits) and compromise (the acceptance of sub-optimal agreement) which may be part of the negotiation process.

Kennedy *et al.* (1980) have identified eight stages in a negotiating framework. These were based on the free-market environment and less on an environment where legal and political parameters do much to establish the organization of an authority. Thus, in considering negotiations in respect of planning applications, Kennedy *et al.*'s stages might be redefined as: (1) preparing; (2) bargaining; (3) proposing; (4) packaging; (5) closing; and (6) agreeing.

In reality, a developer is likely to include all of these stages, to a lesser or greater degree, but may not pursue them

in the logical sequence outlined because an upset at any one stage may require a review of a previous stage. As with any effective planning system itself, the process of negotiating will essentially be cyclical. Thus, having prioritized the requirements as part of the preparation stage and commenced discussions with the local authority, the developer may well receive signals that indicate that the ingredients of the planning applications being negotiated are not acceptable. This may well lead to a reconsideration, new proposals promoted and bargaining recommencing. This again will be followed by further discussions and again a response from the local authority will be signalled.

As the name "pure negotiation system" tells, in this system, negotiation must be involved. This system also encompasses the following elements:

1. formulation of the ordinance texts and maps by a local zoning commission;

2. adoption of the draft texts and maps by the local governing body;
3. enforcement of the planning ordinance by the relevant planning board; and
4. amendment of the existing ordinance texts and maps when necessary.

The major difference between the "pure zoning system" and the "pure negotiation system" is the uses stipulated in the plans. In the "pure negotiation system", by definition, the plans would only list out the uses which needs planning application (which is similar to the Column II in the Outline Zoning Plans in the planning system in Hong Kong). If the use of development is shown in the plan, planning application is necessary to be approved by the relevant planning board before any development should proceed. Negotiation plays a vital role in the planning application process and it runs parallel to the process. If the use of development is not stated in the plan, the only thing that can be done is to request a

rezoning administratively. The relevant planning board could accept the request, reject it, or even ignore it, as the request does not have any statutory enforcement.

Rezoning in this pure system, as defined, could only be initiated by individuals. What the government does is not to review the plans regularly to see whether the zoning still fits the society, but rather to review the plans comprehensively after there is a market response of which rezoning is requested. Although the party who instigates the rezoning process is unlike the "pure zoning system", public involvement is made available. After the plans are consulted and subsequently approved, they acquire statutory power.

Resembling the "pure zoning system", public involvement is also present in the stages of plan preparation and plan amendment processes.

4.4 Cost Benefit Analysis

In this part, the two “pure” systems are compared by a cost benefit approach in order to analyze their efficiency.

The assumption in part 4.1 states that the two “pure” systems would lead to the same result at the same level, so the benefits brought by these two systems are the same. Therefore, what the author has to do is just to compare the costs of transaction involved in the two systems given the above assumption. Now every component involved in the systems are evaluated.

Component I: Formulation of the ordinance texts and maps by a local zoning commission.

Although the uses listed in the two “pure” systems is of different purposes: one is always permitted whereas the other one needs planning approval, the costs of transaction involved

in both systems can be of similar magnitude. This is because this component, although in different systems, has to go through "standard" procedures: the officers have to examine, in that particular zone, the current situation of land use, the trend of population growth, the development of different economic sectors, the land prices, as well as the future needs on the land. No matter what uses are going to be listed, the plans could not be gazetted before these procedures have finished. Both systems employ public involvement during the process of plan drafting. Since the procedures are assumed to be the same, the costs of information (due to searching data of the current trend to project them in future figures), costs of negotiation (due to public involvement), costs of drawing up the plans and texts are similar, so the author could assume that the costs of transaction involved in this component (formulation of planning rules and maps) are more or less the same in both "pure" systems.

Component II: Adoption of the draft texts and maps by the local governing body.

After preparing the draft plans, both "pure" systems require that the draft plans and maps have to be approved by the local governing body before they obtain legal status. Before the plans become statutory, the government has the responsibility to invite public inspection and receive public comments so as to know how the proposed plans affect the people. The public could, during the consultation period, voice out their opinions, support or objection to the governing body. Because the two "pure" systems have to go through this component, which is of similar type, it is assumed that the costs of information (due to searching data of the community's preference and views), costs of negotiation (due to negotiation with members of the community or any interest groups) and costs of drawing up the plans and texts (due to drawing up the initial draft plans as well as any amendment to the plans after receipt of comments from the public) are

similar, and so does the costs of transaction.

Component III: Enforcement of the planning ordinance by the relevant planning board.

Both "pure" systems have this component, which is comprised of sending inspectors to the specific sites for checking whether the existing uses complies with the ordinance and zoning as stipulated in the respective plans, issuing legal notices to the ones who do not comply with the planning regulations, and prosecuting anyone whose development contravenes the current planning statute etc. These activities have to be executed by the relevant government bodies in both "pure" systems at the same level. Thus, the costs of information, administration and enforcement of the laws are supposed to be of the same amount.

Component IV: Amendment of the existing ordinance texts and maps when necessary.

No matter how carefully drafted, a zoning ordinance and map can never cover all the circumstances that might arise or all the eventualities that might come to pass. Hence, there has to be some way of providing for the unforeseen. There are two main methods of doing this: by way of planning approval and amendment of the current legislation, in particular, rezoning. The first one only exists in the "pure negotiation system", in which all development proposals have to be submission for approval upon change of use; whereas there is no such provision in the "pure zoning system", in which the development could proceed once its use is stated in the plans. As mentioned before, negotiation constitutes a crucial ingredient in the planning application process in the "pure negotiation system", which implies that there would be a large amount of costs of transaction involved. The costs of transaction are mainly come from the costs of information (to

discover who is going to be dealt with, to inform people that one wishes to deal and on what terms), the costs of negotiation (to conduct negotiations leading up to a bargain in the planning application, especially in terms of planning gain), the costs of drawing up the contract and the costs of enforcing contracts (to undertake the inspection needed to make sure that the terms of the contract are being observed), or even the costs of changing institutional arrangements (e.g., change of contract terms).

The second way of amending the current legislation is rezoning. In the author's model, both "pure" systems make use of this concept, but in different detail. The "pure zoning system" does not permit any administrative request upon rezoning by any individuals. All matter of rezoning shall be instigated by the relevant planning board, in view of the general welfare of the community, rather than of granting benefits to any members of the public. In this system, the major costs borne by the government are the costs of searching

information of what the society would need in the future, which types of land use is and will be in demand, how the use of land is to be allocated etc.

In the "pure negotiation system", rezoning could only be initiated by administrative request by the members of the community to the government. For this reason, one may argue that the costs of transaction would be much greater than that involved in the "pure zoning system" because there are not only the costs of searching information for investigating the current needs and future trends of land use, but also the costs of negotiating and bargaining with various kinds of professionals between the government and the developer and the costs of making and enforcing the contracts between them.

The author, nevertheless, proposes that the transaction costs involved in these two "pure" systems, as long as the issue of rezoning is concerned, should be comparable. In both systems, the government has to review the plans and

regulations to see whether it still fits the society. The only difference is that in the "pure zoning system", government operates the research on a regular basis whilst in the "pure negotiation system", the government starts the research upon receipt of administrative request on rezoning. One point should be noted is that although administrative request of rezoning is not permitted in the "pure zoning system", there must be some interest groups lobbying the government on the use of land during the times of review of plans. From a macroscopic point of view, the frequency of review should be the same between these two "pure" systems and thus the transaction costs involved in the review of planning regulations and maps are analogous (since the government, in both systems, has to go through the same procedures of, say, public consultation before rezoning, no matter which party, the government or individual, initiates the matter concerned).

Although both "pure" systems employ component IV (the

amendment of existing regulations), due to the fact that they implement it at a different level, the transaction costs involved in the two systems are not the same. Analysis in the previous paragraphs reveals that the costs of transaction involved in the "pure negotiation system" shall be much greater than that in the "pure zoning system".

The author would like to make a note on component I (plan preparation) and component IV (plan amendment) in both "pure" systems. These two components are, in fact, the implementation of the zoning technique, which is the establishment of private property rights over land. Once private property rights are to be established, costs of transaction must be involved. In both systems, the costs of delineating and policing the private property right are suggested to be the same.

After the four components have been put into discussion individually, the subject shall be viewed collectively. The

costs of transaction involved in the first three components (formulation, adoption and enforcement of the planning rules) in the two "pure" systems are comparable, but that in the last component (amendment of planning rules, in particular, the matter of planning application) shows a large difference in the two "pure" systems. To put in a word, the overall transaction costs involved in the "pure negotiation system" is greater than that in the "pure zoning system" and the "pure zoning system" is more efficient than the "pure negotiation system" if all assumptions of the model are valid.

Chapter 5

Analysis of the Current Planning System in Hong Kong

In this chapter, the problem of planning and property rights would be discussed in the context of the planning system in Hong Kong. After reviewing Lai's research about his arguments of the two conflicts, the costs of transaction involved in the local planning system would be compared to the author's model of "pure zoning system" and "pure negotiation system" to conclude whether the local planning system is efficient.

5.1 Planning and Property Rights

In Hong Kong, most of the land resources are allocated through the leasehold system, in which the lease conditions have been serving the purpose of development control. However, as the society is changing all the time, the government has

subsequently imposed statutory plans putting restrictions on the rights of the lessee. Lease, as discussed in chapter 3.3.1.2, is itself a contract. In the law of contract, the lessor can be said to be in breach of contract if the right of the lessee is attenuated due to the action of the lessor. The government, acting as the lessor, should therefore be liable to compensate for the loss of the aggrieved party.

The current planning application process used in Hong Kong is often criticized for its ambiguous decision made by the Town Planning Board, its lengthy procedures and its expensive cost (Lai, 1996; Lai, 1997; Stanley, 1994). Local planning researchers have been skeptical of the development loss due to the decision of the Board. The question of whether the imposition of such planning regulations to protect the public interest at the expense of attenuating private property rights is beneficial or not has been raised by many scholars. According to Lai (1997), there are four main issues which put planning into a questionable position.

5.1.1 Planning Application

Any intended redevelopment or change in use would need to be checked against the statutory plan, even where there is no need for lease modification. If an intended use is a Column II use in the Outline Zoning Plan, or a temporary change in use or development in a Development Permission Areas Plan, planning permission must be obtained from the Town Planning Board before proceeding the development. Planning permission is in this situation necessary even if the use is permitted by the government lease. Where an intended use is not found in the Schedule of Notes, then that use cannot be developed, even if it is consistent with the government lease. The Building Authority will not give permission to build if the requisite statutory use right or planning permission is not available (s.16(1)(d), Buildings Ordinance, Cap. 123). The only way out for the proprietor is to wait or apply for rezoning in his favour. Where the zoning is for a public use, e.g., open space, the proprietor's objector is usually in

vain.

The institution of planning applications means that private planning decisions are superseded by government planning decisions. This constitutes an attenuation of the rights of the proprietor to use land in the most profitable manner possible. Where the zoned use is for a public purpose, the government will as a matter of policy resume land at its existing value (s.4(2), Town Planning Ordinance, Cap. 131). This means that the rights of the proprietor are extinguished unilaterally by the landlord (the government) before the lease expires naturally. The proprietor will as a result lose the difference between the opportunity cost of land under the lease terms as controlled in development bulk by the prevailing Building Regulations, and the existing value which is the value of the existing property ignoring redevelopment potential. If a zoning proposal adversely affects the value of a land parcel, the proprietor(s) of that land parcel is (are) not entitled to compensation. On the other hand, if a

zoning proposal enhances the value of a land parcel, there is no betterment levy on the proprietor(s).

5.1.2 Plot Ratio Reduction

The development intensity of the intended use, whether or not planning permission is required, is reduced or restricted in the relevant statutory zoning. A typical example is the stipulation in the statutory zone if a plot ratio or building height lower than that permitted under the prevailing Building Regulations or lease document. The problem could be illustrated by the downzoning of plot ratio from 15 to 9.5 in the industrial zones of Tsuen Wan New Town. Implementation of the downzoning means that any redevelopment of existing factory buildings could not exceed the now-reduced plot ratio of 9.5, entailing a potential loss of 5.5. Plot ratio reduction can be regarded as taxation in kind, attenuating the rights of proprietors to derive the maximum amount of income from their property as implied in the lease terms.

5.1.3 Comprehensive Development Area

Under the circumstance where a piece of land under multiple ownership falls within a Comprehensive Development Area (CDA) designated in an Outline Zoning Plan (OZP), independent redevelopment of individual land parcels permitted by respective lease documents will no longer be realized by individual proprietors of the land parcels. Any redevelopment of the CDA must be comprehensive and unitary in accordance with a Master Layout Plan (MLP) submitted to and approved by the Town Planning Board (TPB) under the planning application procedure. As multiple ownership effectively incurs prohibitively high transaction costs of arriving at mutual agreements to joint redevelopment according to an MLP, the government assigns the right to resort to resumption to public agencies for urban renewal. The agencies are the Land Development Corporation (LDC) and the Housing Society (HS).

CDA designation for land under multiple ownership in effect makes the freedom to use a proprietor's land contingent on the consent of another. It extinguished the rights of proprietors to freely subdivide or combine property for the most profitable use. The landowner loses his autonomy in deciding the fate of any part of his land. The owner would have no choice but to join with others if he or she wished to develop land in an organization involving third parties.

Where resumption under the Lands Resumption Ordinance (Cap. 124) occurs for the purpose of urban renewal by government agencies, the property rights of proprietors are extinguished unilaterally by the landlord before the natural expiry of the lease. Landowners are compensated at the existing level of the existing use but not the full potential value of the land. The proprietor will lose the difference between the opportunity cost of land under the prevailing plot ratio control and the existing value of the property.

