

TOWN PLANNING BOARD

**Minutes of 332nd Meeting of the
Metro Planning Committee held at 9:00 a.m. on 18.8.2006**

Present

Director of Planning
Mrs. Ava S.Y. Ng

Chairperson

Dr. Greg C.Y. Wong

Vice-chairman

Mr. Nelson W.Y. Chan

Mr. Leslie H.C. Chen

Professor N.K. Leung

Dr. Daniel B.M. To

Ms. Sylvia S.F. Yau

Mr. Walter K.L. Chan

Mr. Raymond Y.M. Chan

Professor Paul K.S. Lam

Mr. K.Y. Leung

Assistant Commissioner for Transport (Urban),
Transport Department
Mr. Anthony Loo

Assistant Director(2), Home Affairs Department
Ms. Margaret Hsia

Assistant Director (Kowloon), Lands Department
Mr. James Merritt

Deputy Director of Planning/District
Miss Ophelia Y.S. Wong

Secretary

Absent with Apologies

Mr. Erwin A. Hardy

Professor Bernard V.W.F. Lim

Mr. Stanley Y.F. Wong

Ms. Maggie M.K. Chan

Mr. Felix W. Fong

Ms. Starry W.K. Lee

Assistant Director (Environmental Assessment),
Environmental Protection Department
Ms. Shirley Lee

In Attendance

Assistant Director of Planning/Board
Mr. Lau Sing

Chief Town Planner/Town Planning Board
Ms. Brenda K.Y. Au

Town Planner/Town Planning Board
Mr. Tony Y.C. Wu

Agenda Item 1

Confirmation of the Draft Minutes of the 331st MPC Meeting held on 4.8.2006

[Open Meeting]

1. The draft minutes of the 331st MPC meeting held on 4.8.2006 were confirmed without amendments.

Agenda Item 2

Matters Arising

[Open Meeting]

- (a) Proposed amendment to the Confirmed Minutes of 329th Meeting held on 7.7.2006

2. The Secretary reported that the Director of Home Affairs on 15.8.2006 clarified in a letter that paragraph 10(e) of the Confirmed Minutes of the 329th meeting held on 7.7.2006 should be amended by replacing “Yau Tsim Mong District Council” in the first line of the paragraph with “Yau Tsim Mong North Area Committee”. Since this was a factual amendment, the Committee agreed that the proposed amendment should be accepted.

- (b) Town Planning Appeal Received

Town Planning Appeal No. 15 of 2006 (15/06)

Temporary Storage of Durable and Consumer Goods for a Period of 3 Years

in “Comprehensive Development Area” zone,

Various Lots in DD 104 and Adjoining Government Land,

Chuk Yau Road, Ngau Tam Mei, Yuen Long

(Application No. A/YL-NTM/187)

3. The Secretary reported that the Town Planning Appeal Board (TPAB) on 4.8.2006 received an appeal against the decision of the Town Planning Board (TPB) to reject on review an application (No. A/YL-NTM/187) for temporary storage of durable and consumer goods for a period of three years in the “Comprehensive Development Area” zone on the Ngau Tam Mei

Outline Zoning Plan (OZP). The s.17 review application was rejected by the TPB on 26.5.2006 on the grounds that the proposed development was not compatible with the residential dwellings and village settlements in the surrounding area, and there was insufficient information in the submission to demonstrate that the proposed development would not have adverse environmental, traffic and drainage impacts on the surrounding area. The hearing date of the appeal was yet to be fixed. The Secretariat would represent the TPB to deal with the appeal in the usual manner.

(c) Abandonment of Town Planning Appeal

Town Planning Appeal No. 23 of 2005

Temporary Public Vehicle Park (excluding Container Vehicles)

for a Period of 3 Years in “Village Type Development” zone, Lots 145(Part), 147A, 147B, 147C, 147RP, 148, 149A, 149B, 149C, 149D, 149RP(Part), 151(Part) and 3405 in DD 102 and Adjoining Government Land, San Tin, Yuen Long

(Application No. A/YL-ST/284)

4. The Secretary reported that the subject appeal was received by the TPAB on 21.11.2005 against the decision of the TPB on 21.10.2005 to reject on review an application (No. A/YL-ST/284) for temporary public vehicle park (excluding container vehicles) for a period of three years in the “Village Type Development” zone on the San Tin OZP. The appeal was abandoned by the appellant of his own accord on 11.8.2006 and the abandonment was confirmed by the TPAB in accordance with Regulation 7(1) of the Town Planning (Appeals) Regulations on 14.8.2006.

