

# **PLANNING LAW AND THE RIGHT TO CITY PLANNING: A CASE STUDY OF 'WALLED BUILDINGS' IN HONG KONG**

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## **Abstract**

Planning-related laws as part and partial of a planning system could be a double-edged sword: they could guarantee people's planning rights but they could also behind the 'equality before the law' façade privilege certain actors' rights at the expense of others. Hence, the coverage and ingredients of planning-related laws could be potential subjects of contention. This paper attempts to tell the story of 'walled buildings' in Hong Kong through the lens of planning-related laws and people's awakening to their right to city planning.

Walled buildings are not new in compact Hong Kong. However, "high-density slab-block style buildings" in new reclamation areas maximizing stunning harbour view, depriving old lower-rise urban areas of natural ventilation and sunlight, is a relatively new phenomenon. Through a critical examination of the delayed amendment of an outdated Town Planning Ordinance (originated in 1939 and amended partially to broaden participation in 2004) and a Buildings Ordinance that 'promises' huge development potential, this paper first investigates the conditions that have given rise to the "walled building" phenomenon in Hong Kong. If "walled buildings" are common place in Hong Kong, then what are the specific circumstances that have led to the emergence of a right to city planning movement to counteract this faulty urban form? The paper adopts a three-pronged approach to answer this research question: the role of the 2005 amended Town Planning Ordinance in sensitizing people of their right to city planning; the roles of networked stakeholders in mobilizing information, resources, opinions in re-problematizing the "walled-building" phenomenon; and the wider evolving socio-economic context with embedded transforming hard and soft institutions that increasingly recognise people's right to the city.

## **1. Introduction**

The following first discusses the relationships between planning law and the right to city planning, followed by an overview of the characteristics and evolution of planning-related laws and regulations in the city of Hong Kong that render

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substantial development rights to property developers, very often at the expense of the urban environment. Through a case study of a 'walled building' controversy, the paper examines the significance of the community's awakening to their right to city planning and the implications to the established institutional setup.

## **2. Laws and the right to city planning**

Alexander (2007, p.114) identifies two types of planning rights: positive planning rights are recognised claims in a planning system through 'laws, regulations, and court decisions that have set the norms of institutional practice' that are different in diverse constitutional, political, legal and institutional contexts; potential planning rights are claims that have yet to be 'recognized or proven through legal confirmation, enforcement or practical effectuation'. Socio-political transformations may be required to translate 'potential planning rights' into 'positive ones' (op cit., 2007, p.114).

Wesley Hohfeld (2000) identifies four basic legal rights: claim rights, liberty rights, powers and immunities, the latter two being 'secondary rights' for 'individuals and groups to alter, override, or ignore existing legal entitlements'. This argument can be compared interestingly to what Attoh (2011) describes as 'a moral right to break the law' or what Dworkin (1977, p.672) argues that 'rights are best understood as trumps against democratic tyranny'. And in certain situations these rights are necessary to realize the potential planning rights of citizens.

Besides breaking laws or challenging the tyranny of the majority, perhaps rights to city planning can be seen as a way to realize 'generational rights' (Waldon, 1993). Waldon (1993) argues that first generation rights, traditional human rights, which would mean very little without second generation rights such as rights to housing... to mobility, employment etc. (all related to urban planning) or what Attoh (2011, p.672) calls 'socio-economic entitlements' especially for the disadvantaged. In discussing what constitutes the right to the city, Harvey (2008, p.23) argues that 'it is a right to change ourselves by changing the city' through 'greater democratic control over the production and utilization of the surplus' (p.27). Purcell (2002, p.102) puts forward two principal rights: 'the right to participation and the right to appropriation' and the latter includes 'the right of inhabitants to physically access, occupy and use urban space' (p.103). Agier (1999) simply calls it a right to 'invent' the city (cited in Capron, 2002, p.222). But to borrow from Alexander (2007), these can be called 'potential planning rights'.

Borja (2001) suggests four approaches to transform 'potential planning rights' to real planning rights: grassroots struggles against marginalization; empowering grassroots initiatives; implementing the right to the city through the legal framework; and public policy and planning. And the processes would involve patient explanation of the values that underlie these rights; civic mobilization to create and legalized the institutionalization of effective rights; and a political-

institutional process 'to formalize and consolidate these rights' in order to implement them! All these point to the moral obligation of those who possess such reflective knowledge to act as 'advocates for potential planning rights'!