5.1.4 Planning Enforcement

Landowners subject to enforcement within DPA plans have to bear heavy fines if they do not comply with the statutory requirements. As a result of the superimposition of modern planning on existing leasehold land, the contractual nature of private development has been significantly altered. Private property rights freedom is increasingly subject to bureaucratic interference. Unlike a land sale or lease modification, neither a hearing of objection, planning application, review, or appeal nor a petition for rezoning is conducted between the government and the individual on an equal contractual footing.

Where the reasons for decisions made are not logically intelligible or the criteria for such decisions are uncertain, and where the institution of private property rights is weakened, the result will be the creation of a great deal of uncertainty in the land market and an increase in the

transaction costs of changes in land use and redevelopment.

In response, the development market will alter its mode of allocation from one based largely on price competition to one based also on non-price competition. Such non-price competition is often not intended to improve the quality of the output but rather to get through government procedures. This not only undermines the institution of private property rights and affects the efficiency of the development market in responding to changing demand, but could also frustrate the professed object of planning for a better sustainable living environment. At the extreme case of taking land for purposes which are doubtfully "public", the whole root of the institution of private property rights is eroded.

5.2 Transaction Costs Comparison

After reviewing Lai's thought about the property rights problems associated with the current planning system in Hong Kong, the author is going to adopt the cost benefit approach to study the costs of transaction involved in the local planning system by comparison with the "pure zoning system" and "pure negotiation system" established in the author's model stated in the previous chapter.

In Hong Kong, the present planning system also consists of aforesaid four components:

1. formulation of the ordinance texts and preparation of draft plans by the Town Planning Board (s.3(1), TPO);
2. adoption of the draft texts and plans by the Chief Executive in Council (s.8(1), TPO);
3. enforcement of the Town Planning Ordinance (Cap. 131) by the Planning Department (ss.20-26, TPO); and

4. amendment of the existing ordinance texts and plans when necessary (s12, TPO).

In the following parts, each costs of transaction involved in these four components is taken to weigh against that in the "pure zoning system" and "pure negotiation system".

Component I: Formulation of the ordinance texts and preparation of draft plans by the Town Planning Board (s.3(1), TPO).

In Hong Kong, there are two Columns defining the uses which are always permitted (Column 1 uses) and the uses which have to submit planning application for approval (Column 2 uses) in the Outline Zoning Plans (OZP). When this policy is compared with the author's model of two "pure" systems, it is not difficult to discover that the plans of the local planning system contain both categories of uses in the "pure zoning system" (in which only the uses which are always

permitted is listed) and in the "pure negotiation system" (in which only the uses which planning approval is required is listed). Though apparently one more column has to be considered during the preparation of draft plans, the underlying workload, or more precisely, the costs of transaction, is more or less the same of the two "pure" systems. This is because all three systems have to go through similar kinds of processes, such as searching information of how the existing land resources are allocated, how fast the projected population growth of the society is, how land capital is scrambled in the future etc. Apart from this, relevant professionals are employed to draft and public are involved in comment on the rules and plans in all three systems to a similar extent. Therefore, the costs of transaction involved in component I (formulation of rules and preparation of plans) in the three systems are comparable to one other due to similar costs of information, costs of negotiation and costs of drawing up the plans and texts.

Component II: Adoption of the draft texts and plans by the Chief Executive in Council (s.8(1), TPO).

Component III: Enforcement of the Town Planning Ordinance (Cap. 131) by the Planning Department (ss.20-26, TPO).

Again, similar approaches of procedures are exercised in these two components in all of the three systems, including invitation of public inspection, receiving public comments, negotiation with members of the community or any interest groups, drawing up plans and texts, amendment to the plans after receipt of comments from the public if necessary, sending inspectors to the specific sites for checking the compliance of land use, issuing legal notices relating to contravention and undergoing prosecution etc. All of these activities are carried out somewhat to the same degree, no matter which systems are employed. So the author would think that the costs of transaction involved in components II and III (adoption of plans and enforcement of rules) are comparable in all three systems.

Component IV: Amendment of the existing ordinance texts and plans when necessary (s12, TPO).

In part 4.4, there are two ways of implementing amendment of the existing ordinance texts and plans: by means of planning application and rezoning. In Hong Kong, applicants are entitled to submit their planning applications to the Town Planning Board for approval if their intended use is stipulated in Column II of the Outline Zoning Plan (OZP), but if the proposed use is listed in Column I of the respective OZP, the owners could proceed their development without any needs of planning approval. This arrangement of planning application provides certainty in Column I use (as in the "pure zoning system") but creates uncertainty in Column II use (as in the "pure negotiation system").

As explained in part 4.4, so long as the matter of planning application is concerned, the costs of transaction involved in the "pure negotiation system" are larger than that in the

"pure zoning system" because all development have to seek for planning permission in the former system and no planning application is needed in the later system. Since the Schedule of Notes in the OZPs in Hong Kong stipulate both the uses which planning application is needed and the uses which planning approval is not required, if the assumption of which same number of development would undergo in the three systems is valid, the number of planning application in Hong Kong's planning system would definitely fewer than that in the "pure negotiation system". Assuming that similar costs of transaction are involved in each planning application, the author would suggest that the transaction costs involved in Hong Kong's planning application system would be greater than that in the "pure zoning system" but lesser than that in the "pure negotiation system".

After comparing the costs of transaction in planning application in the three systems, the comparison of that in the matter of rezoning, which is the second mean of amendment

of planning rules and maps, is discussed.

In Hong Kong, the plans would be reviewed by the Town Planning Board upon instruction of the Chief Executive or receipt of administrative request of members of the general public. No matter which party initiates the review of zoning, market response should be gathered to know the needs of people. If we see it from a wide angle, the period for which plans would be reviewed should be more or less similar in all of the three systems. Because similar procedures are involved in every zoning review process, for example, searching information of the needs of the society, negotiation with different kinds of interest groups, bargaining between professionals, drawing up rules and plans, discussion with and consultation from the public, etc, the costs of transaction involved in the rezoning process would be comparable in all three systems.

To conclude, the total costs of transaction involved in

the planning system in Hong Kong would lie between the two "extremes", i.e., greater than that in the "pure zoning system" and lesser than that in the "pure negotiation system". In other words, the "pure zoning system" is the most efficient, the Hong Kong's planning system is in the midst, and the "pure negotiation system" is the least efficient. The significance of this conclusion is that it tells us the costs of transaction involved in the local planning system is increasing as the system is gradually changed from a "pure zoning system" to a "pure negotiation system". The current system of planning application have not been operated until the year 1974, after which s.16 application was introduced. Since discretion are involved in the planning application system, uncertainty arises, which generates more costs of transaction and therefore the efficiency of the planning system is decreased.

5.3 Overview of the Singway Case

The previous part asserts the idea of the author about the change of the current planning system in Hong Kong from a relative “pure zoning system” to the direction leading to the “pure negotiation system”. This part aims to describe and explain why there was a sudden change of the planning system.

The most important change to land-use regulations occurred in 1974 when the courts invalidated the government’s power to use notes developed by the Office of Town Planning on zoning plans as guidelines for development. This law case, *Singway Co. Ltd v The Attorney-General* [1974] HKLR 275 (Cruden, 1999), led to a significant revision of the Town Planning Ordinance.

Expressed briefly, during the period 1970-1972, the site of the present Hopewell Centre was acquired, and plans were submitted for a 53-storey commercial building to contain offices, restaurants, a cinema and other commercial

enterprises, even though the site was zoned under Draft Outline Zoning Plan LH 5/34 for Wanchai as for residential use only. This initial proposal was rejected by the Buildings Ordinance Office on the grounds of incompatibility with the draft plan. The development, then, challenged this rejection by claiming that the term "residential" used on the plan, and enlarged by the supplementary note published on the face of the plan, was invalid (Bristow, 1984).

The subsequent argument in court centered on the notion of permissiveness, and the extent of flexibility introduced by the notes and their validity under the Town Planning Ordinance (Section 4(1)). It was at last held in the judgment that such flexibility was not allowed by the Ordinance, and that consequently all statutory plans of a similar type were invalid; and further that the specific refusal of permission to develop was also therefore incorrect (Bristow, 1984).

The Supreme Court decision of June 1974 precipitated an

immediate change to the former town planning legislation. The amendments related to two matters. Firstly, Legislation was passed in 1974 to give statutory authority not only to the plans, but also the diagrams, illustrations, notes or descriptive matter. Secondly, a new procedure was set up to ensure that, where flexibility was to be allowed, a proper means should exist to show when, how and by whom permission could be granted to alter a plan's requirements (Planning Department, 1999). This is the currently well-known section 16 planning procedure.

Chapter 6

Planning Case Study

The previous chapter arrives a conclusion that the costs of transaction involved in the planning system in Hong Kong is steadily rising as areas of discretion becomes larger. This chapter aims at providing a firm ground to this theoretically-derived conclusion by studying a planning case in the territory, examining the rejection reasons, and the time cost involved in the planning application process.

6.1 Introduction

The planning case selected for the academic study in this dissertation is the planning application of redevelopment of portion of Wah Yan College, Kowloon in Yaumatei. The site concerned is zoned as Government / Institution and Community (G/IC) (Appendix V) and the proposed use is residential development. On 5/2/2000, an interview with the Principal of

the school was conducted in order to know the reason for the development. According to the reply of the Principal, Mr. Chung-Ping So, the revenue earned from the development of residential blocks would be utilized to subsidize the construction of a new education building which would consist of science laboratories, sports fields and swimming pools for improving the existing education facilities in the school.

The instance of Wah Yan College is not the only case of demanding a change of use from G/IC to residential. The table in the next page shows the planning applications of the same request from 1974 to 22/12/2000.

The samples which are similar to the case of Wah Yan College are collected for better comparison. Since the proposed development of Wah Yan College is residential and school development, as well as club and car park, the planning applications with all these proposed development are gathered for analysis.

File Ref.	Location	Zoning	Proposed use	Appli- cation	Date of meeting	Decis- ion
Applications in Hong Kong Island						
H03/ 123R	J/O Lower Lascar Row & Lok Ku Rd, Sheung Wan	G/IC	R	S16	20/2/87	AC
H03/ 132	1-7 Kwok Hing Lane, Sai Ying Pun	G/IC	R	S16	6/3/87	R
				S17	19/6/87	R
H03/ 134	103, Third St, Sai Ying Pun	G/IC	R	S16	20/3/87	D
				S16	8/5/87	R
				S17	19/6/87	D
				S17	11/9/87	AC
H03/ 160	75, Caine Rd, HK	G/IC	R	S16	19/10/90	AC
H03/ 180	97 High St, Sai Ying Pun	G/IC	R, School	S16	22/5/92	AC
H03/ 193	97 High St, Sai Ying Pun	G/IC	R, School	S16	5/2/93	AC
H03/ 212	75 Caine Rd, HK	G/IC	R	S16	16/12/94	R
H03/ 215	75 Caine Rd, HK	G/IC	R, Kinder- garden	S16	11/4/94	AC

H03/ 225	38 Tai Ping Shan St., Sheung Wan	G/IC	R	S16	3/11/95	R
H03/ 238	38 Tai Ping Shan St., Sheung Wan	G/IC	R	S16	21/1/96	AC
H03/ 262	75 Caine Rd, HK	G/IC	R, Kinder- garden	S16	2/5/97	AC
H03/ 279	51 Centre St, Sai Ying Pun	G/IC	R, Kinder- garden	S16	26/2/99	AC
H05/ 009	J/O Oi Kwan Rd & Sung Tak St, Wanchai	G/IC	R	S16	21/11/75	A
H05/ 119	23, Monmouth Path, Waichai	G/IC	R	S16	18/10/85	D
				S16	20/12/85	AC
H05/ 131	21, Monmouth Path, Waichai	G/IC	R	S16	9/1/87	R
				S16	8/5/85	D
				S17	10/7/87	AC
H05/ 172	1-20 Chit St, Wanchai	G/IC	R	S16	9/4/90	AC
H05/ 198	1-20 Chit St, Wanchai	G/IC	R	S16	8/4/92	AC
H07/ 001	3 Link Rd, HK	G/IC	R	S16	11/6/76	R
				S17	20/8/76	R

H07/ 020	3 Link Rd, HK	G/IC	R	S16	15/8/80	R
				S17	19/12/80	A
H07/ 021	6 Broadwood Rd, HK	G/IC	R	S16	20/2/81	AC
H07/ 024	101 Caroline Hill Rd, Causeway	G/IC	R	S16	18/9/81	R
				S17	5/1/82	A
H07/ 036	17 Ventris Rd, HK	G/IC	R	S16	6/4/84	A
H07/ 039	Off Sing Woo Rd, Happy Valley, HK	G/IC	R	S16	10/1/85	AC
H07/ 048	3 Link Rd, Happy Valley, HK	G/IC	R	S16	14/11/86	A
H07/ 077	101 Caroline Hill Rd, Causeway Bay	G/IC	R	S16	4/10/91	AC
H07/ 086	101 Caroline Hill Rd, Causeway Bay	G/IC	R	S16	18/9/92	AC
H07/ 107	Green Lane Hall, 32 Green Lane, Happy Valley	G/IC	R	S16	24/1/97	AX
H08/ 123	281 Tsat Tsz Mui Rd, HK	G/IC	R	S16	22/8/86	D
				S16	6/2/87	AC
H08/ 184	Chung On Terrace, North Point	G/IC	R	S16	4/9/92	AC