(d) Appeal Statistics

5. The Secretary said that as at 18.8.2006, 30 cases were yet to be heard by the TPAB. Details of the appeal statistics were as follows:

Allowed	:	17
Dismissed	:	85
Abandoned/Withdrawn/Invalid	:	117

Yet to be Heard	:	30
<u>Decision Outstanding</u>	:	<u>1</u>
Total	:	250

Tsuen Wan and West Kowloon District

[Ms. Heidi Y.M. Chan, District Planning Officer/Tsuen Wan and West Kowloon (DPO/TWK), and Mr. Louis K.H. Kau, Senior Town Planner/Tsuen Wan and West Kowloon (STP/TWK), were invited to the meeting at this point.]

Agenda Item 3

Section 16 Application

[Open Meeting (Presentation and Question Sessions only)]

A/K1/215 Proposed Commercial Bathhouse and Massage Establishment
in “Commercial” zone,
Lower Basement, Harbour Crystal Centre,
100 Granville Road, Tsim Sha Tsui
(MPC Paper No. A/K1/215)

Presentation and Question Sessions

6. Mr. Louis K.H. Kau, STP/TWK, presented the application and covered the following aspects as detailed in the Paper :

- (a) background to the application;
- (b) the proposed commercial bathhouse and massage establishment;
- (c) departmental comments – no objection from concerned Government departments was received;

- (d) during the statutory publication period, one public comment was received from a District Councillor agreeing to the application; and
- (e) the Planning Department (PlanD)'s views – PlanD had no objection to the application for reasons as detailed in paragraph 12.1 of the Paper.

7. Members had no question on the application.

Deliberation Session

8. After deliberation, the Committee decided to approve the application, on the terms of the application as submitted to the Town Planning Board (TPB). The permission should be valid until 18.8.2010, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The permission was subject to the condition of the provision of water supplies for fire fighting and fire service installations to the satisfaction of the Director of Fire Services or of the TPB.

9. The Committee also agreed to advise the applicant :

- (a) to resolve any land issues relating to the proposed development with the concerned owners of the subject premises;
- (b) to consult the Director of Buildings on matters related to the compliance with the Buildings Ordinance and Regulations;
- (c) to consult the Director of Fire Services on the requirements of fire safety provisions within the application premises; and
- (d) to consult the Commissioner of Police and the Director of Food and Environmental Hygiene on the licensing requirements for a massage establishment and a commercial bathhouse respectively.

[The Chairman thanked Ms. Heidi Y.M. Chan, DPO/TWK, and Mr. Louis K.H. Kau, STP/TWK, for their attendance to answer Members' enquiries. Ms. Chan and Mr. Kau left the meeting at this point.]

Kowloon District

[Mr. C.C. Lau, Senior Town Planner/Kowloon (STP/K), was invited to the meeting at this point.]

Agenda Item 4

Section 16 Application

[Open Meeting (Presentation and Question Sessions only)]

A/K18/238 Proposed School (Kindergarten)
 in "Residential (Group C)1" zone,
 G/F, 109 Waterloo Road (NKIL 710RP), Kowloon Tong
 (MPC Paper No. A/K18/238)

Presentation and Question Sessions

10. Mr. C.C. Lau, STP/K, presented the application and covered the following aspects as detailed in the Paper:

- (a) background to the application;
- (b) the proposed kindergarten;
- (c) departmental comments – no objection from concerned Government departments was received;
- (d) during the statutory publication period, two public comments were received raising concerns on the possible adverse impacts on the environment and

traffic in the area; and

- (e) the Planning Department (PlanD)'s views – PlanD had no objection to the application for reasons as detailed in paragraph 11.1 of the Paper in that the proposed kindergarten generally complied with the Town Planning Board Guidelines No. 23 for Application for Kindergarten/Child Care Centre in Kowloon Tong Garden Estate. No adverse impacts on the environment and traffic in the area were anticipated, and relevant Government departments had no adverse comments on the application.