### 3. Planning-related laws and regulations in Hong Kong

Hong Kong is a densely populated city. A population of seven million occupying a land area of about 1,108 km<sup>2</sup>, population density is often quoted as 6,318 per km<sup>2</sup>. However, reference to Table 1 below shows that less than 25 per cent of the land in Hong Kong is built up land and in fact, public housing that accommodates about 48 per cent of the population used up only 1.4 per cent of the land, giving rise to a density of 210,000 per km<sup>2</sup>. As can be seen below, Hong Kong has a rather crude urban land use zoning system without detailed urban design rules or regulations.

Table 1. Land Use Distribution (as at end-2010)

Class	Approximate Area (km <sup>2</sup> )	%	Remarks
<b>Residential</b>			
Private Residential	25	2.1	Residential land developed by private developers (except village houses, HOS/SPS and temporary housing area)
Public Residential	16	1.4	Includes HOS/SPS and temporary housing area
Rural Settlement	25	2.2	Includes village housing and temporary structures.
<b>Commercial</b>			
Commercial/Business & Office	4	0.4	
<b>Industrial</b>			
Industrial Land	7	0.6	
Industrial Estates	3	0.3	
Warehouse and Storage	16	1.4	Includes open storage areas.
<b>Institutional/Open Space</b>			
Government, Institutional & Community Facilities	25	2.3	
Open Space	24	2.2	Includes parks, stadiums and playgrounds.
<b>Transportation</b>			
Roads	40	3.6	
Railways	3	0.3	
Airport	13	1.2	
<b>Other Urban or Built-up Land</b>			
Cemeteries and Crematoriums	8	0.7	
Utilities	7	0.6	
Vacant Development Land/Construction in Progress	16	1.4	
Others	21	1.9	
<b>Agriculture</b>			
Agricultural Land	51	4.6	
Fish Ponds/Gei Wais	17	1.5	
<b>Woodland/Shrubland/Grassland/Wetland</b>			
Woodland	254	22.9	
Shrubland	303	27.3	
Grassland	178	16.1	
Mangrove and Swamp	5	0.4	About 4 km <sup>2</sup> of Mangrove and Swamp, which is below the High Water Mark, is included in this figure. This 4 km <sup>2</sup> should not be counted in the total land area of the Territory.
<b>Barren Land</b>			
Badland	2	0.2	
Quarries	1	0.1	
Rocky Shore	4	0.4	
<b>Water Bodies</b>			
Reservoirs	25	2.3	
Streams and Nullahs	5	0.4	
<b>Total</b>	<b>1 108</b>	<b>100.0</b>	According to Lands Department, the total land area of the Territory (i.e. land above the High Water Mark) is 1 104 km <sup>2</sup> .

Source: Planning Department, Enquiry Telephone No. 2231 5000

### **3.1 Development density controlled by Buildings Ordinance not Town Planning Ordinance**

Positive planning rights are rather limited in Hong Kong. The Town Planning Ordinance (TPO) was first enacted in 1939 when the plot ratio then was set around 3 (80 feet in height with less than five stories) by the 1935 Buildings Ordinance (BO) (HKBRTP, 1973, p.1). Population in the 1930s was less than one million while the city's current population is seven million. In other words, the urban context has been completely transformed. Yet, the TPO even with the latest amendments has not been fundamentally changed. Throughout these decades, the Town Planning Board (TPB) has been entrusted to 'make provision for the systematic preparation and approval of plans' only but NOT the power to implement its plans. As argued by Cuthbert (1997, p.299), the Planning Department 'is not allowed to implement the plans which it prepares... Implementation procedures are enshrined with the Buildings regulations and Crown lease conditions, and there is no mandate that statutory plans must be carried out'.

As stated in the Hong Kong Planning Standards and Guidelines, 'the Buildings Ordinance, including its associated Building (Planning) Regulations, is the only statute which explicitly sets density limits and provides for their enforcement (Planning Department, Chapter 2, p.3). As a result, 'population estimates and the resultant provision of services and reservation of land for road, government, institution and community purposes have had to be based upon full development under the Buildings Ordinance' as no one would doubt that developers will not build to the maximum density permitted by law (HK Branch of RTPI, 1973, p.42). So how reasonable is the BO in guiding urban development and growth?

As mentioned above, the 1935 BO allowed for a plot ratio of 3. However, this level of development could not satisfy the needs arising from rapid urban growth in the post war years. For instance, in 1945 Hong Kong's population dropped to 0.6 million and then in 1956, the number rose to 2.4 million. As a result the Building (Planning) Regulations (B(P)R) was changed in 1956 and building height then was controlled by the width of street, that is, the wider the street, the taller the buildings and development bulk. Hence, the permitted development plot ratio was extremely high: about 18-19 and the subsequent population density of about 7,000 persons per acre, a big challenge for the Government then to provide enough land for social amenities (HK Branch of RTPI, 1973, p.2).