H09/ 010	50-54 Hing Man St, Shaukeiwan	G/IC	R	S16	18/3/83	A
H09/ 024	Shau Kei Wan Rd, J/O Tai On St & Holy Cross Path, HK	G/IC	R	S16	9/1/87	A
H09/ 033	7-8 Basel Rd, Shau Kei Wan, HK	G/IC	R	S16	10/5/91	R
H10/ 020	Blocks A B C & D, Gov't Quarters, 122 Pok Fu Lam Rd	G/IC	R	S16	14/6/96	AX
H11/ 005	Canossian Missions, 2-4 Mosque St, 10 Robinson Rd & 26 Caine Rd, Mid-Levels West, HK	G/IC	R	S16	10/7/87	D
				S16	14/8/87	R
				S17	11/12/87	R
H11/ 008	Canossian Missions, 2-4 Mosque St, 10 Robinson Rd & 26 Caine Rd, Mid-Levels West, HK	G/IC	R	S16	25/3/88	AC

H11/ 014	3 Babington Path & 44 Lyttelton Rd, HK	G/IC	R	S16	9/6/89	R
H11/ 014R	3 Babington Path & 44 Lyttelton Rd, HK	G/IC	R	S17	13/10/89	AC
				Appeal	26/11/91	A
H11/ 027	4-6 Robinson Rd, HK	G/IC	R	S16	20/9/91	R
				S17	20/12/91	R
H11/ 041	78-80 Robinson Rd & 10 Bonham Rd, HK	G/IC	R, Club	S16	19/8/94	D
				S16	4/11/94	R
				S17	3/3/95	D
				S17	12/5/95	D
H11/ 045	78-80 Robinson Rd & 10 Bonham Rd, HK	G/IC	R	S16	17/2/95	R
				S16	16/12/94	D
				S17	16/6/95	AC
H11/ 049	22A Kennedy Rd, Central	G/IC	R, kinder- garden	S16	24/5/96	R
				S17	11/10/96	R
H11/ 064	78-80 Robinson Rd & 10 Bonham Rd, HK	G/IC	R	S16	24/8/00	AC
H14/ 003	41 Mount Kellet Rd, Peak District, HK	G/IC	R	S16	15/5/81	R
				S17	18/9/81	AC

H14/ 032	41 Mount Kellet Rd, Peak District, HK	G/IC	R	S16	14/4/00	R
				S17	15/9/00	R
H15/ 003	Yue Kwong Rd / Aberdeen Reservoir Rd, Aberdeen	G/IC	R	S16	17/3/78	A
H15/ 080	Shum Wan Rd, Wong Chuk Hang, HK Gov't Land	G/IC	R	S16	13/10/89	AC
H17/ 059	45 Deep Water Bay Rd	G/IC	R	S16	24/1/97	R
				S17	27/6/97	R
Applications in Kowloon Peninsula						
K01/ 001	138 Nathan Rd, Kln	G/IC	R	S16	17/9/76	A
K02/ 108	Portion of Wah Yan College, Kln, Waterloo Rd, Yaumatei	G/IC	R, Car Park (under)	S16	6/12/96	R
				S17	15/8/97	R
K02/ 124	Portion of Wah Yan College, Kln, Waterloo Rd, Yaumatei	G/IC	R, school	S16	9/5/00	D
				S16	22/9/00	R

K05/ 008	Po On Rd, Cheung Sha Wan	G/IC	R	S16	16/5/80	A
K05/ 333	Gov't Quarters at 3, 2-4 & 8-10 Caldecott Rd, Cheung Sha Wan	G/IC	R	S16	20/9/96	AX
K05/ 397	Non-departmental Gov't Quarters at -10 Caldecott Rd, Cheung Sha Wan	G/IC	R	S16	3/10/97	AC
K07/ 030	16 Tin Kwong Rd, Ho Man Tin	G/IC	R, School, Car park, Club	S16	24/4/98	D
				S16	14/8/98	R
				S17	18/12/98	R
K07/ 031	217-223 Prince Edward Rd West, Ho Man Tin	G/IC	R, Car park	S16	8/5/98	R
K07/ 036	16 Tin Kwong Rd, Ho Man Tin	G/IC	R, School	S16	17/12/99	D
				S16	19/5/00	R
K10/ 069	194-200 Argyle St, Kln	G/IC	R	S16	22/4/88	R
				S17	12/8/88	AC
K10/ 158	1 Ma Hang Chung Rd, Ma Tau Kok	G/IC	R	S16	26/1/96	R

K10/ 162	1 Ma Hang Chung Rd, Ma Tau Kok	G/IC	R	S16	26/1/96	R
				S17	27/9/96	AC
K10/ 168	1 Ma Hang Chung Rd, Ma Tau Kok	G/IC	R	S16	11/7/97	AC
K11/ 030	Sai Nam Terrace, 141 Hammer Hill Rd, Diamond Hill	G/IC	R	S16	14/3/86	R
				S17	11/7/86	R
K11/ 038	Area of Gov't Land & Portion of the Private Lot Abutting Shatin Pass Rd	G/IC	R	S16	22/5/87	A
K11/ 100	Lung Poon St & Fung Tak Rd, Diamond Hill	G/IC	R	S16	4/11/94	D
K12/ 004	Ngau Chi Wan (Off Hammer Hill Rd)	G/IG	R	S16	21/8/81	R
				S17	15/1/82	R
K12/ 006	40 Ngau Chi Wan Private Sectors Participation Scheme	G/IC	R	S16	19/11/82	A
K12 012	Ngau Chi Wan	G/IC	R, Kinder- garden	S16	20/9/93	R

K14/ 113	70 Wan Hon St, Kwun Tong	G/IC	R, School	S16	20/9/93	R
K14/ 283	2 Horse Show Lane, Kwun Tong	G/IC	R	S16	20/6/97	R
				S17	31/10/97	R
K18/ 050	2 College Rd, Kln	G/IC	R	S16	27/1/89	AC
K18/ 071	2A Oxford Rd, Kln Tong	G/IC	R	S16	6/9/91	R
K18/ 110	1 Derby Rd, Kln Tong	G/IC	R	S16	3/11/95	R
K18/ 156	Gov't Land & Private Lots Adjacent to the East of Holy Family Canossian College, Invernes Rd, Kln Tong	G/IC	R	S16	31/3/00	R
				S17	21/7/00	R

Applications in the New Territories						
TY/ 016	Area 1, Tsing Yi	G/IC	R	S16	14/4/89	AC
ST/ 434	Blk E, Prince of Wales Hospital, 30-32 Ngan Ching St, Shatin	G/IC	R	S16	8/8/97	AX
TM/ 060	Blk 1-4, Tsing Shan Tsuen	G/IC	R	S16	11/12/87/	R
TM/ 067	Tsing Shan Tsuen Area 31, Tuen Mun	G/IC	R	S16	27/5/88	AC
TM/ 092	Tsing Shan Tsuen Area 31, Tuen Mun	G/IC	R	S16	25/5/90	R
TM/ 114	Tsing Shan Tsuen Wan Shan Rd, Area 31, Tuen Mun	G/IC	R	S16	12/4/91	R
TM/ 170	Tsing Shan Tsuen, Tuen Mun	G/IC	R	S16	20/9/93	R
TM/ 174	Tsing Shan Tsuen, Tuen Mun	G/IC	R	S16	21/1/94	AC
TM/ 205	Tsing Shan Tsuen, Tuen Mun	G/IC	R	S16	15/9/95	R
TM/ 225	Tsing Shan Tsuen, Tuen Mun	G/IC	R	S16	21/11/97	AC

Applications in the Rural Areas						
NE/ LYT/ 156	Shung Hin Tong	G/IC	R	S16	5/6/98	AC
YL/ TYST/ 021	Tong Yan San Tsuen, Yuen Long	G/IC	R, Car Park	S16	24/10/97	R
				S17	13/2/98	R
YL/ TYST/ 046	Tong Yan San Tsuen, Yuen Long	G/IC	R, Car Park	S16	25/9/98	AC

Table 3: Planning Applications of Requesting a Change of Use to Residential Development in a G/IC Zone from 1974 to 22/12/2000

The decision made by the Town Planning Board could be mainly divided into four categories: approved without conditions (A), approved with conditions (AC), temporary approval with / without conditions (AX) and rejected (R). If the applications are withdrawn by the applicants, D, which stands for deferred, is used to indicate the status of the applications.

The following table shows the number of approved and rejected cases of requesting a change of use from G/IC to

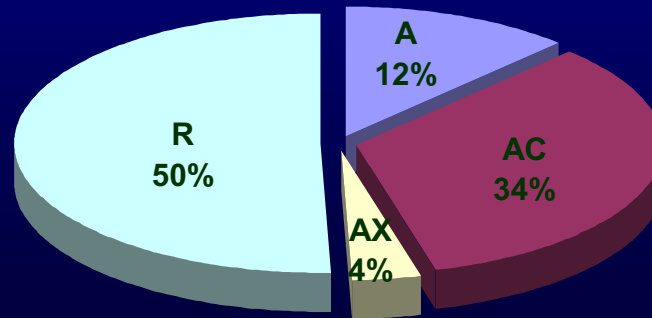
residential development through sections 16 and 17 application from 1974 to 2000.

Total number of applications	121
A	13
AC	36
AX	4
R	54
D	14

Table 4: Grouping of the Planning Applications of Requesting a Change of Use to Residential Development in a G/IC Zone from 1974 to 22/12/2000 According to the Decision Made by the Town Planning Board

The above data are presented in the graph in the next page showing the percentage of these decisions exclusive of the calculation of deferred applications.

Percentage of different decisions made by TPB upon applications of a change of use to residential development in G/IC zone from 1974-2000 (exclusive of deferred cases)



Graph 1

From the above finding, it is not difficult for us to conclude that the Town Planning Board usually rejects the application of a change of use to residential development in a site zoned as G/IC (50%). Most of the approved cases are inserted with planning conditions (34%) and only a small number of this kind of request is granted without any conditions (12%).

6.2 Wah Yan College, Kowloon

In 1996, Wah Yan College made an application to the Town Planning Board about requesting a change of use to residential development in its existing site zone as G/IC (The word "residential" appear in the Column 2 of the respective Schedule of Notes) (Appendix V). The following table shows the detail of this application.

Application No.	A/K02/108	
Planning area	K02	
Site	Portion of Wah Yan College, 56 Waterloo Road, Yaumatei	
Lot number	KIL 6059 RP(P)	
Area of site	about 6257 sq. m.	
Term of lease	75 years from 16/9/49	
Type of lease	Renewable	
OZP	Yau Ma Tei OZP No. S/K2/7	
Zoning	G/IC	
Proposed development	Residential development and car park (under)	
Proposed use of floors	Scheme A	Scheme B
GFA	31284 sq.m. (about)	31285 sq.m. (about)

Site Coverage	33.4%	16.4%
No. of storey	4 blocks of 15 storeys above 2 basement car park levels	2 blocks of 31 storeys above 2 basement car park levels
Basement levels 1-2	Car parks	Car parks
G/F	Landscape area, L/U area, domestic flats and recreational use	Landscape area, L/U area, domestic flats and recreational use
1/F & above	Domestic flats	Domestic flats
No. of flats	239	244
Total building height	42m	88.2m

Table 5: Details of the Proposed Development of a Portion of Wah Yan College, Kowloon in its first s.16 application in 1996

The planning application was rejected on 6/12/1996 by the Metro Planning Committee (MPC). The following grounds were stated for the rejection.

- (a) The proposed development is not in line with the proposed intention of the G/IC zone for the site which is intended to be used for educational purposes. There are no strong justifications to merit a departure from such proposed

intention;

(b) The proposed use of the site, which is zoned G/IC, for residential development is considered undesirable from the land-use planning viewpoint since there is currently a shortfall of primary schools and local open space in the general area of the application site. The site is more suitable for G/IC uses and can be used to alleviate the shortfall of primary schools and local open space in the area;

(c) The traffic impact assessment in the submission is considered not satisfactory in that:

(i) There is no assessment on the cumulative traffic impact of the proposed development with regard to other proposed developments being planned or constructed in the area, including the redevelopment of the ex-Government Staff Quarters at King's Park Rise and the ex-British Military Hospital as well as two other residential developments at King's Park Rise (Kowloon Lot 11001)

and King's Park Rise / Wylie Road (Kowloon Inland Lot 11002). Besides, there is no assessment on the traffic impact of the transport infrastructure being planned or constructed in the area including the Princess Margaret Road Link;

(ii) Detailed calculations of the junction capacity assessment have not been included; and

(iii) The reserve capacities of the critical junctions in the vicinity of the site, including the junctions of Wylie Road / Waterloo Road, Wylie Road / Princess Margaret Road and Wylie Road / Gascoigne Road have been over estimated; and

(d) Approval of the application will set an undesirable precedent for similar applications in the area, thereby leading to cumulative loss of G/IC sites and remitting in cumulative adverse impact on the provision of the existing and planned infrastructure.

The school submitted a review later but the review was

rejected by the Town Planning Board on 15/8/1997. Similar reasons were stipulated for explaining the rejection.

(a) The proposed development is not in line with the proposed intention of the G/IC zone for the site which is intended to be used for educational purpose. There is no strong justifications to merit a departure from such proposed intention.

(b) The proposed use of the site, which is zoned G/IC, for residential development is considered undesirable from the land-use planning view point since there is currently a shortfall of primary schools and local open space in the general area of the application site. The site is more suitable for G/IC uses and can be used to alleviate the shortfall of primary schools and local open space in the area;

(c) The proposed road improvement schemes at the junction of Wylie Road / Waterloo Road / Yim Po Fong Street are not acceptable as they would ban traffic movement from

Waterloo Road to southbound Wylie Road or could not be implemented; and

(d) Approval of the application will set an undesirable precedent for similar applications in the area, thereby leading to cumulative loss of G/IC sites and resulting in cumulative adverse impact on the provision of the existing and planned infrastructure.