11. A Member asked whether there would be any tree felling in the application. Mr. C.C. Lau replied that according to the applicant's submission, the existing tree within the site would be preserved. As suggested by the Chief Town Planner/Urban Design and Landscape, Planning Department, an approval condition on the submission and implementation of a tree preservation proposal had been recommended in paragraph 11.2(b) of the Paper for Members' consideration.

Deliberation Session

12. The Chairperson said that possible adverse traffic impact was a major concern when considering similar applications for kindergarten use in Kowloon Tong. For this application, the Transport Department considered that the proposed parking and loading/unloading facilities and vehicular access arrangement were acceptable.

13. After deliberation, the Committee decided to approve the application, on the terms of the application as submitted to the Town Planning Board (TPB). The permission should be valid until 18.8.2010, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The permission was subject to the following conditions :

- (a) the provision of water supplies for firefighting and fire service installations to the satisfaction of the Director of Fire Services or of the TPB; and

- (b) the submission and implementation of a tree preservation proposal to the satisfaction of the Director of Planning or of the TPB.

14. The Committee also agreed to advise the applicant :

- (a) that if the first floor of the subject building was to be used for teachers' working area of the subject kindergarten, it would require planning permission from the TPB;
- (b) that the approval of the application did not imply compliance with the Buildings Ordinance and Regulations. The applicant should approach the Buildings Department direct to obtain the necessary approval;
- (c) to consult the Registration Section, Education and Manpower Bureau on the school registration process under the Education Ordinance and Regulations;
- (d) to follow Chapter 9 of the Hong Kong Planning Standards and Guidelines in providing practicable noise mitigation measures to abate the excessive road traffic noise disturbance on the affected noise sensitive areas of the proposal;
and
- (e) to resolve any land issues relating to the development with the concerned owner(s) of the application site.

[The Chairman thanked Mr. C.C. Lau, STP/K, for his attendance to answer Members' enquiries. Mr. Lau left the meeting at this point.]

Hong Kong District

[Ms. Christine K.C. Tse, District Planning Officer/Hong Kong (DPO/HK), and Ms. Donna Y.P. Tam, Senior Town Planner/Hong Kong (STP/HK), were invited to the meeting at this point.]

Agenda Item 5

[Open Meeting (Presentation and Question Sessions only)]

Further Consideration of Application No. A/H4/78

Proposed Bank, Fast Food Shop, Restaurant or Showroom excluding Motor-vehicle Showroom in “Government, Institution or Community” zone,

G/F, Cheung Kong Center (Phase 1B), 2 Queen's Road Central, Central

(MPC Paper No. A/H4/78A)

15. The Committee noted that one of the consultants for this application was Hutchison Whampoa Properties (Management & Agency) Limited, which was a subsidiary company of Cheung Kong (Holdings) Limited (CKHL). Dr. Greg C.Y. Wong declared an interest in this item for having current business dealings with the CKHL.

[Dr. Greg C.Y. Wong left the meeting temporarily at this point.]

Presentation and Question Sessions

16. Ms. Donna Y.P. Tam, STP/HK, presented the application and covered the following aspects as detailed in the Paper :

- (a) background to the application, highlighting that the Committee considered the application on 28.4.2006 and decided to defer a decision pending submission of further justifications from the applicant on the conversion of the application premises to the proposed uses and information on the size and arrangement of the remaining circulation area after conversion;
- (b) according to the supplementary information submitted by the applicant on 23.6.2006, the proposed bank, fast food shop, restaurant or showroom uses would be ancillary to the permitted use on the L/G level of the same building. The L/G level was currently used as a fast food shop and the applicant intended to use the application premises as a take-away service counter. The reason for seeking planning approval for different uses was to

allow greater flexibility of uses at the G/F level should the use at the L/G level change. There would be no adverse impact on the provision of the existing Government, institution or community (GIC) uses nor any increase in the permitted commercial gross floor area (GFA) in the development. The applicant also claimed that the proposed uses would not affect the circulation within the premises since a 1.5m wide access route would be maintained as shown in Drawings FA-1 to FA-3 of the Paper;