Because of this, the B(P)R were changed in 1962 and instead of having a fixed development height, it became a function of plot ratio and site coverage. Hong Kong was divided into three density zones (Figure 1, Planning Department, 2012, p.28) and site coverage and plot ratio were defined according to three

classes of sites (Table 2, op cit, p.19) and Figure 2 (op cit, p.19). As a result permitted maximum development was reduced by about 25 per cent. This slashing of development right was not implemented immediately. In fact, a long grace period of four years were given for implementation and in the interim, the number of private resident units shot up from 11,300 in 1962 to 29,000 in 1965, an increase of 160 per cent (Fung, 2011, p.96). This development gut had led to a banking crisis in the mid-1960s, a time of turmoil in China and other parts of the world. It should be noted that the First Schedule of B(P)R (Table 1) was enacted in 1976 and the specification more or less stopped at 61 metres (about 21-storey) as buildings higher than that level was hard to imagine then. Hence, while the B(P)R are outdated, these have continued to be used as the basis to direct urban growth and development, sustaining an ultra-high density regime in the urban areas.

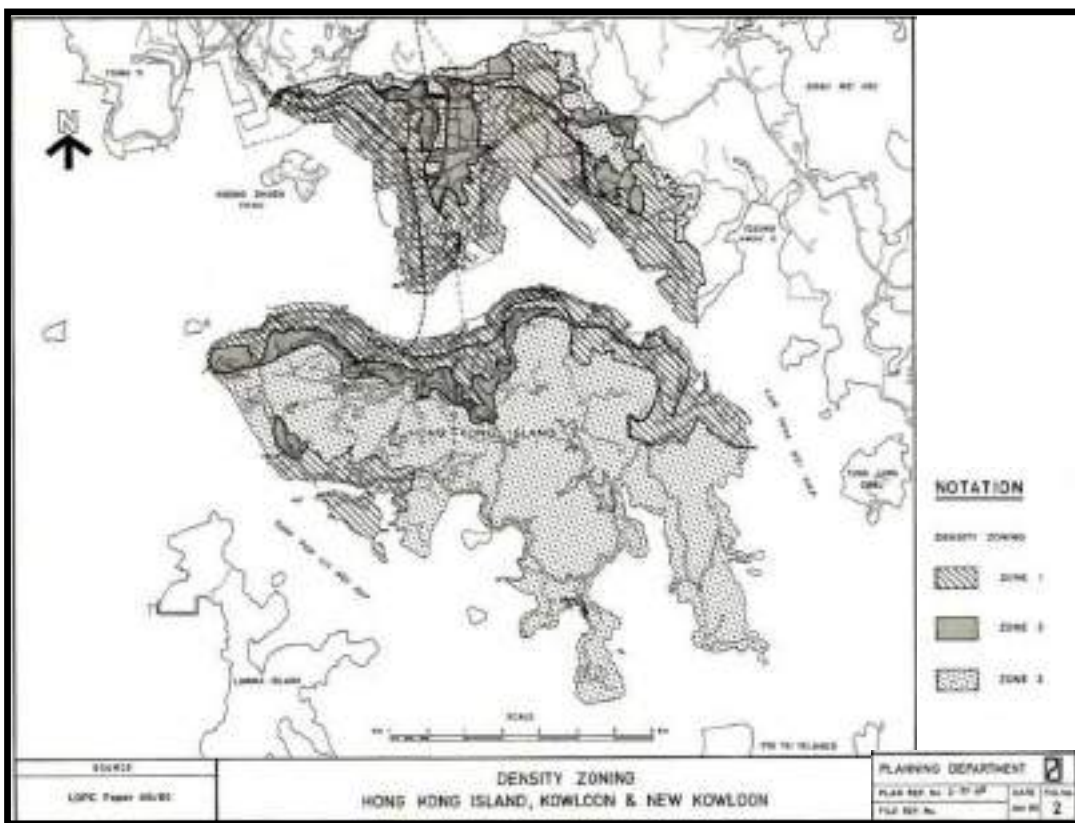


Figure 1. Density Zoning in Hong Kong

Table 2. Maximum permitted site coverage and plot ratio in relation to building height for domestic buildings under First Schedule of B(P)R