An appeal was made but it was subsequently abandoned by the applicant on 11/12/97. After a deferred request of application on 19/5/2000, another s16 planning application with some amendments to the previous proposal (a construction of school in attempting to satisfy the requirements implied by previous rejection reasons) was made on 22/9/2000. The following table shows the detail of the application.

Application No.	A/K02/124
Area of site	about 6775 sq.m.
1st applied use	residential
2nd applied use	school

Uses applied for	Proposed residential and school development
GFA applied for	Total: 36233 sq.m. Domestic: 31233 sq.m. Non-domestic: 5000 sq.m.
No. of blocks	3 (Residential) 1 (school)
No. of storey	16-18 residential storeys over 5-storey podium
No. of unit	300
No. of car parking spaces	300 (Residential) 15 (Visitors) 15 (Motor cycle)
Loading / unloading bays	3

Beginning floor	Ending Floor	Uses inclusive
G		car parks, L/U area, entrance lobby
1	3	car parks
4		clubhouse, swimming pool, landscaped garden
5		residential flats

Table 6: Details of the Proposed Development of a Portion of Wah Yan College, Kowloon in the second s.16 application in 1998

This application was again rejected by the MPC. The reasons of disapproval were that:

(a) The proposed development is not in line with the planning intention of the G/IC zone, and there are no strong planning justifications to merit a department from it. The proposed development also does not comply with the Town Planning Board Guidelines for Development / Redevelopment within G/IC zone in that the applicant site is no longer required for G/IC uses as there is an anticipated shortfall of primary schools in the area; and the proposed development is excessive in scale and intensity; would cause adverse visual impact; would aggravate the open space shortfall in the area; and would be susceptible to adverse environmental impacts;

(b) The proposed development would have adverse traffic impact on the surrounding areas as there is insufficient information to demonstrate that the proposed road improvement schemes at the junction of Waterloo Road /

Wylie Road / Yim Po Fong Street can be implemented;

(c) The proposed development would be subject to potential adverse noise impact from the East Rail; but there is insufficient information to demonstrate that the proposed noise mitigation measures can be implemented.

(d) The proposed development which involves extensive felling of mature trees along Yim Po Fong Street is unacceptable from landscape planning point of view; and

(e) The approval of the proposed development would set an undesirable precedent for other similar applications, thereby leading to cumulative loss of G/IC land and resulting in cumulative adverse impact on the provision of the existing and planned infrastructure.

On 19/1/2001, a review was submitted to the TPB. The TPB decided not to approve the application and the reasons are:

(a) the proposed development is not in line with the planning intention of the G/IC zone, and there are no strong planning

justifications to merit a departure from it. The proposed development also does not comply with the TPB Guidelines for Development / Redevelopment within G/IC zone in that the applicant has failed to demonstrate that the application site is no longer required for GIC uses as there is an anticipated shortfall of primary schools in the area, and the proposed development is excessive in scale and intensity; would cause adverse visual impact; would aggravate the open space shortfall in the area; and would be susceptible to adverse environmental impacts;

(b) The proposed development would have adverse traffic impact on the surrounding areas as there is insufficient information to demonstrate that the proposed road improvement schemes at the junction of Waterloo Road / Wylie Road / Yim Po Fong Street can be implemented;

(c) The proposed development would be subject to potential adverse noise impact from the East Rail; but there is insufficient information to demonstrate that the proposed noise mitigation measures can be implemented.

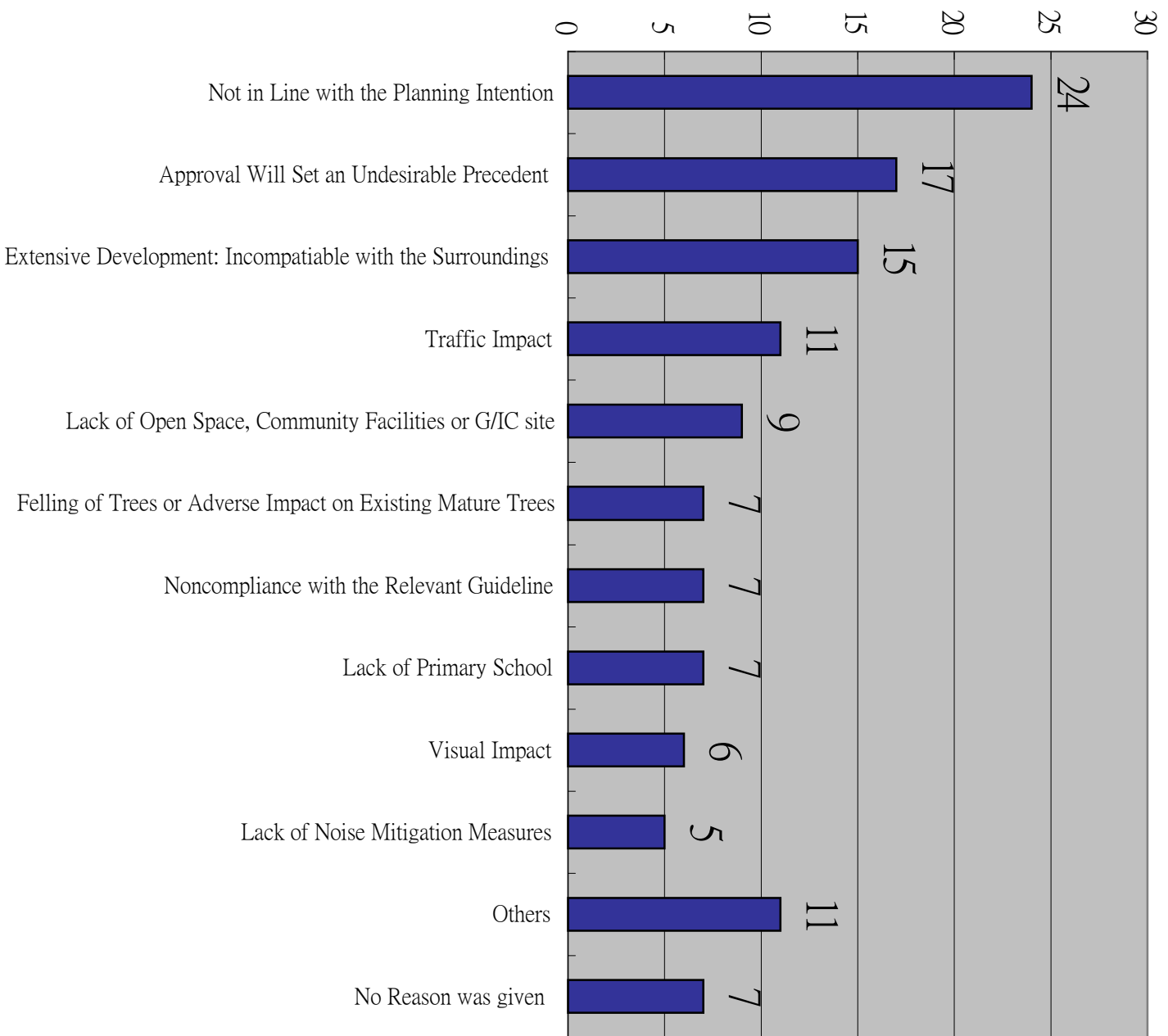
- (d) The proposed development which involves extensive felling of mature trees along Yim Po Fong Street is unacceptable from landscape planning point of view; and
- (e) The approval of the proposed development would set an undesirable precedent for other similar applications, thereby leading to cumulative loss of G/IC land and resulting in cumulative adverse impact on the provision of the existing and planned infrastructure.

6.3 Problems of the current planning application system in Hong Kong

In the above case study of the development of Wah Yan College, Kowloon, the planning rejection reasons are mainly the contradiction with the planning intention of a G/IC zone, the shortfall of open space and primary school, the adverse environmental and traffic impacts, and the establishment of undesirable precedent for other similar applications if approval is to be given. The graph shown in the next page lists the number of times of the reasons used to reject the planning applications of requesting a change of use to residential development in a G/IC zone in the period 1974-2000.

The data collected are the same cases (54 cases) used in section 6.1 except that 2 of them were lost (file reference number: TM/060 & TM/205), so there are totally, including s.16 and s.17 applications, 52 rejected cases of such request in that period.

Number of times of the reason used to reject the planning applications
of requesting a change of use to residential development
in a G/IC zone in the period 1974-2000



Graph 2

After investigating the 52 rejected applications of requesting a change of use to residential development in a G/IC zone from 1974 to 2000, twelve major rejection reasons are identified. They are:

1. The proposed development is not in line with the planning intention;
2. Approval of the application would set an undesirable precedent for later similar applications;
3. The proposed development is so extensive (maybe so high plot ration or site coverage) that the development will be incompatible with the surrounding environment;
4. The proposed development will cause traffic burden to the existing roadwork;
5. Approval of the application would further jeopardize the provision of G/IC facilities as the existing zone is lacking in open space and community facilities;
6. The proposed development would involve felling of mature trees or have an adverse impact to the existing mature trees

or the replanting scheme is not sufficient to compensate the loss;

7. The proposed development does not comply with the Town Planning Board's Guidelines for 'Application for Development / Redevelopment within G/IC zone for uses other than G/IC uses';
8. The existing site is in a shortfall of provision of primary schools;
9. The proposed development would obstruct the view of the adjacent existing buildings;
10. There would be noise impacts from the nearby traffic routes or there is insufficient information to show that the noise mitigation scheme is viable;
11. Others reason such as no re-provision of temples, non-compliance with the original proposal, inadequate provision of sewerage, demolition of historical building, adverse effect on the future expansion of cable terminal station, impracticable road widening scheme, no proposal of emergence vehicular access, no road connection,

excessive car park space, etc;

12.No reason was given.

The graph in page 196 illustrates that the most widely used rejection reasons are "not in line with the planning intention" and "approval would set an undesirable precedent for similar later applications". "Extensive development", "traffic impact", "lack of open space, community facilities and G/IC site" are also frequently used to reject the applications. Among all these reasons, "planning intention" and "undesirable precedent" are of the most concern as they are the most frequently used and the most ambiguous reasons laid down by the Town Planning Board. It seems that these two reasons are the "planning tools" adopted by the government to reject development.

6.3.1 Planning Intention

There is currently no legal definition of “planning intention” in the Town Planning Ordinance (Cap. 131). Lai (1999), after evaluating all planning appeal cases, stated that planning intention refers to the purpose for a given land use zone and it can be interpreted from the non-statutory Explanatory Statements (Appendix V), reading of the Schedule of Notes to a statutory plan (Appendix V) or even the lease conditions of a property. It seems that there are clues of guessing what planning intention of a particular zone is, but what it actually refers to is solely interpreted by the Town Planning Board upon submission of a planning application. In the rejection reasons, as shown in the above section, there is no explanation of what “planning intention” means in a particular zoning of a particular lot, which gives no way to the applicants to have an understanding of how to modify his planning proposal to obtain planning approval. In guessing what this vague term, “planning intention”, refers to in

modifying the planning proposal, much uncertainty is involved, thus increasing the costs of transaction and decreasing the efficiency of the process.

6.3.2 Undesirable Precedent

In his book, *Town Planning in Hong Kong: a Review of Planning Appeal Decisions*, Lai (1999) criticized the contradictory meaning of the term "undesirable precedent". This reason, "the approval of the proposed development would set an undesirable precedent for other similar applications", implies that there must be a precedent in examining planning applications by the TPB, but sometimes two cases, with similar situations and environments, were treated differently, in which one is accepted and one is rejected, as Lai's analysis (1999) on the planning appeal decisions revealed.

This rejection reason again produces much costs of transaction in the process because the applicant cannot know

in what circumstances can his request be approved. The presence of this reason is virtually meaningless.

6.3.3 Time Cost

The uncertainty brought out by the problematic meanings of "planning intention" and "undesirable precedent" could be reflected by the time cost involved in the planning application procedure, which could be in turn revealed by the number of application (including s.16, s.17 and appeal) made to the Town Planning Board. After delineating the assumptions of the relationship between these variable with an efficient / inefficient planning application system, the time associated in the application procedure of requesting for a change of use to residential development in a G/IC zone from 1974 to 2000 is then worked out.

If an efficient planning application system is defined in terms of the number of planning application submitted by the

applicant, the author would suggest and assume that this number should be two, more than that the system must be inefficient. In an efficient planning system, as mentioned in the previous chapters, the rules must be well-defined and well-stated so that the applicant could follow them without any risk of uncertainty. So, if the first planning application is rejected and the rejection reasons laid down by the Town Planning Board are clear without ambiguity, the second application, with the relevant amendments, must be approved. If the applicant considers that implementing the suggestions made in the rejection reasons cannot make his development in a profitable position, he will not proceed on any further application. Similar argument is put to the case in which the first planning application is approved with conditions. If the applicant does not want to implement the planning conditions in his proposed development, he will not run any further in the planning application race. By this assumption, the maximum number of application needed in an efficient planning application system should be two. If the

number is more than two, that means uncertainty exists in the system and the system is inefficient.

This assumption is used to examine the current planning application system in Hong Kong based on the planning application cases in which there was a request for a change of use to residential development in a G/IC zone from 1974 to 2000. Within the applications in this period, there are totally 60 proposed developments. The table in the next page shows the number of application in these developments.

Number of Application	Frequency
1	24
2	11
3	8
4	7
5	3
6	0
7	3
8	2
9	1
10	0
11	1
Total	60

Table 7: Number of Applications needed for a Request of a Change of Use to Residential Development in a G/IC Zone from 1974 to 22/12/2000.