- (c) departmental comments – no objection from concerned Government departments was received;
- (d) the District Officer (Central & Western) advised that the Food, Environmental, Hygiene and Works Committee (FEHWC) of the Central and Western District Council (C&WDC) had not withdrawn its previous objection to the application. The FEHWC considered that as the subject premises fell within the “Government, Institution or Community” (“G/IC”) zone, priority should be given to GIC uses by local groups and Government departments; and
- (e) the Planning Department (PlanD)’s views – PlanD had no objection to the application for reasons as detailed in paragraph 4.1 of the Paper in that the proposed uses would not affect the provision of GIC facilities in the comprehensive development at the subject site. They were not incompatible with the uses permitted on the L/G level and would provide convenient services to office workers in Cheung Kong Center and nearby areas. No adverse traffic and environmental impacts on the surrounding areas were anticipated. By maintaining a 1.5m wide access route, the proposed uses would unlikely affect the circulation within the application premises.

17. Members had the following questions on the application:

- (a) whether a 1.5m-wide access route as proposed by the applicant was

sufficient for circulation purpose;

- (b) noting that the application premises was zoned “G/IC” and there were local views that priority should be given to using the premises for GIC purposes, whether approval of the application would affect the provision of GIC uses;
- (c) noting that the current intention of the applicant was to use the subject premises as a take-away service counter for the fast food shop at the L/G level, what were the reasons for the applicant also applying for planning permission for bank, restaurant and showroom uses;
- (d) whether there were any details of the re-provisioned public toilet as shown on Sheet No. MLP-1.4 in the applicant’s submission; and
- (e) whether land premium would be payable in respect of the proposed uses if the application was approved.

18. In response to Members’ questions, Ms. Christine K.C. Tse, DPO/HK, and Ms. Donna Y.P. Tam, STP/HK, made the following points:

- (a) the application premises was designated as a circulation area in the scheme approved by the Committee in 2001 (Application No. A/H5/58) for access to the L/G level only. As shown in the photographs at Plan A-3, the circulation area did not serve as access to other parts of the subject building and maintaining a width of 1.5m should be generally sufficient. Concerned Government departments had no adverse comment on the proposed arrangement;
- (b) the existing comprehensive development of Cheung Kong Center fell partly within the “Commercial” and partly within the “G/IC” zones. The “G/IC” zoning previously covered the ex-Garden Road Multi-storey Car Park, a public toilet, a petrol filling station and Beaconsfield House. The land in the “G/IC” zone had been incorporated as part of the development comprising

Cheung Kong Center and some GIC facilities including post office, public toilet, public car park and public open space. Based on the previously approved scheme, various requirements of GIC facilities had already been provided within the development site. The application premises was within Cheung Kong Center and had been included in the calculation of commercial gross floor area of the development. The proposed uses would not affect the provision of the GIC facilities, and the application premises was not required for GIC uses under the lease;

- (c) according to the approved scheme, the L/G level of the subject building could be used for eating place and shop and services, including retail shop, restaurant, fast food shop, bank and showroom (excluding motor-vehicle showroom) uses. The applicant had explained that seeking planning permission for different uses was to allow greater flexibility in using the application premises should the use at the L/G level change; and
- (d) the annotation of reprovisioning of the public toilet as shown on Sheet No. MLP-1.4 in the applicant's submission was part of the comprehensive development of Cheung Kong Center, which had already been completed. The toilet would not be affected by the proposed uses under application.

19. In response to the question on whether land premium would be payable, Mr. James Merritt said that land premium had been paid for the comprehensive development of Cheung Kong Center. The proposed change of use at the application premises might have premium implication depending on how the overall premium was calculated previously. The District Lands Officer/Hong Kong West and South had advised in paragraph 3.1.1 of the Paper that the proposal might have premium implication. The premium issue would be looked into by the Lands Department separately.

Deliberation Session

20. Two Members considered that a width of 1.5m of the access route as proposed by the applicant might not be sufficient, bearing in mind that it might be blocked by people

queuing for services of the proposed uses.

21. Another Member expected that the operator of the commercial use and the property management office of Cheung Kong Center would take necessary measures to avoid blocking of the access route in order not to affect the image of the building and the business at the L/G level. This Member, however, considered that the range of uses applied by the applicant was too wide. Given that the applicant's intention was to serve the fast food shop at the L/G level, it might be more appropriate to restrict the use at the application premises to fast food shop only.