Height of building in metres	Maximum site coverage (%)			Maximum domestic plot ratio		
	Class A Site	Class B Site	Class C Site	Class A Site	Class B Site	Class C Site
up to 15	66.6	75	80	3.3	3.75	4.0
up to 18	60	67	72	3.6	4.0	4.3
up to 21	56	62	67	3.9	4.3	4.7
up to 24	52	58	63	4.2	4.6	5.0
up to 27	49	55	59	4.4	4.9	5.3
up to 30	46	52	55	4.6	5.2	5.5
up to 36	42	47.5	50	5.0	5.7	6.0
up to 43	39	44	47	5.4	6.1	6.5
up to 49	37	41	44	5.9	6.5	7.0
up to 55	35	39	42	6.3	7.0	7.5
up to 61	34	38	41	6.8	7.6	8.0
over 61	33.33	37.5	40	8.0	9.0	10.0



Class A site



Class B site



Class C site

- Class A site means a site, not being a Class B site or Class C site, that abuts on one street not less than 4.5 m wide.
- Class B site means a corner site that abuts on two streets neither of which is less than 4.5 m wide.
- Class C site means a corner site that abuts on three streets none of which is less than 4.5 m wide.

Figure 2. Classes of sites in the First Schedule of the B(P)R

Besides relying on the B(P)R to ‘guide’ the formulation of the level of development intensity in the statutory plans, the implementation of plans also

depends on the Building Authority who can disapprove a building plan if ‘the carrying out of the building works... result in a building differing in height, design, type or intended use from buildings in the immediate neighbourhood or previously existing on the same site’ (Section 16(1)(g), BO). The Building Authority, however, possesses discretionary power in exercising his/her development control responsibilities and the guideline is not particularly useful in green-field sites such as newly reclaimed land.

### 3.2 Failed attempts to introduce implementation and enforcement power to the Town Planning Ordinance

The problems of the TPO have long been identified by planners in the city. As early as 1973, before the introduction of the development application system to the TPO, the Hong Kong Branch of the Royal Town Planning Institute undertook a thorough review of the TPO and put forward a number of pertinent recommendations which are still valid to this very date. In 1991, after the establishment of the Planning Department (before this, urban planning was housed under the Works Department), a comprehensive review was done by the Government and many suggestions were put forward to enhance the ‘openness, fairness, certainty, efficiency, effectiveness, affordability and comprehensiveness’ of the TPO (PELB, 1991). Unfortunately, as can be seen in Table 3 below, most of the recommendations of these two thorough reviews have not been accepted in the various minor and major amendments of the TPO.

Table 3. Amendments made at the 2004 Town Planning (Amendment) Bill when compared to suggestions put forward in the 1973 HK Branch of RTPI Report and the 1991 Comprehensive Review of the TPO

	1973 HK Branch of RTPI Report	1991 Comprehensive Review of the TPO	2004 Town Planning (Amendment) Bill
<b>Planning study</b>	The public to be consulted before & during the preparation of plan... period of public exhibition to be extended to 3 months	A planning study to be prepared & published for 3 months for public comments	n.a.
<b>Submitting representation</b>	n.a.	Any member of the public would be able to submit representations to be published	Any member of the public would be able to submit representations to be published

	1973 HK Branch of RTPI Report	1991 Comprehensive Review of the TPO	2004 Town Planning (Amendment) Bill
<b>Exhibition time</b>	n.a.	Would be extended from 3 to 6 months	<ul style="list-style-type: none"> <li>• 2 months for making representations</li> <li>• 3 weeks for commenting on the representations</li> </ul>
<b>Plan review</b>	To be reviewed at least once every five years	n.a.	n.a.
<b>Planning permission</b>	Regulations to be introduced to replace the notes... requiring material changes of use... to be submitted to the planning committee	<ul style="list-style-type: none"> <li>• Written consent or notice to owners required</li> <li>• Planning applications published for public inspection &amp; comments</li> <li>• Consideration from 2 to 3 months</li> </ul>	<ul style="list-style-type: none"> <li>• Written consent or notice to owners required</li> <li>• Planning applications published for public inspection &amp; comments</li> <li>• Consideration within 2 months</li> </ul>
<b>Interim development control</b>	n.a.	Deferred consideration for sites as subject of objections	n.a.
<b>A register of all planning applications</b>	n.a.	A register available for public inspection	A register available for public inspection
<b>Established use certificate</b>	'Established use certificates' to be issued by the planning authority	Planning related provisions in the BO should be consolidated in the new Planning Ordinance. Planning certificates issued by the Planning Authority	n.a.
<b>Building density</b>	Include density and development control etc. in the TPO	Control on development density (reg.19 to 23 & B(P)R)... consolidated in the new Planning Ordinance	n.a.