From the above table, you can see that the number of application which is greater than two is 25 (42%) and that which is equal and less than two is 35 (58%). By this number, one may conclude that the system tends to be efficient as most of the applications are within two times of submission. However, when one looks closer to the data shown in the

following table, he would change his mind.

Number of Application	Final Decision	Frequency	Efficient?
1	Approved (with or without conditions)	13	Yes
1	Rejected	9	No
1	Deferred	1	--
2	Approved (with or without conditions)	5	Yes
2	Rejected	5	No
2	Deferred	1	--
>2	Any	26	No

Table 8: Number of Applications needed for a Request of a Change of Use to Residential Development in a G/IC Zone from 1974 to 22/12/2000 with final decision.

It is important for us to know the final decision made to the applications in order to conclude whether they reflect efficiency or not. The following assumptions are made in the groupings.

1. If the system is inefficient, that means rules are uncertain, it seems to be impossible that once application could be approved (with or without conditions). So, those once applications with approval (13) tend to mean that the system is efficient. (The author calls this group as "1A cases")
2. If the system is efficient, that means rules are well-delineated, there would be no once application with rejection. It is because the applicants would re-submit the applications with suitable amendments laid down in the clear rejection reasons with knowledge that the application must be approved in the next time. If rules are well-defined, there would be no silly person applying for a "to be rejected" application. So, those once applications with rejection (9) imply inefficiency of the system. (The author calls this group as "1R cases")
3. There are many factors affecting the reasons why the applications are deferred. Since the factors may be very complicated, and there is a lack of information showing

the underlying relationship, the two insignificant deferred cases are not commented.

4. The twice applications with approval (with or without conditions) in the final decision has been discussed as an indicator to reflect the efficiency of the application system. So, this kind of application (5) is regarded as efficient. (The author calls this group as "2A cases")
5. If the system is efficient and rules are unambiguous, the second application would not be rejected because the applicants would follow what is laid down in the rejection reasons relating to the first application. So, those twice applications with rejection in the final decision (5) reveals the inefficiency of the application system. (The author calls this group as "2R cases")
6. For those development cases with more than two applications, the fact of inefficiency is obviously exposed, as far as the previous aforesaid assumption holds. (The author calls this group as "more than 2 applications cases")

By these arguments, the above table is so constructed and the result is that there are altogether 18 "efficient cases" (30%) and 40 "inefficient cases" (67%). In other words, the current planning application system in Hong Kong is rather inefficient.

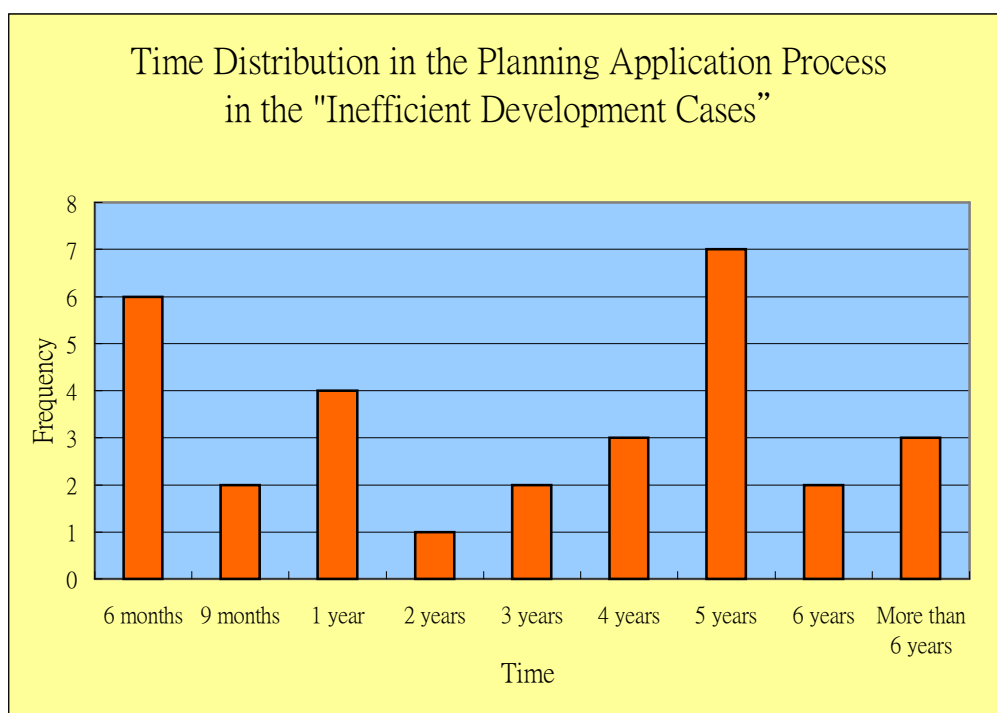
In order to further study whether the planning application system is inefficient, the time cost associated in the "inefficient development cases" is demonstrated. The "inefficient development cases" which is used for analysis includes the development cases with twice applications with rejection in the final decision (the 2R cases), and that with more than two applications (the more than two applications cases). The development cases with once application with rejection (the 1R cases), although revealing the nature of inefficiency in the system, is not used in the time cost analysis since there is only one application in this kind of development cases and a time of just around 2 months is involved, which is meaningless to assist in evaluating whether the

system is inefficient, if time is the variable used as the indicator of efficiency. The table in the next page shows the time needed in the "inefficient development cases".

The time required for a planning approval is calculated as the difference between the date of the latest meeting by the Town Planning Board and the date of receipt of the first application. Among the planning applications in the 30 "inefficient development cases", there is one application (file reference number: K07/030) in which the date of receipt of the application is not publicized. In such circumstances, the application is assumed to be received 8 weeks before the date of meeting by the Town Planning Board. Why it is so assumed is that s.16(3) of the Town Planning Ordinance provides that the Town Planning Board should give decisions within 2 months upon receipt of the application.

Time	Frequency
6 months	6
9 months	2
1 year	4
2 years	1
3 years	2
4 years	3
5 years	7
6 years	2
More than 6 years	3
Total number of development cases	30

Table 9: Time Involved in the Planning Application Process in the "Inefficient Development Cases".



Graph 3

The graph above summarizes the data shown in the table in a form of time distribution of these development cases. There are 6 development cases which require 6 months to obtain a final decision. This kind of development cases is mainly come from the "2R cases". Another peak appears in "5 year", which illustrates that there are 7 development cases which require 5 year to obtain a final decision of approval (with or without conditions).

Staley (1994) mentioned that in an economy where major developments are completed in two years, a delay in the project by two to nine months could add as much as 40% to the time required for the whole development; and in an economy where banks expect repayment of development loans in three to four years, the risks and uncertainties surrounding property-related loans will force interest rates up, crowding out investment and increasing the cost of new developments. He also argued that the delays are unpredictable. The nature of the objection and approval process is sufficiently vague

that developers will have few ways to predict whether the project will be delayed for two months, nine months, or over a year.

The research of "time cost analysis" in this part provides evidence to what Staley asserted relating to the unpredictable nature of delay in the planning application process. It also affirms what the author suggests in the previous parts that there is uncertainty created by the two vague rejection reasons -- planning intention and undesirable precedent -- in the current planning application system in Hong Kong.

6.4 Recommendations

Bristow (1984) believed that government lease could not attain the goal of planning, so direct planning intervention shall be exercised by the government. As seen by the author, planning, actually, is a way of redefining the private property rights over land. During the redefining process, costs of transaction must be involved in terms of money and time. Among the two planning systems in the author's model, the "pure zoning system" and the "pure negotiation system", the former would produce a lesser amount of transaction costs, as long as the assumption of which same benefits at the same level would be achieved by these two systems in allocating land resources is valid. In real-life practice, however, this assumption could be rebutted. Since more information of market needs could be reflected during negotiation processes, the "pure negotiation system" would, in deed, result in a better urban form, as it is compared to the "pure zoning system". In Hong Kong, s.16 planning application was not introduced

until 1974, after which areas of discretion and negotiation has been getting larger. This change implies that the planning system in Hong Kong is moving towards a "pure negotiation system". The author does not argue that we should therefore abolish the current planning system and should change it back to the pre-1974 form. Certainly, a suitable bargaining and negotiable process is important to achieve efficient allocation of land resources. As stated above, "pure negotiation system" could result in a better allocation of land resources, but with a larger amount of transaction costs. In order to minimize such costs involved in the process, especially in the process of planning application, a reform is necessary in the system to improve the efficiency. Rules should be well defined so that the public would know how to play the planning game. Otherwise, the system would just favour the more financially powerful developers, who could bear the high transaction costs. The unfairness so created would infringe the private property rights of individuals. In order to rectify the problem, the author, as far as the

planning application process is concerned, advises that the rejection reasons, especially "planning intention", given by the Town Planning Board upon requesting of a change of use should be clearly delineated. There are two ways to do so: by common law system or by statutory legislation.

By implementing the planning application into a common law system, a case is examined in the court and the decision would become precedent to later similar cases, unless the later cases could go to an upper level of the court. In the common law system, due to the existence of precedent, decision rules could be well defined as one should follow the decisions of previous ones. Examples of the current practice is the Buildings Appeal Tribunal considering building appeal cases, the Labour Tribunal considering labour disputes and the Lands Tribunal considering landlord and tenants rental disputes etc.

If the planning reasons are implemented into a statutory

legislation, such as what is laid down in section 16(1) of the Buildings Ordinance stipulating clearly the grounds on which approval or consent may be refused, the court has the power to interpret the meaning of the reasons upon its reasonableness and fairness. The rejection reasons shall be well delineated to the extent that the court could interpret their meanings. Between these two methods, by applying the second version of the Coase Theorem, one should choose the method with lowest transaction costs. The author would suggest the later way to minimize the costs entailed in the planning application system since the procedure involved in passing a law concerning the rejection reasons is general (which means that the procedure is done once and after that no more procedure would be involved), in which the costs of transaction (costs of consultant report and public consultant) is lesser; whereas the procedure involved in the common law system is specific (which means that the court has to make the decision case by case to set up the precedent), the transaction costs (mainly the legal fees) is very large. So

what is recommended is that the rejection reasons of planning application should be made statutory to minimize the uncertainty. By such arrangement, the costs of transaction could still be kept minimal, even though negotiation is present in the planning application process. A more efficient planning system would therefore result.

Chapter 7

Conclusion

7.1 Summary of Findings

This dissertation analyzes the practice and characteristics of the present planning system in Hong Kong by a transaction costs approach. A literature review is conducted to examine the economic nature of planning and zoning and the problem of private property rights associated, which confirms that the justification for planning system should be based on a cost benefit analysis. In order to know how the planning concept is put into practice, the planning systems of the United States, Britain and Hong Kong is investigated. A comparison of these countries' planning systems shows that areas of discretion are the largest in that of Britain while the least in that of the US. In chapter four, A model of "pure zoning system" and "pure negotiation system" is established for assessing the costs of transaction in the

planning system in Hong Kong, which concludes that the costs of transaction is increasing as Hong Kong goes from a zoning system to a negotiation system.

Since negotiation system would make a better urban form as more market needs could be reflected, it should be preserved and areas of discretion should be maintained. So what is the most important is to minimize the costs of transaction involved, especially in the planning application system, in which some of the rejection reasons made by the Town Planning Board are not sound enough. If rules are well defined, costs of transaction could still be kept minimal, even though negotiation is present in the planning application process.

Chapter 6 provides a case study of the proposed development project in Wah Yan College, Kowloon to identify the major problems existing in the planning application in Hong Kong. After criticizing two planning objection reasons -- the "planning intention" and "undesirable precedent" -- as

unreasonable and uncertain, they shall be more certain and definite to enhance the applicants to assess their positions more easily in the application and bargaining process. If the level of certainty is increased, the costs of transaction involved could be decreased. Therefore, the grounds on which planning applications would be granted or rejected is recommended to be laid down in statutory provisions, rather than policy, so that the court could have the power to interpret the reasons applied by the Town Planning Board to the planning application cases. The precedent so set up would bind the following cases, which would minimize the transaction costs and thus a more economically efficient planning system, with openness, impartiality, and fairness, would result.

7.2 Limitation and Further Investigation

The efficiency of the current planning system in Hong Kong is assessed in this dissertation under a number of empirical tests, including the percentage of rejection / approval upon

submission of the planning applications, the planning rejection reasons, and the time associated in the application procedures of requesting a change to residential development in a G/IC zone from 1974 to 22/12/2000. The tests themselves may have some limitations which may bias the results. For the test of whether the government would approve / reject planning applications to prevent changes of G/IC zone, the planning applications of requesting a change of use to residential development in a G/IC site is investigated. However, the significance of the model being test is constrained by factors such as the size of the proposed development, the submission detail in the planning applications, the existing development and the surrounding environments etc.

For the test of which planning rejection reasons are widely used by the Town Planning Board to reject developments, all the planning rejection reasons used by the Board to reject developments of residential purpose in G/IC sites are examined and categorized. Though the result is capable of telling

which ones are the most widely used, it would be better to study all rejection reasons in all planning s.16 and s.17 applications because it would give a more comprehensive and general review of the subject matter.

The time cost of planning applications is estimated by calculating the time, of the same case, between the day of the latest meeting by and the day of the submission of the earliest planning applications to the Town Planning Board. The estimation in this study is rather primitive, but it is sufficient to display the huge costs associated in the current planning system. Certainly, in order to evaluate the actual costs of the system, details of each and every application shall be considered, including the intensity of the proposed development, the feasibility of the planning proposal, the negotiation approach, the existing use of the site, and the surrounding environments etc. So regression approach could be used as a statistical tool to analysis how the relevant factors affect the decision made by the Town Planning Board.