22. A Member considered that if all uses applied for were approved, it would be possible to have different uses and operators at the application premises and L/G level, rendering management problem and possible blockage of the access route. Another Member considered that showroom use, unlike the other three proposed uses, was not for providing convenient services to office workers in the area.

23. In response to a Member's question, Mr. James Merritt said that it was common for planning permissions granted by the Committee to have premium implication. Should the application be approved, the Lands Department would proceed to assessing whether the applicant should pay a premium. This issue was however not a planning consideration. Members generally agreed.

24. Members then had a lengthy discussion on whether any restriction should be imposed on the uses to be permitted at the application premises. Two alternative approaches of restriction were considered, namely the approval of fast food shop use only or imposing an approval condition requiring the use at the application premises to be the same as that on the L/G level. After discussion, Members were of the view that since the application premises formed part of the commercial portion of Cheung Kong Center and the uses under application were the same as those approved for the L/G level, more flexibility could be allowed for the applicant to determine from business perspective. Some Members also considered that since the setting and location of the application premises and the L/G level were different, it would not be appropriate to tie the uses of two locations.

25. Members then had a discussion on the 1.5m-wide access route proposed by the applicant. In response to the Chairperson's enquiry, Ms. Christine Tse said that the current use of the application premises as a circulation area was based on the master layout plan submitted by the applicant and approved by the Committee. It was not the subject of any approval condition nor any departmental requirement. Taking into account that the proposed access route only led to a disabled lift and escalators providing access to the L/G level, the Chairperson said that the access route was largely not a common passageway to other parts of the development. The application premises would also be subject to relevant Government regulations, e.g. fire escape requirements. As such, it might not necessary to impose a planning condition on the dimension and design of the route. Instead, the applicant could be advised to ensure that the proposed access route was sufficient to allow smooth circulation in the application premises.

26. After deliberation, the Committee decided to approve the application, on the terms of the application as submitted to the Town Planning Board (TPB). The permission should be valid until 18.8.2010, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The permission was subject to the condition of the provision of fire service installations to the satisfaction of the Director of Fire Services or of the TPB.

27. The Committee also agreed to advise the applicant :

- (a) to ensure that the proposed access route in the application premises was sufficient to allow smooth circulation;
- (b) to apply to the Director of Lands for amendments to the approved master layout plan for the proposed change of use under the lease; and
- (c) to apply for relevant food licence/permit from the Director of Food and Environmental Hygiene prior to the operation of food business on the premises pursuant to the Food Business Regulations (Cap. 132 sub. leg.).

[Dr. Greg C.Y. Wong returned to the meeting at this point.]

[Dr. Greg Wong, Ms. Margaret Hsia and Mr. James Merritt left the meeting temporarily at this point.]

30. The Secretary reported that a petition against the application was received in the morning of 18.8.2006 from several Members of the Central and Western District Council (C&WDC) and the Concern Group of the Peel Street/Graham Street and Staunton Street/Wing Lee Street redevelopment projects. The petitioners submitted an open letter dated 18.8.2006 to the Committee, which was tabled at the meeting. In the open letter, the petitioners requested the Committee to follow the principle as stated in the Urban Renewal Strategy of giving priority to the 25 uncompleted projects of the then Land Development Corporation, and to urge the URA to expedite the implementation of the Peel Street/Graham Street redevelopment project and to immediately undertake the property acquisition and rehousing/relocation of the tenants within its development schemes at Peel Street/Graham Street and Staunton Street/Wing Ling Street.

Presentation and Question Sessions

31. Ms. Donna Y.P. Tam, STP/HK, presented the application and covered the following aspects as detailed in the Paper :

- (a) background to the application;
- (b) the proposed residential cum retail shops development;
- (c) departmental comments – the Director of Leisure and Cultural Services advised that the applicant should conduct a Heritage Impact Assessment to address the impact of the proposed development on the three pre-war shophouses at the site and the street-market on Graham Street. Other relevant Government departments had no adverse comments on the application;
- (d) during the statutory publication period, five public comments were received. While one commenter supported the application, three commenters

objected to the application due to the concern that piecemeal redevelopment proposal would further delay the implementation of the comprehensive redevelopment project in the area. The remaining comment was submitted by the URA, mainly stating that the proposed development would jeopardise the comprehensiveness of the development scheme under planning by the URA. Also, the subject buildings formed part of the key streetscape design area and were proposed to be preserved; and

- (e) the Planning Department (PlanD)'s views – PlanD did not support the application for reasons as detailed in paragraph 11.1 of the Paper in that no master layout plan (MLP) nor any detailed information/assessments of the proposed development as required under the Peel Street/Graham Street DSP was submitted by the applicant and the piecemeal redevelopment proposal would jeopardise the comprehensiveness of the comprehensive redevelopment of the area.