After a thorough consultation of the general public on the 1991 Comprehensive Review, the Secretary for the then Planning, Environment and Lands Bureau (PELB) reported that there were 65 written representations and except the developers, the general public supported wider consultation in the preparation of statutory plans and in the planning process (HK LegCo, 1992, p.1355). Secretary for PELB also pointed to the 'misguided fear' of the proposed planning certificate system and explained that the proposal was simply to 'enable the Planning Authority to deal directly with the planning aspects of buildings works rather than indirectly through the Building Ordinance as at present' (op cit., p.1356). Five years after the 1991 Comprehensive Review came another consultation document the 1996 White Bill which maintained most of the recommendations put forward in the previous review. Legislator Albert Chan then questioned strongly the Government's change of attitude and queried why a consultative White Bill instead of a promised Blue Bill was published (HK LegCo, 1996, p.147). To the Democratic Party that Chan then represented, 'the proposals [in the White Bill]... still lack transparency with regard to the composition of the Town Planning Board, the decision-making process in planning and the appeal procedure... it is imperative for the Government to introduce... the Blue Bill into this Council for scrutiny asap' (op cit., p.150). Other legislators criticized the design of the whole mechanisms as biased towards the interests of 'the Government, the public utility organizations and the property developers' (op cit., p.155).

The long delay in introducing an amended TPO also prompted the Hong Kong Institute of Planners (HKIP) to question 'the Government's sincerity of introducing new planning legislation to revamp the much out-dated TPO' (HKIP, 1996). However, on the contrary, the Hong Kong Institute of Architects, Hong Kong Institute of Engineers and the Hong Kong Institute of Surveyors put forward a joint paper criticising the White Bill (1997, pp.1-7):

1. The White Bill would delay the development process.
2. The White Bill would create uncertainty because of the discretion power left to the TPB.
3. The White Bill would deprive landowners of proprietary rights without compensation.
4. The White Bill would impose from above another layer of bureaucracy in relation to land development.
5. The White Bill would provide excessive power to the Planning Department.
6. The White Bill would be an expensive endeavour though there was no financial and economic assessment of the proposal of White Bill.

And naturally, these Institutes suggested that planning permission should only be required 'in exceptional cases' and that 'no planning certificates should be required' (op cit., p.7). In other words, these professionals with their vested interests in the development rights of land owners guaranteed by the existing BO and the B(P)R had joined force to thwart attempts to return the



responsibility of urban planning to the planning profession. Although the HKIP urged repeatedly (1997, 1998) the Administration to release the compiled public views on the White Bill and publicize the Blue Bill as early as possible, the requests were not entertained.

In 1998, an interim amendment was made to the TPO to expedite the drafting of plans through limiting the processing time of objections to nine months (LegCo, 2003, p.1). The HKIP declared that it would only support the Bill in principle if the Administration undertook to introduce a major Bill to revamp the TPO in the first half of the following legislative session and requested once again the release of assorted views expressed on various controversial issues related to the TPO (Provisional Legislative Council Secretariat, 1998, p.2).

In 2000, a Legislative Council Brief on the TPO reported that:

‘Green groups, Municipal Councils and District Boards, professional institutes and the Law Society support proposals that would make the statutory planning system more open and involve the public more extensively in the entire planning process... Real estate developers, business sector and other professional institutes such as the Hong Kong Institute of Surveyors, Hong Kong Institute of Architects, Hong Kong Institute of Engineers have expressed concern over whether a more open system would lead to further delay to the development process’ (p.2).

Because of these controversial stances, the Government had continued to consult, review and address the concerns of different parties and hence the revised Bill was not tabled until 16 February 2000, four months before the end of the legislative session. At the 9<sup>th</sup> meeting, the Bills Committee came to the conclusion that ‘it would be unrealistic to complete the scrutiny of the Bill within the current LegCo Session’ (2000, p.4). That was extremely unfortunate though instead of the shortage of time, the crux of the matter was probably due to the fact that ‘while planners called for the early enactment of the Bill, architects, surveyors and real estate developers had indicated their preference for adhering to the existing legislation over putting in place a new Bill hastily passed without careful scrutiny’ (op cit., p.4).