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6. Composition of the Town Planning Board
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8. Performance Pledge for 2000 of the Planning Department in
Hong Kong
9. Summary of offences, fines and actions laid down in
sections 21 and 23 of the Town Planning Ordinance upon
unauthorized development

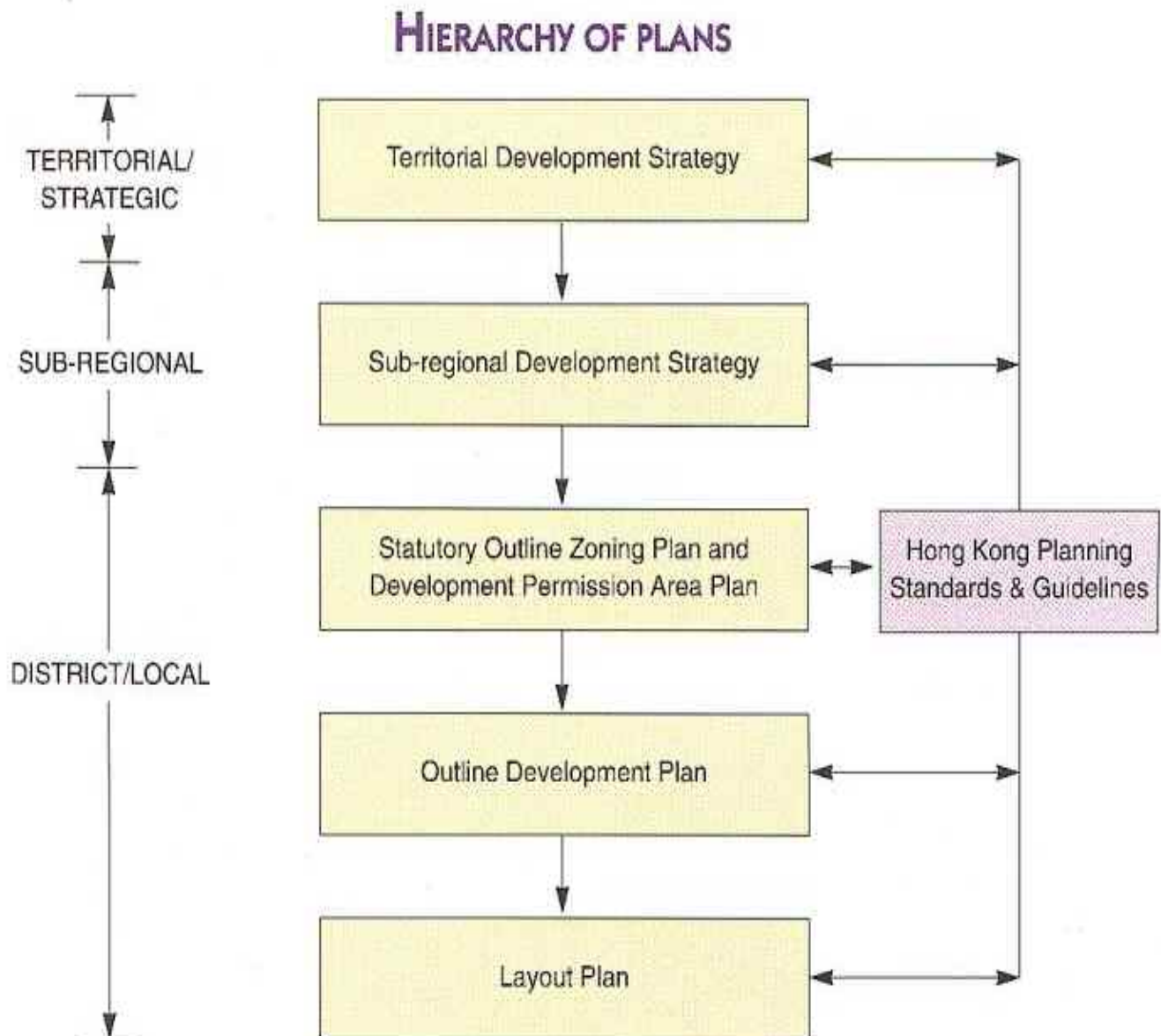
Appendix I:

Lists of Figures

- Fig.1 The Three Tier Planning System in Hong Kong
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- Fig.4 The Five Sub-Regions in Hong Kong
- Fig.5 An Example of Outline Zoning Plan
- Fig.6 An Example of Development Permission Area Plan
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- Fig.10 Coverage of Statutory Plans in Hong Kong
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Figure 1:

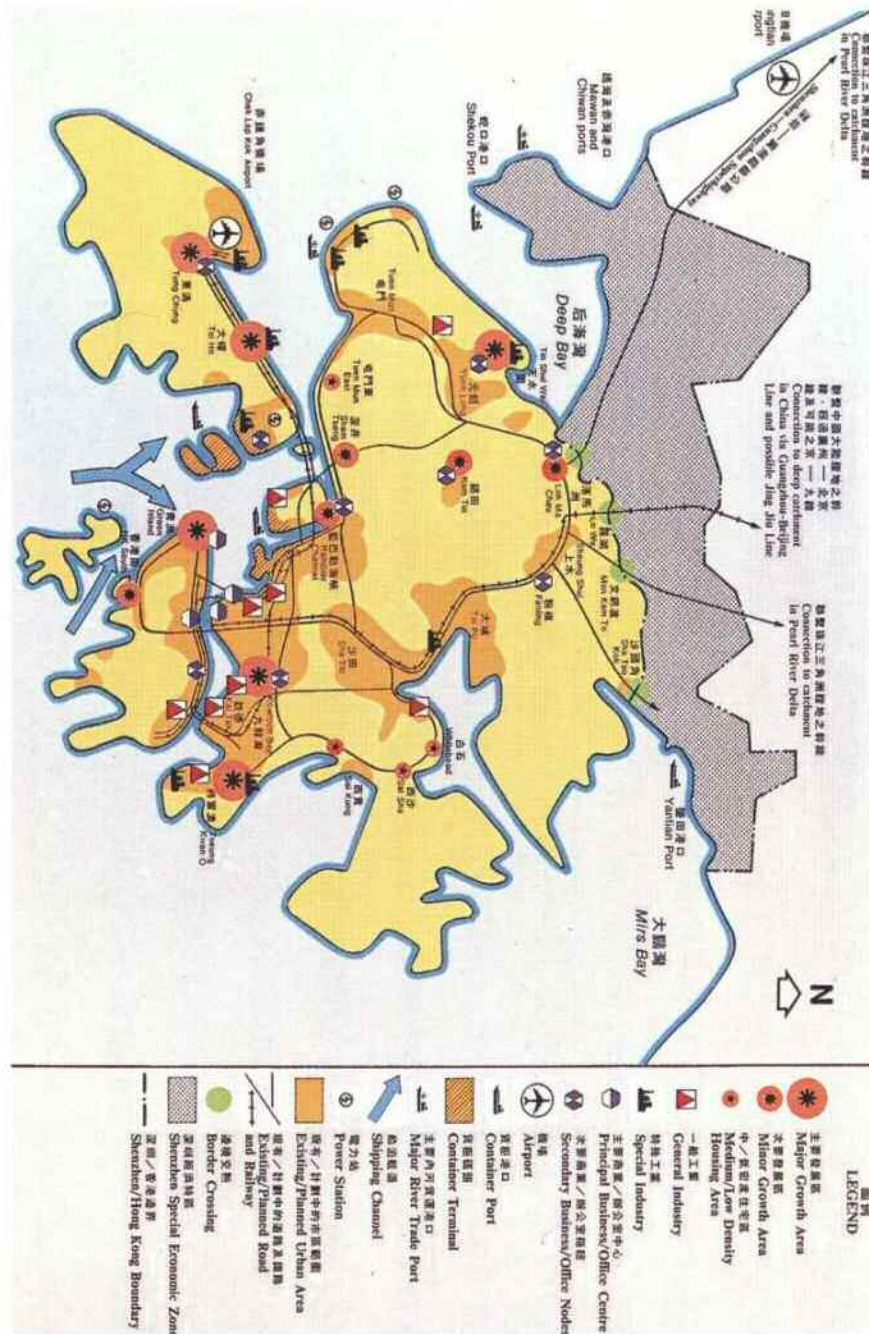
The Three Tier Planning System in Hong Kong



Source: Planning Department (1995) Town Planning in Hong Kong:

A Quick Reference. Hong Kong: Planning Department

An Example of Territorial Development Strategy

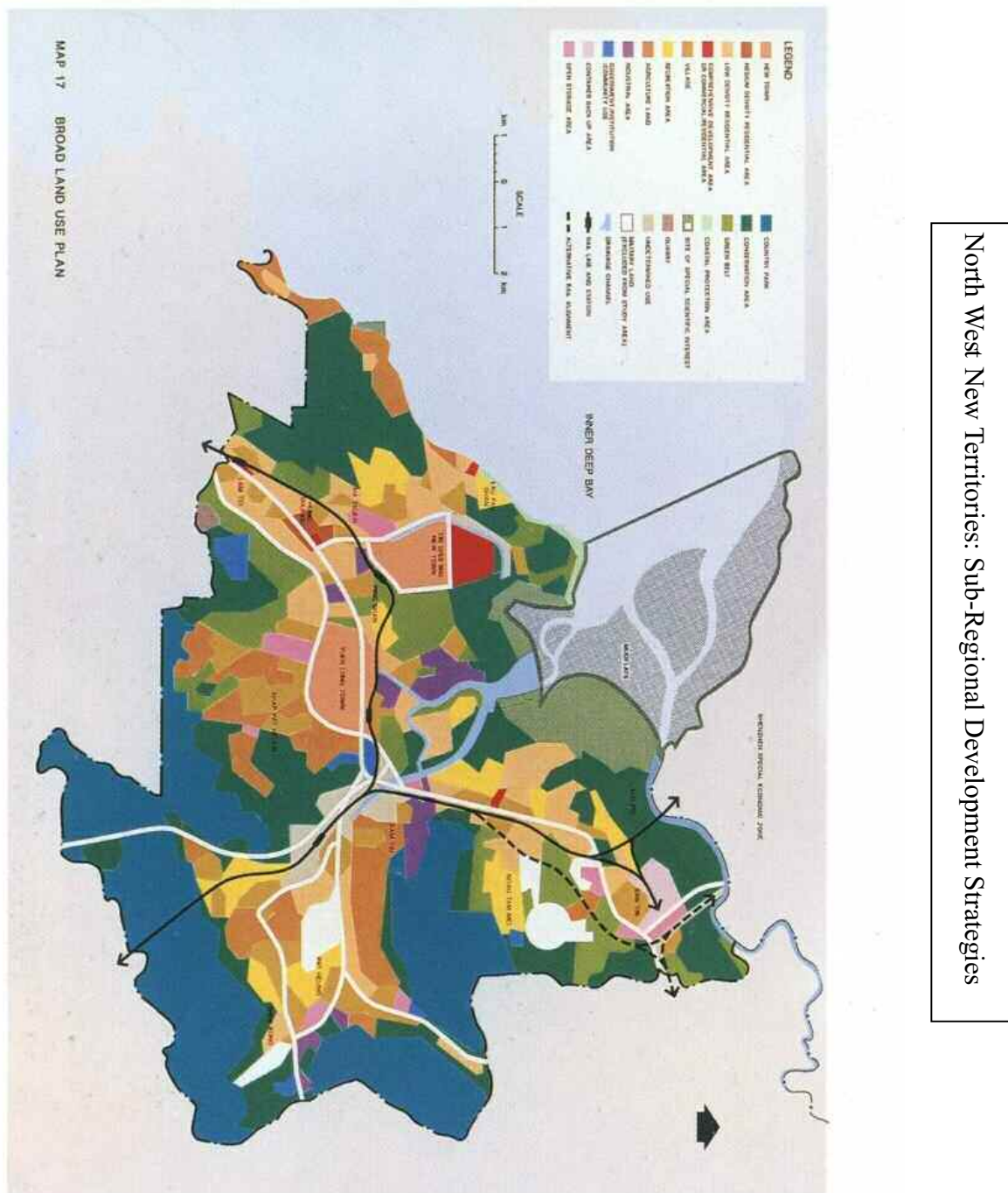


Source: Planning Department (1995) Town Planning in Hong Kong:

A Quick Reference. Hong Kong: Planning Department.