32. Referring to the last two items of requests made by the petitioners in their open letter, a Member asked whether the Town Planning Board (the Board) had the power to direct the URA expediting its work in property acquisition and rehousing/relocation of the tenants within its development schemes. The Secretary replied that the operation of the URA was governed by the URA Ordinance and there was no statutory provision for the Board to give instruction to the URA regarding its operation.

33. Another Member asked whether there was any timetable for the URA to implement the redevelopment project at Peel Street/Graham Street. Ms. Christine K.C. Tse, DPO/HK, replied that the URA targeted to complete the planning procedures for the project by 2006/07, which would include the submission of a draft Planning Brief (PB) and MLP for the project to the Board for approval. The URA was seeking public views on the project through community participation workshops and discussions with the C&WDC. There was no information in hand on the programme for land acquisition and construction.

Deliberation Session

34. A Member noted that the application site was included in the approved Peel Street/Graham Street DSP, and asked whether there would be any legal implication if the application was approved. The Chairperson said that the site was zoned “Comprehensive Development Area” (“CDA”) on the DSP and the planning intention of the “CDA” zone was to achieve environmental improvement through comprehensive redevelopment. Members should consider whether the proposed development was in line with the planning intention. The Secretary added that according to section 25(4) of the URA Ordinance and similar provisions in the repealed Land Development Corporation Ordinance, a DSP might provide for the grant of planning permission and might prohibit any development which was not compatible with any development scheme prepared under the URA Ordinance. According to legal advice previously obtained, the URA could seek an injunction from the court to enforce the prohibition provision.

35. A Member said that redevelopment of the application site and its adjoining area should be undertaken in a comprehensive manner, which was the only way to effectively address the various issues involved in redevelopment, such as the requirements of heritage preservation and environmental and traffic improvements. Another Member agreed to this view and considered that the applicant had not submitted sufficient information to demonstrate that the proposed scheme would be compatible with the planning intention for comprehensive redevelopment.

36. A Member shared the locals’ concern about the delay in the implementation of the URA’s redevelopment projects at Peel Street/Graham Street and Staunton Street/Wing Lee Street, and suggested that the Committee should request the URA to expedite the implementation of these projects. The Committee asked the Secretariat to relay Members’ request to the URA.

37. After deliberation, the Committee decided to reject the application and the reasons were :

- (a) the Notes of the “Comprehensive Development Area” (“CDA”) zoning of

the Peel Street/Graham Street Development Scheme Plan (DSP) required that a master layout plan (MLP) including the relevant information and assessments be prepared for the approval of the Town Planning Board but no such MLP had been submitted; and

- (b) the planning intention of the “CDA” zoning of the DSP was for the Urban Renewal Authority (URA) to achieve environmental improvement of the scheme area through comprehensive redevelopment. URA was currently actively pursuing the redevelopment scheme and the applicant’s piecemeal proposal would jeopardise the comprehensiveness of URA’s scheme.

[Dr. Greg C.Y. Wong, Ms. Margaret Hsia and Mr. James Merritt returned to the meeting at this point.]

[Open Meeting (Presentation and Question Sessions only)]

- (ii) A/H5/353 Proposed Commercial Bathhouse and Massage Establishment in “Commercial/Residential” zone, 3/F and 4/F, Kam Chung Building, 52-58 Jaffe Road, 17-21 Fenwick Street, Wan Chai
(MPC Paper No. A/H5/353)
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Presentation and Question Sessions

38. Ms. Donna Y.P. Tam, STP/HK, presented the application and covered the following aspects as detailed in the Paper :

- (a) background to the application;
- (b) the proposed commercial bathhouse and massage establishment;
- (c) departmental comments – no objection was received from concerned Government departments;
- (d) during the statutory publication period, nine public comments were received.