When the Town Planning Bill was raised again in the Legislative Council, it was 2002, 11 years after the publication of the 1991 Comprehensive Review of the TPO. This round, the Government’s determination to introduce comprehensive changes had evaporated. Instead of enacting a comprehensive Bill, the Government proposed to amend the TPO in stages and planned to introduce the relevant legislative proposals into LegCo in March 2003 (PPLW, 2002, p.6). The amendment was eventually passed by the Legislative Council on 7 July 2004. As can be seen in the Administration work schedule in amending the TPO below, the prospect of placing development control and implementation mechanisms back to the hands of urban planners is dim (HK LegCo, 2003, p.2):

- (a) Stage One - to streamline and shorten the town planning process, enhance openness of the planning system, and strengthen enforcement control on unauthorized developments;
- (b) Stage Two - to amend the TPO regarding the operation of TPB, designation of Special Design Area, Environmentally Sensitive Area and Designated Development; and
- (c) Stage Three - to review the highly controversial proposals such as interim development control and planning control on building development.

Again, the HKIP was the lone voice to urge the Government 'to include issues covered by Stage Three amendments in Stage Two and streamline the whole amendment process' (2003, p.1). And in fact, since the stage one amendment of the TPO, the issue of further amending the TPO seems to have faded away in the agenda of the LegCo.

As can be seen in Table 3 above, while the 2004 Town Planning (Amendment) Ordinance has indeed made the plan making and development application systems more transparent, the fact that TPO lacks implementation power persists and the city has continued to rely on the BO and the B(P)R in directing high density development. In other words, the 'positive planning rights' rendered by the planning-related laws and regulatory regime even after the fight by the planners and some of the democratic legislators have not much been expanded. In the long and rather futile road to amend the TPO and behind the facade of many technical jargons, complicated procedures and behind the scene administrative practices, Hong Kong saw the rise of many 'walled buildings' in the newly reclaimed areas, scrambling to capitalize on the stunning sea-view of Victoria Harbour but shutting off the older more modest urban fabric from natural air ventilation, sunshine, visual and physical accessibility. While the professional planners have failed to regain their planning power, the civil society has mobilized itself to fight for its own right! The following uses one such case to illustrate the civil society's efforts in expanding/regaining their right to city planning.

#### **4. 'Walled buildings': the case of Tai Kok Tsui**

The case in point lied on the western part of the West Kowloon reclamation, a massive piece of then newly formed land from the sea in 1990 the size of which amounted to one third of the Kowloon peninsula. It was one of the ten core Airport Core projects undertaken by the Government in the late 1980s as a 'rose garden project' to boost the confidence of Hong Kongers after the June Fourth massacre in 1989 in Beijing (Ng, 1993). The reclamation served strategic planning purposes (TDD, 1992, p.2-3):



- To provide space for the construction of two Airport Express stations which serve to bring the Airport in Lantau Island back to the heart of the city in 25 minutes.
- A strategic transport corridor linking Hong Kong, Kowloon and the northwest New Territories including the Lantau Island.
- Re-provisioning of waterfront facilities.
- New secondary office and hotel centre.
- Housing land.
- Solution space to restructure land uses including the ‘thinning out’ of congested residential and industrial areas in old Kowloon.
- Meeting local district level needs to make up deficiencies in open space, GIC uses, etc.

However, as statutory plan lacks implementation power and has to rely on the BO for development control, residential developments on the reclaimed land where there was no neighbouring uses were therefore allowed to develop to its ‘fullest extent’ allowed in the First Schedule of the B(P)R. Figure 3 is the statutory plan for the site and the reclaimed areas are zoned into distinctively massive blocks very different from the human scale street blocks in old Kowloon. Worse still, when monstrous residential tower blocks emerged and very often, on podium structures, their prominent presence turned the old Tai Kok Tsui inland into a ‘walled city’, being ‘robbed’ of sunlight, ventilation and visual access. Figures 4 and 5 show the various phases of high-rise development in the reclaimed areas and the corresponding birds’ eye-view. Figure 6 is a photo that shows the location of the site, described as the only breathing gap for the old urban area. The emergence of these massive property developments and socio-economic changes in the post-colonial city saw the rise of civic activism that criticizes the ‘walled buildings’ severely.



Figure 3. Statutory plan showing the study site



LEGEND:

 Study site

1998 Year of completion of the real estate

Figure 4. Development of 'walled buildings' in Tai Kok Tsui

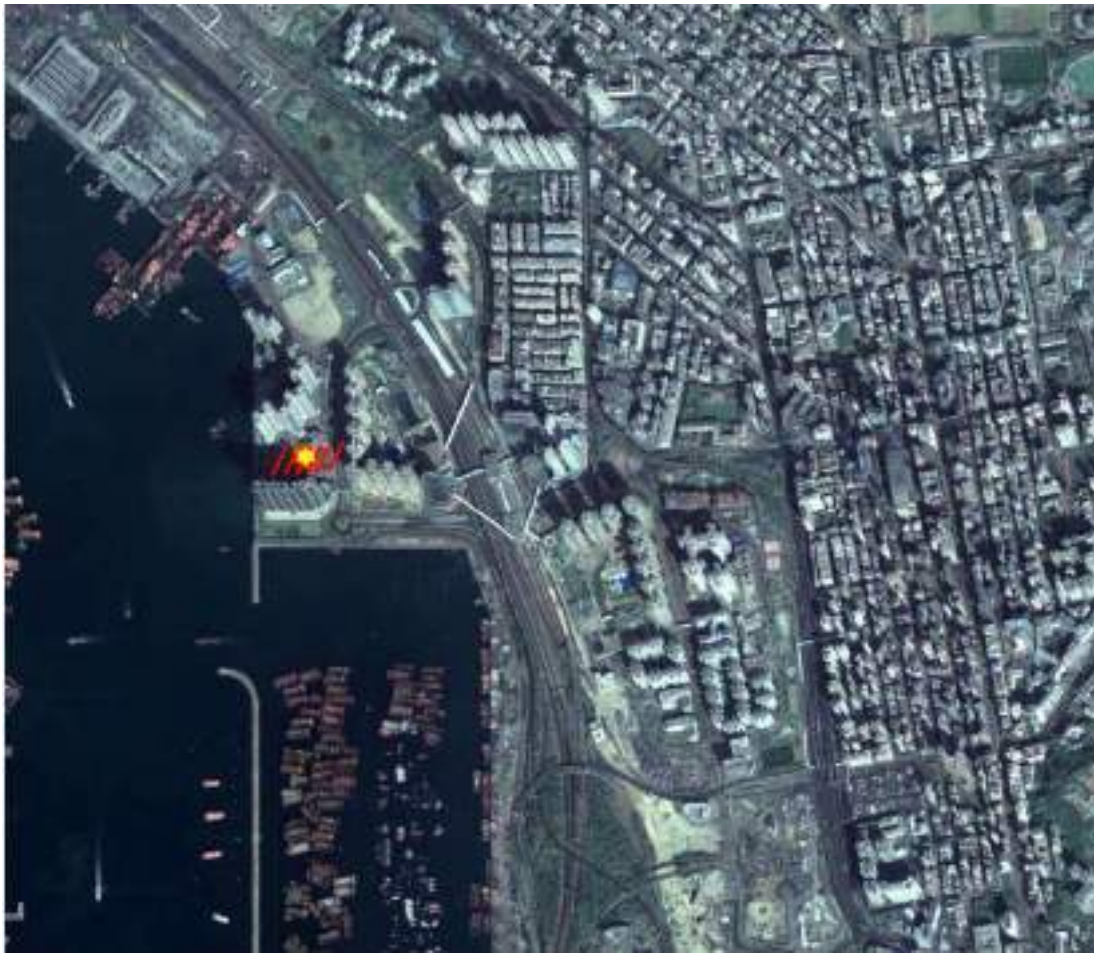


Figure 5. Walled buildings in Tai Kok Tsui.



Figure 6. The subject site described as the only 'breathing space' for old Tai Kok Tsui

Many people in Hong Kong think that the founder of a civic group, Green Sense, Roy Tam coined the term 'Walled Buildings' (direct translation from Chinese should be 'screen' buildings but 'walled buildings' are more popular in the English media). However, according to our interview with him, he first noticed a similar term in another protest activity surrounding the Hopewell Mega Tower where the proposed development was described by local residents as a 'screen' blocking their views. And his concern about 'walled buildings' was triggered by a picture that he saw on the newspaper about another site above a mass transit station (Figure 7). He found the proposed development unreasonable and was concerned about its impacts on the surrounding community and this concern triggered his campaign, among others, against 'walled buildings'.



Source: <http://simg.sina.com.hk/cp/0/0043/7688/2/p.jpg>

Figure 7. Above station development in Nam Cheong, West Kowloon

The late 1990s and early 2000s was an interesting era in the ex-colony. The return to Chinese rule in 1997 coincided unfortunately with the Asian Financial Crisis and Hong Kong entered into an economic recession that was further hit by the SARS crisis (Ng, 1995; 2000; 2008a, 2008b; 2011). The economic downturn allowed many to have time to reflect on their life styles, the city's mode of urban development and their rights to city planning. The dense urban living and the ideology of growth at all costs have increasingly been challenged and questioned by the general public especially among the younger generations,

commonly called the 'post-80s' (born after 1980) who do not have the tolerance of the previous generations towards the Government and refuse to give it the credit in transforming Hong Kong from a poverty-stricken refugee-filled city into a modern metropolis. Hence, the city's economic downturn was contrasted with the rise of civic activism challenging the conventional wisdom of development such as harbour reclamation, urban redevelopment and the removal of heritage sites to further growth. And it is against this background that the battle to save the last breathing space in Tai Kok Tsui took place.