An Example of Sub-Regional Development Strategy

An Example of Sub-Regional Development Strategy

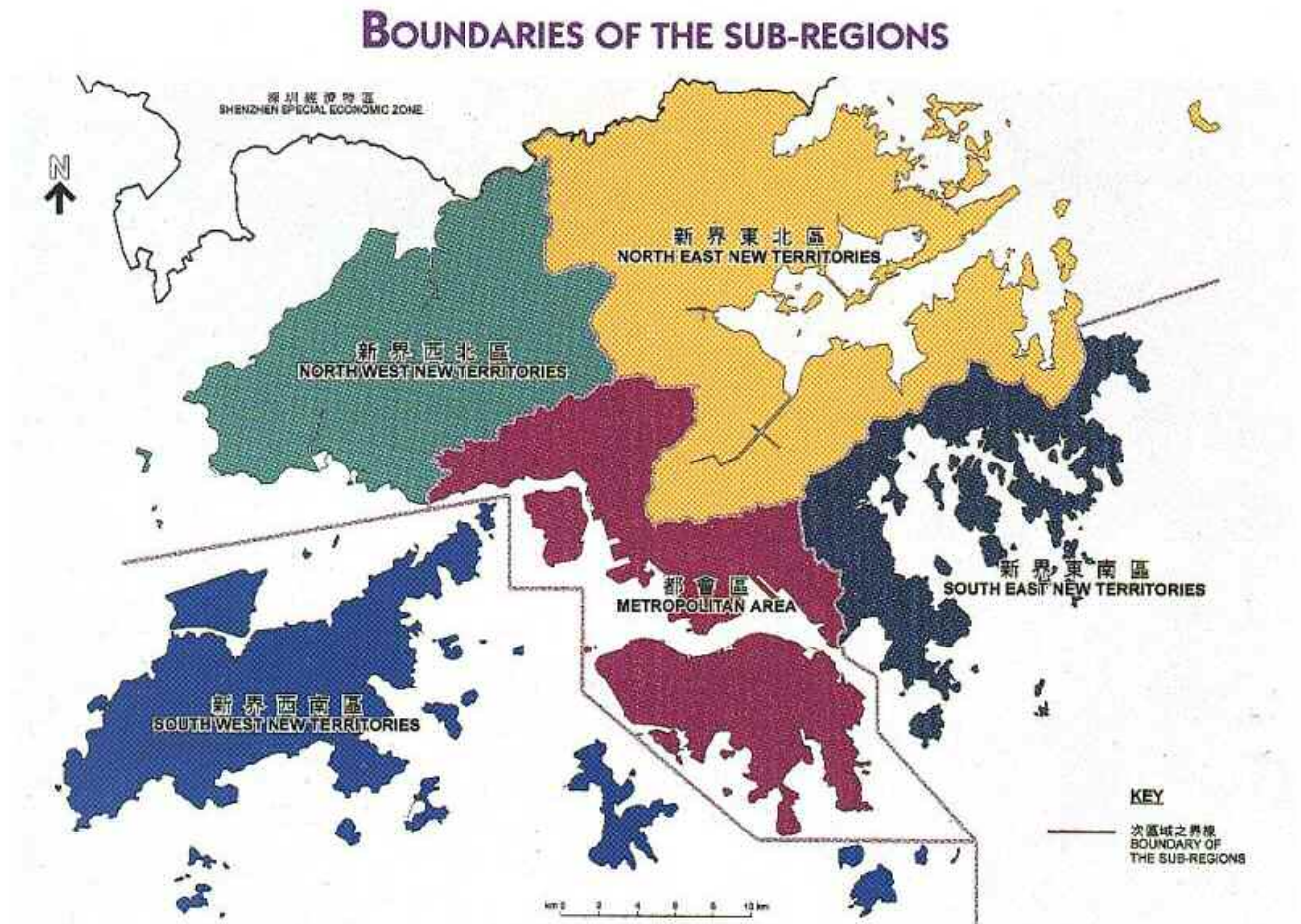


Source: Planning Department (1995) Town Planning in Hong Kong:

A Quick Reference. Hong Kong: Planning Department.

Figure 4:

The Five Sub-Regions in Hong Kong



Source: Planning Department (1995) Town Planning in Hong Kong:

A Quick Reference. Hong Kong: Planning Department.

Figure 5:

An Example of Outline Zoning Plan

Kowloon Planning Area No.2: Yau Ma Tei

(The Plan is not included in the electronic copy of the
dissertation)

An Example of Development Permission Area Plan

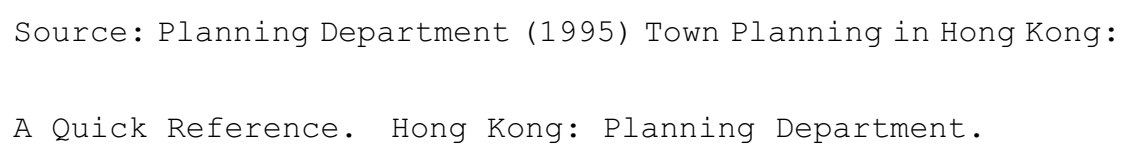
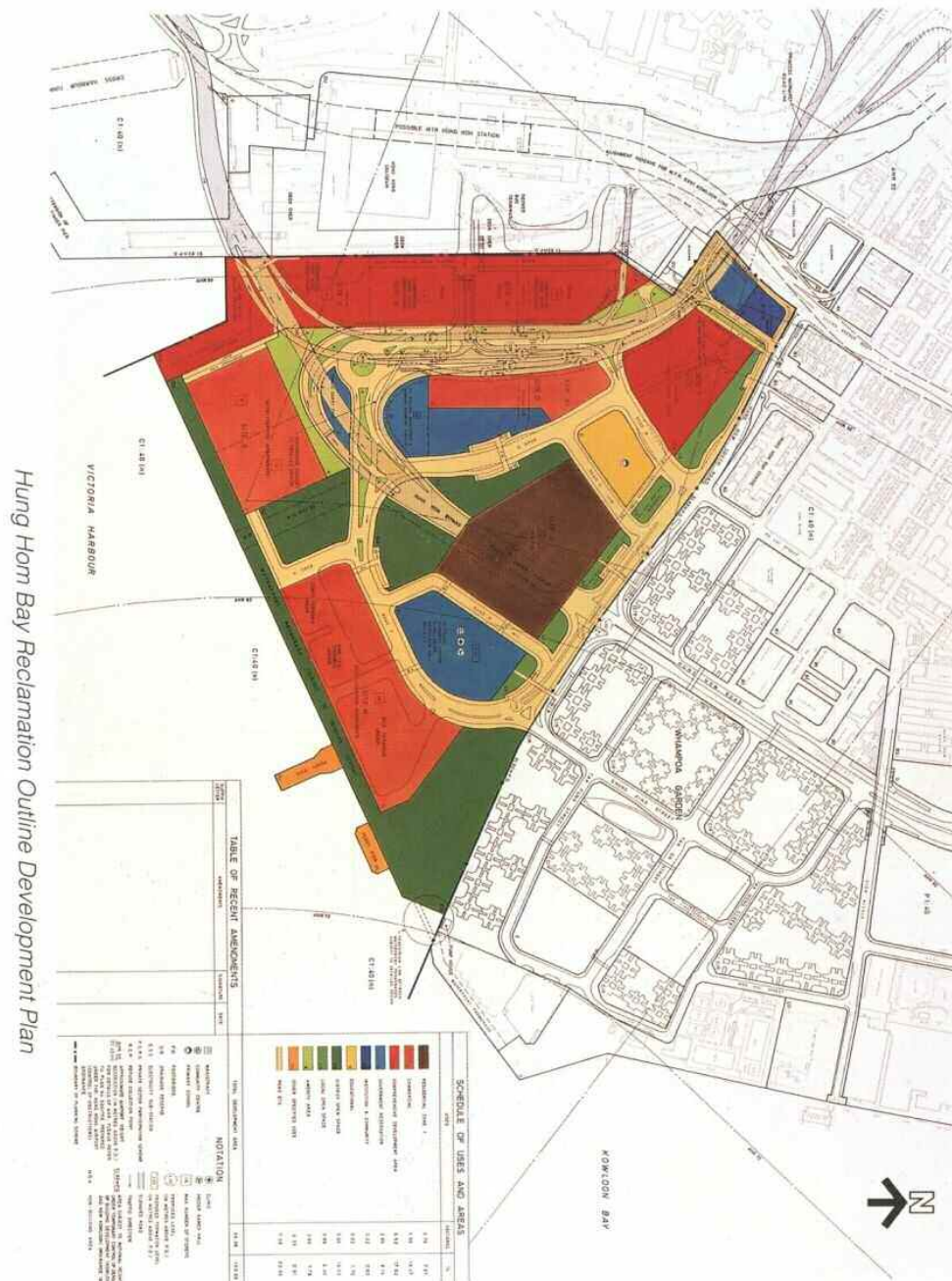


Figure 7:

An Example of Outline Development Plan



Source: Planning Department (1995) Town Planning in Hong Kong: A Quick Reference. Hong Kong: Planning Department.

Figure 8:

Hong Kong Planning Standards and Guidelines



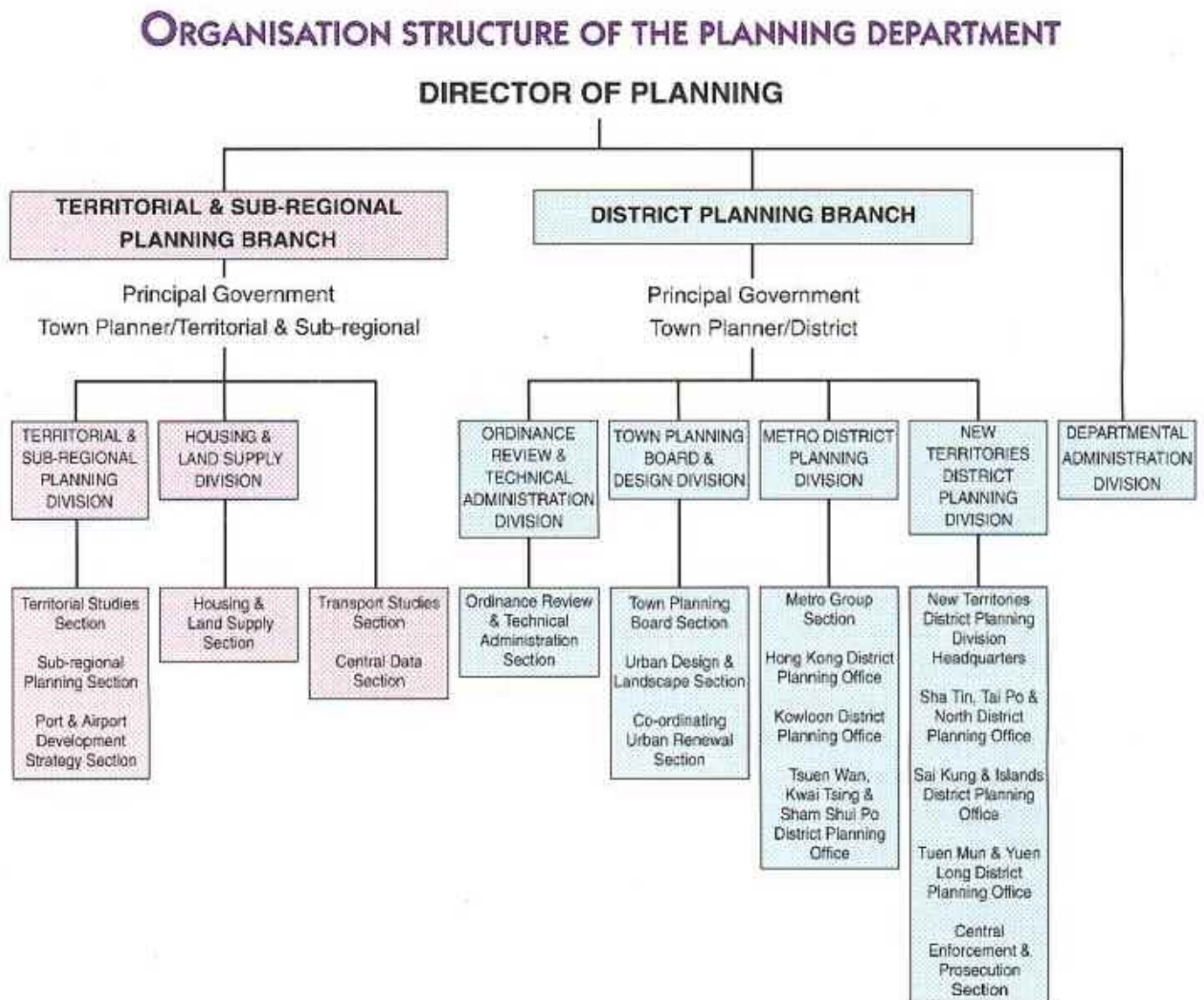
Hong Kong Planning Standards and Guidelines

Source: Planning Department (1995) Town Planning in Hong Kong:

A Quick Reference. Hong Kong: Planning Department.

Figure 9:

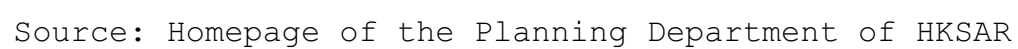
Organization Chart of the Planning Department



Source: Planning Department (1995) Town Planning in Hong Kong:

A Quick Reference. Hong Kong: Planning Department.