Two commenters supported the application and one commenter considered that if the application was approved, measures should be taken to ensure no nuisance would be caused to the neighbouring residents. The remaining six commenters objected to the application for reasons that the proposed use was considered incompatible with the surrounding commercial buildings and would affect the security in these buildings as well as the local community; and

- (e) the Planning Department (PlanD)'s views – PlanD had no objection to the application for reasons as detailed in paragraph 11.1 of the Paper in that the proposed use was considered not incompatible with the uses in the same commercial building and the surrounding developments which comprised predominantly a mix of commercial and composite commercial/residential buildings, and was in compliance with the Town Planning Board Guidelines No. 14B for Application for Commercial Bathhouse and Massage Establishment. Regarding the public concerns on possible nuisances to the local community, the Commissioner of Police would monitor the public law and order through the massage establishment licensing system.

39. Members had no question on the application.

Deliberation Session

40. After deliberation, the Committee decided to approve the application, on the terms of the application as submitted to the Town Planning Board (TPB). The permission should be valid until 18.8.2010, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The permission was subject to the condition of the provision of fire services installations to the satisfaction of the Director of Fire Services or of the TPB.

41. The Committee also agreed to advise the applicant :

- (a) to apply to the Police Licensing Office for a massage establishment licence;

and

- (b) to apply to the Food and Environmental Hygiene Department for a commercial bathhouse licence.

[Open Meeting (Presentation and Question Sessions only)]

- (iii) A/H21/127 Proposed “Flat” use at top floor of a Commercial/Office Development (For Residence of a Senior Executive of the Company) in “Commercial” zone,
Inland Lot Nos. 8687 and 7737 at 865 King’s Road,
Quarry Bay
(MPC Paper No. A/H21/127)
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Presentation and Question Sessions

42. Ms. Donna Y.P. Tam, STP/HK, presented the application and covered the following aspects as detailed in the Paper :

- (a) background to the application;
- (b) the proposed penthouse apartment at the top floor of a commercial/office development, highlighting that only the penthouse would require planning permission while the commercial/office development was always permitted in the “Commercial” (“C”) zone;
- (c) departmental comments – there was no adverse comment from concerned Government departments on the proposed penthouse use. Nevertheless, the Chief Town Planner/Urban Design and Landscape, Planning Department had expressed concern that the proposed 45-storey commercial/office building was exceptionally tall as compared with the surrounding developments which were predominantly medium-rise buildings of less than 30 storeys in height;

- (d) no public comment was received during the statutory publication period and no local objection was received from the District Officer; and
- (e) the Planning Department's views – PlanD had no objection to the application for reasons as detailed in paragraph 10.1 of the Paper in that the proposed penthouse apartment, which was small in scale, was not incompatible with the main commercial/office use in the same building and would unlikely generate any adverse traffic and infrastructural impacts on the surrounding areas. Regarding the concern on the overall height of the development, PlanD would liaise with the relevant Government departments in the lease modification stage to consider restricting the building height to a lower level.

43. Members had the following questions on the application:

- (a) whether the applicant had submitted any photomontage to illustrate the relation between the future commercial/office development at the application site and its surrounding areas;
- (b) whether planning permission was required only for the penthouse on the top floor of the commercial/office development;
- (c) whether the applicant's agreement to incorporate a restriction on separate alienation of the proposed penthouse from the commercial/office accommodation in the building under the modified lease, as stated in paragraph 2(d) of the Paper, was a reason for PlanD to consider that the application was acceptable. If this was the case, whether other applications for 'flat' use of similar scale would also be considered acceptable, even if there was no restriction on separate alienation;
- (d) whether there were any guidelines adopted by the Town Planning Board (the Board) for consideration of applications for 'flat' use in commercial/office buildings; and

- (e) whether there was any similar application considered by the Board before.

44. In response to Members' questions, Ms. Christine K.C. Tse, DPO/HK, made the following points:

- (a) the applicant had not submitted any photomontage to illustrate the future commercial/office building but had submitted a section drawing, which was in Drawing A-5 of the Paper. The applicant had indicated that the building height of 45 storeys as shown on the drawing was tentative, which was subject to change in the detailed design of the development;
- (b) the subject site was zoned "C" and no planning permission would be required for the commercial/office development. The proposed penthouse was regarded as 'flat' use which required planning permission under the "C" zoning; and
- (c) each application would be considered on its individual merits taking into account all relevant planning considerations. For this application, the proposed penthouse was considered acceptable to the PlanD mainly because of its small scale, being not incompatible with the commercial/office use, and having no adverse impact on the surrounding areas. Imposition of a restriction on separate alienation in the modified lease would help ensure that the future ownership of the proposed penthouse would be connected with the commercial/office operation in the same building.