The campaign started in 2003, before the enactment of the Town Planning (Amendment) Ordinance when there was no provision in the TPO for rezoning of land uses in statutory plans. The application of rezoning the residential site into open space was made to the TPB administratively and was rejected as according to the Board, there was enough public open space and the site should be used for residential purposes 'to optimize the use of valuable urban land'. In 2004, the local advisory District Council passed a motion to request the change of land use from residential to open space or government/institution/community (GIC) use (Green Sense, 2009). In 2005, the site was included in the List of Sites for Sale by Application, that is, the site was ready for sale by auction should a developer opt to put a price to the land lot that was agreeable to the Government. With the Town Planning (Amendment) Ordinance in place, the local resident filed in two more planning applications to change the residential site into either open space or GIC uses but both were rejected by the TPB.

In 2007, the Lands Department announced that the site was successfully triggered for sale under the Application List system with a price of HK\$4.2 billion (HK Government, 2007). Local district councillors on one hand petitioned the Lands Department and on the other hand organised various civic actions including the launching of the 'Blue Windwill Action' to protest at the land sale; Green Sense filed yet another rezoning application to request the reduction of plot ratio and appropriate air ventilation (Green Sense, 2009); and the filing for a judicial review by a local resident which was refused by the Court as information provided was too sparse and unclear. Nevertheless, the land was successfully bid by a developer and building plans were submitted in July 2007.

In August 2007, a professional town planner belonging to the Democratic Party and a representative of Green Sense submitted yet another planning application requesting the maximum permissible domestic plot ratio to be reduced from 6.5 to 5 as well as introducing a 10-metre wide wind corridor but both requests were again rejected. Eventually, in 2008, the building plans were finally approved and the building height was reduced to 130 to 140 metres with 32 to 34 stories, about 10 stories less when compared to neighbouring sites. The Chairman of the TPB, a government official, made the following remarks:

'[Th]e OZP might not be the most suitable tool for the control of the design of individual buildings. As building design and layout were largely

governed by the Buildings Ordinance, the Buildings Ordinance might need to be reviewed and, where appropriate, amended to give regard to air ventilation factor... the proposed 10m wide non-building area... was provided voluntarily by the developer' (TPB, 2008, p.14).

To the civic activists, this cannot be a victory but to the developer, perhaps this was a big concession. The developer's willingness to make such a concession might have to do with the fact that the bid price was much lower than its neighbouring sites due to uncertainties introduced by local civic actions (Sing Tao Daily, 2007).

## 5. Conclusion

Where does Hong Kong stand with reference to the earlier discussions on laws and the right to city planning? Obviously, the recognized rights to city planning offered by the planning system through laws and regulations are rather limited. In fact, as can be seen in previous paragraphs, the procedural TPO offers no statutory power for implementing the formulated plans. And the scale and intensity of development allowed in the plans are constrained by the First Schedule of the B(P)R which have been taken as the promised development rights by the built-environment related professionals. Indeed, the vested interests of developers and related professionals (except some of the town planners) have led to the delay of the amendment of the outdated TPO and the resumption of the urban planning responsibility to the planning profession. In other words, the planning profession has failed to help realize the 'potential planning rights' of the citizens as the Government seems to have sided with the interests of the developers.

On the other hand, civic activism sprang up to try to challenge the biased system at the grassroots level. Various attempts were made to use the amended TPO to change the land use zoning but to no avail. Although eventually, the community actions had succeeded in lowering the height of the development project and enforcing a 10-metre wide ventilation corridor, the fundamental of the biased planning and building regime remains intact.

This story shows us the importance of having conscientious professionals who are willing to put public interest before self-vested interests. In other words, to borrow from Alexander (2007), Hong Kong needs 'advocates of potential planning rights', planners or related professionals who are willing to use their knowledge to patiently explain the 'hegemonic bias' (Borja, 2010, p.24) of the current system and to point out the importance of institutionalizing planning considerations in the development process, the return of planning authority to professional planners, the review of the First Schedule of the B(P)R, the empowerment of the civil society of their rights to city planning and the



formalization of appropriate mechanisms to facilitate their participation throughout the plan and decision making processes.

This paper has attempted to reveal the mechanisms that have given rise to 'walled buildings' in compact Hong Kong and hopefully, it also points to a need to explore possible alternative futures that will simultaneously be contested but open to democratic control and management!

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