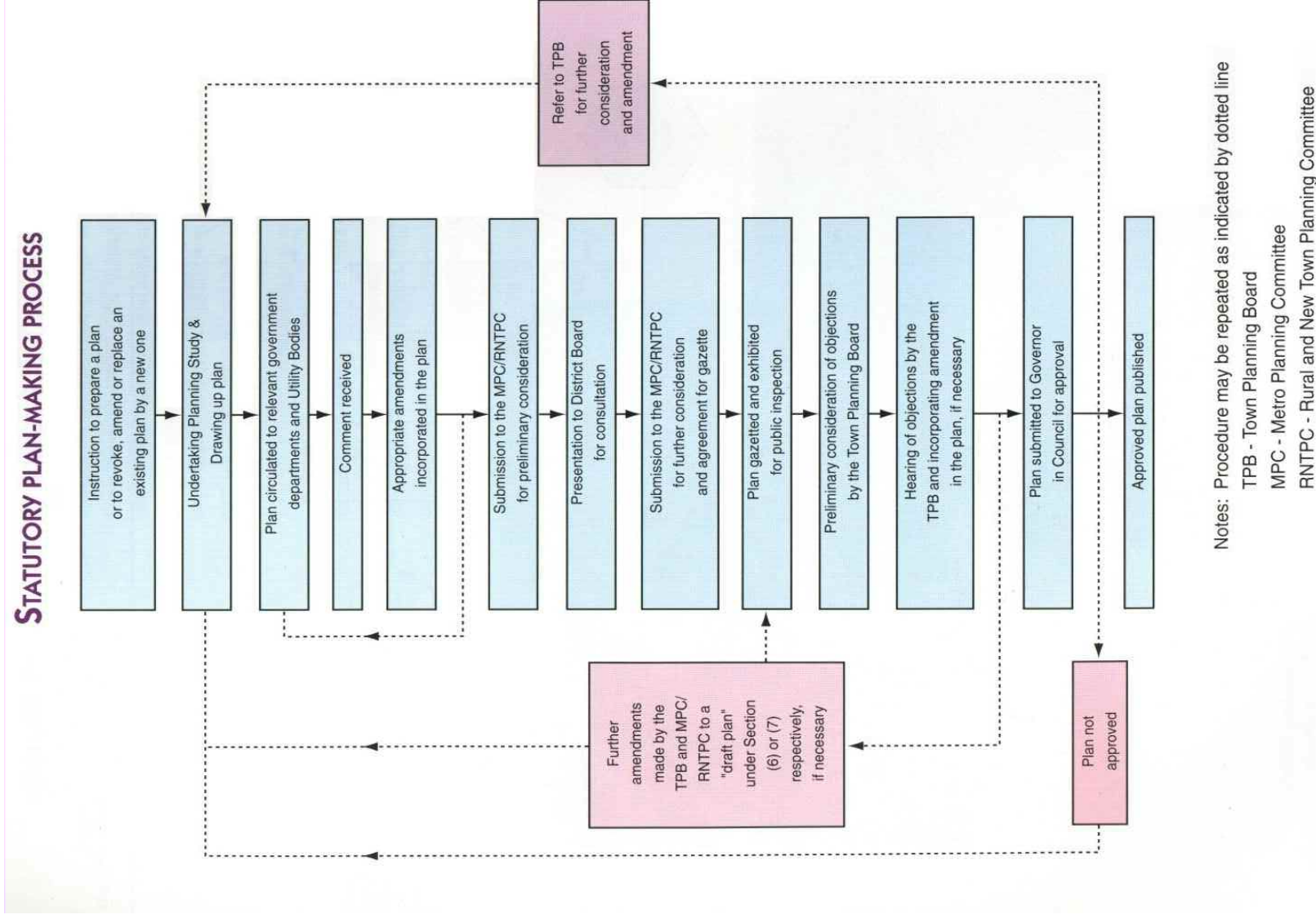
Coverage of Statutory Plans in Hong Kong



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Figure 11:

Statutory Plan Making Process



Remarks by the author: the term "Governor in Council" is changed to "Chief Executive in Council" after 1997.

Source: Planning Department (1995). Town Planning in Hong Kong: A Quick Reference. Hong Kong: Planning Department.

Figure 12:

An Example of Master Layout Plan



Source: Planning Department (1995) Town Planning in Hong Kong:

A Quick Reference. Hong Kong: Planning Department.

Figure 13:

Aerial Photos of Wah Yan College, Kowloon



Source: Keung, Y.M. (1991) Contemporary Geography 1. Hong Kong:

Hong Kong Oxford University Press

Appendix II:

Relevant Act related to the planning control in Britain

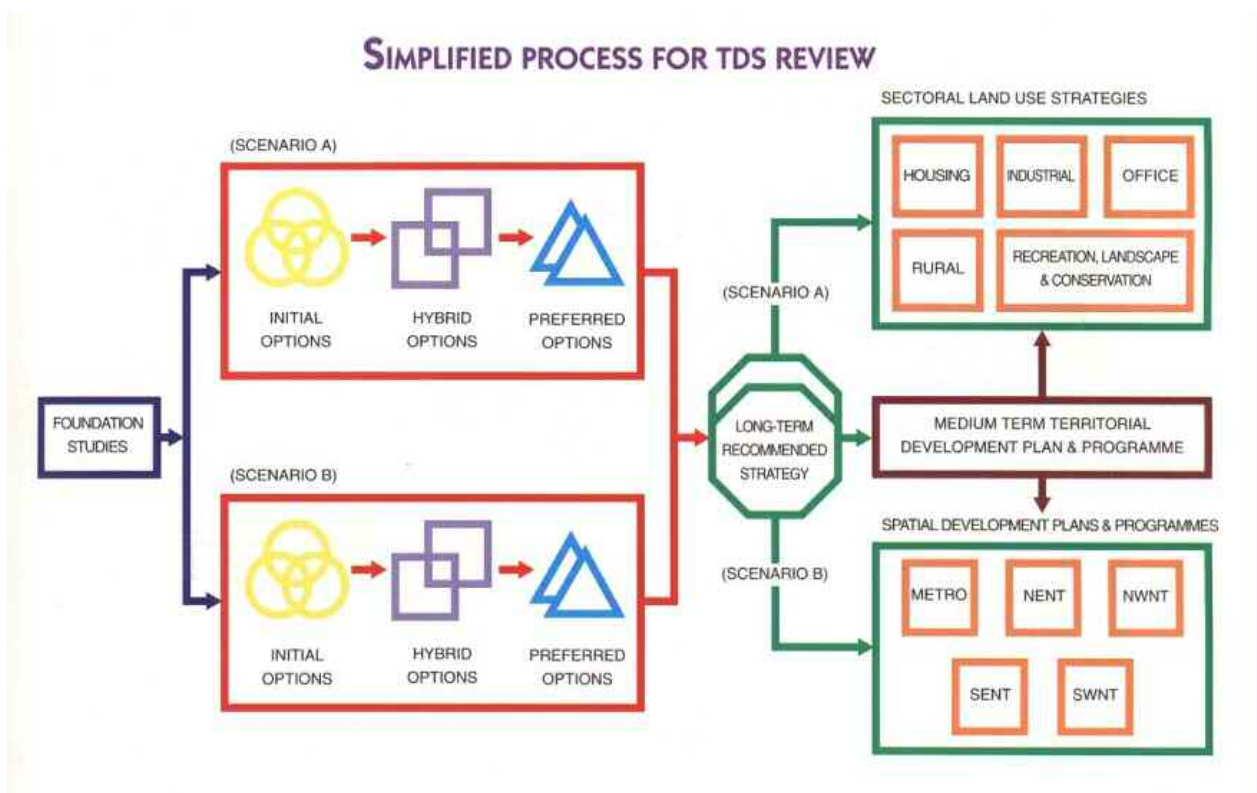
- ✧ Town and Country Planning Act 1990
- ✧ Planning (Hazardous Substances) Act 1990
- ✧ Planning (Listed Buildings and Conservation Areas) Act
1990
- ✧ Planning (Consequential Provisions) Act 1990
- ✧ Planning and Compensation Act 1991

Source: Mark, T.J. (1996). British Planning Policy in
Transition: Planning in the Major Years. London: UCL Press.

Appendix III:

A Simplified Process for Territorial Development Strategy

Review



Source: Planning Department (1995) Town Planning in Hong Kong:

A Quick Reference. Hong Kong: Planning Department.

Appendix IV:

Relevant ordinances related to the development control in Hong Kong

- ✧ Land Development Corporation Ordinance (Cap. 15)
- ✧ Marine Parks Ordinance (Cap. 37)
- ✧ Government Leases Ordinance (Cap. 40)
- ✧ Antiquities and Monuments Ordinance (Cap. 53)
- ✧ Waterworks Ordinance (Cap. 102)
- ✧ Buildings Ordinance (Cap. 123)
- ✧ Lands Resumption Ordinance (Cap. 124)
- ✧ Government Rights (Re-entry and Vesting Remedies)
Ordinance (Cap. 126)
- ✧ Foreshore and Seabed (Reclamations) Ordinance (Cap. 127)
- ✧ Land Registration Ordinance (Cap. 128)
- ✧ Town Planning Ordinance (Cap. 131)
- ✧ New Territories (Renewable Government Leases) Ordinance
(Cap. 152)
- ✧ Country Parks Ordinance (Cap. 208)

- ✧ Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276)
- ✧ Dangerous Goods Ordinance (Cap. 295)
- ✧ Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301)
- ✧ Air Pollution Control Ordinance (Cap. 311)
- ✧ Waste Disposal Ordinance (Cap. 354)
- ✧ Water Pollution Control Ordinance (Cap. 358)
- ✧ Roads (Works, Use and Compensation) Ordinance (Cap. 370)
- ✧ Noise Control Ordinance (Cap. 400)
- ✧ Sewage Tunnel (Statutory Easements) Ordinance (Cap. 438)
- ✧ Land Drainage Ordinance (Cap. 466)
- ✧ Environment Impact Assessment Ordinance (Cap. 499)

Appendix V:

Schedule of Notes in an Outline Zoning Plan

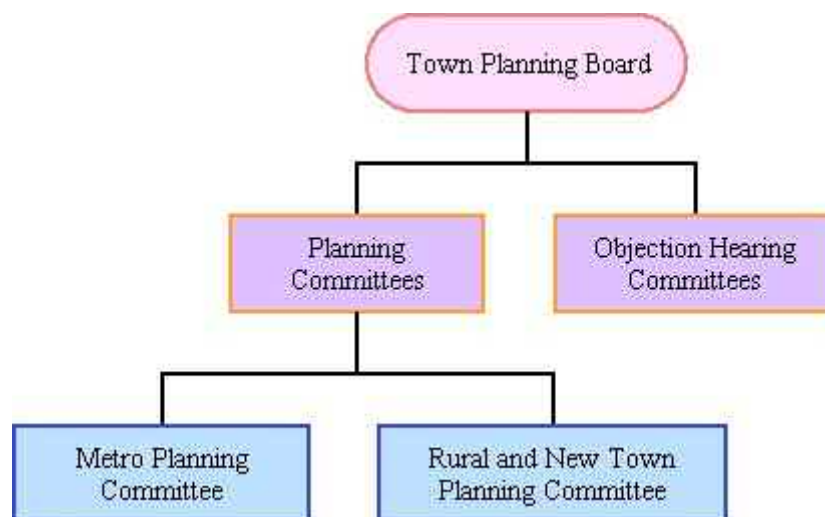
Kowloon Planning Area No.2: Yau Ma Tei

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dissertation)

Appendix VI:

Composition of the Town Planning Board

For the better discharge of the Board's functions, two Planning Committees, namely, the Metro Planning Committee and the Rural and New Town Planning Committee were set up to facilitate the preparation of statutory plans and consideration of planning applications. Moreover, under the Town Planning (Amendment) Ordinance 1998, the Board is empowered to appoint committees, namely the Objection Hearing Committee, from among its Members to hear objections.



Source: Homepage of the Planning Department of HKSAR

<http://www.info.gov.hk/planning>

Appendix VII:

Summary of when planning application is needed under OZP and

DPA Plans

	Planning Application	
	Yes	No
OZPs	Column 2	Column 1
DPA Plans	Other uses except stated in the right box	1. Annex A 2. Annex B Column 1 3. Otherwise specified

Appendix VIII:

Performance Pledge for 2000 of the Planning Department in Hong

Kong

Despite our good performance in 1999, we are committed to further improve our services to the community. Our achievement targets in the following services pledge have been raised from 85% to 90% for 2000:

- Issuance of written notification of TPB's / its committees' decision on planning application/objection within seven working days from confirmation of minutes of meeting
- Issuance of written notification of decision on applicant's submission in relation to master layout plan for the purpose of s.4A(3) of the Town Planning Ordinance within six weeks.

Source: Planning Department (2000b) 2000 Performance Pledge.

Hong Kong: Planning Department

The following paragraph was extracted in the booklet named Planning Information Services published by the Planning Department (2000d). It could be used to illustrate how the Planning Department deals with public enquiries.

"In order to ensure a quality service to the public, all enquiries would be handled according to the standards and targets laid down in the Planning Department Performance Pledge. For oral enquiries, we target to reply on the spot or on the phone for straightforward cases and within 3 working days for complicated cases. On written enquiries, we target to reply within 10 days from the date of receipt of the simple and straightforward cases. For complicated cases, we strive to reply as soon as possible and not more than 3 weeks from the receipt date of the enquiry." (Planning Department, 2000d, p.5)

Appendix IX:

Summary of offences, fines and actions laid down in sections 21 and 23 of the Town Planning Ordinance upon unauthorized development (UD)

Section 21	1 st conviction	Fine: \$500,000	
	Subsequent conviction	Fine: \$1,000,000	
Section 23(1)	Enforcement Notice (EN)	Reason: Matters that constitute the UD	Action: The UD should be discontinued or planning permission be obtained within normally 3 months
Section 23(2)	Stop Notice (SN)	Reason: 1. Continuance of an UD could constitute a health of safety hazard of adversely affect the environment; or 2. Make it impracticable or uneconomic to reinstate the land within a reasonable period of time	Action: 1. Specify the date by which the UD should be discontinued 2. The steps required to be taken to prevent the happening of the above adverse effects.
Section 23(3)	Reinstatement Notice (RN)	Reason: 1. Planning permission has not been obtained by the date specified	Action: Require the person concerned to reinstate the

		in the EN; or 2. Permission has been refused and all rights of review or appeal under section 17 of TPO have expired, abandoned or exhausted		land to the condition it was immediately before the publication of the DPA plan or IDPA Plan under s.26
Section 23	1 st conviction	Lump sum: \$500,000	Daily fines: \$50,000	Reason: Fails to comply with the requirements of either an EN, a SN or a RN
	Subsequent conviction	Lump sum: \$1,000,000	Daily fines: \$100,000	
Section 23(7)	Action: the Authority may enter the land and take possession of, remove, detain and dispose of property that is on the land			
Section 23(8)	Action: The expenses incurred in entering the land and taking such steps may be recovered from the person concerned			

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