45. In response to questions (d) and (e) above, the Secretary said that the Board had not adopted any specific guidelines for consideration of applications for 'flat' use in commercial/office buildings. Neither had the Board considered any similar application in the past. Each application should be considered on individual merits taking into account all relevant planning considerations.

Deliberation Session

46. Members generally considered that taking into account the small scale of the proposed use, there would unlikely be any adverse impact on the surrounding areas. However, Members had the following concerns:

- (a) domestic activities relating to the penthouse might affect the daily commercial/office operation in the same building. Individual components of the commercial/office building, such as the mechanical plants on roof-top, might also cause noise nuisance to the occupants of the penthouse. Without knowing the details of the commercial/office part of the building, it was difficult to confirm that the proposed use was acceptable;
- (b) approving the application might set a precedent for similar ‘flat’ use in commercial/office buildings. As a general principle, the Committee should first decide whether ‘flat’ use in commercial/office buildings should be encouraged. There should also be a mechanism to ensure that planning approval, if granted, would not be abused; and
- (c) it was not sure whether there was a genuine operational need for the senior executive of the applicant’s company to live in the proposed commercial/office building.

47. The Chairperson said that penthouse in commercial/office buildings was not a new idea and was very common in some other countries. While no specific guidelines had been established for assessment of such applications, Members could focus on whether the proposed use was in line with the planning intention of the subject site and compatible with the other proposed uses within the building and the land uses in the surrounding areas.

48. Referring to Plan A-1 of the Paper, a Member pointed out that the application site was located adjacent to the “Commercial/Residential” (“C/R”) zone which comprised a mix of commercial and residential uses. ‘Flat’ use in the proposed commercial/office building was not incompatible with the surrounding uses and the application could be approved. The

Chairperson added that since the site was not located near any industrial uses, there was also no industrial-residential interface problem. It was noted that the Director of Environmental Protection had no objection to the application.

49. Though not subject of the application, the Secretary said that relevant details of other parts of the commercial/office building, including the access arrangements on the ground and first floors and a section drawing of the whole building, were available at Drawings A-1 to A-5 of the Paper. Ms. Christine Tse said that according to the applicant, details of the commercial/office building as provided were tentative, which would be subject to change in the detailed design. Notwithstanding, the information submitted by the applicant should be sufficient for the purpose of assessing the application.

50. The Chairperson said that since the maximum permissible non-domestic plot ratio was greater than domestic plot ratio, there was no incentive for such application from the perspective of gain in development floor space. That was why there were very few similar proposals in the past. A Member shared the Chairperson's view and considered that there should be no commercial gain in the proposed penthouse use due to the difference in permissible plot ratio. Provided that there was no adverse impact on the surrounding area, the application should be acceptable.

51. A Member said that should the application be approved, the applicant should be asked to abide by its commitment to use the penthouse only for residence of the senior executive and not to alienate the penthouse separately. This was important in order to ensure that the planning approval would not be abused. This Member suggested that a planning condition should be imposed to this effect. This view was shared by other Members.

52. Mr. James Merritt said that while no restriction on separate alienation would normally be incorporated in the modified lease for a commercial/office development, a planning condition prohibiting separate alienation could only be enforced through the standard clause in the lease requiring compliance with the Town Planning Ordinance.

53. In response to a Member's enquiry on the concept of mixed-use development, the Secretary said that the type of development intended under the "Other Specified Uses"

annotated “Mixed Uses” (“OU (MU)”) zone was different from the subject development which was largely for commercial/office use. She added that the Secretariat was preparing a set of guidelines for the “OU (MU)” zone, which would be submitted to the Board for consideration in due course.

54. On the overall height of the commercial/office development, Members agreed with PlanD’s view that the proposed height of 45 storeys of the subject building was excessive, taking into account the proximity of the site to the waterfront, the general height of the buildings in the area, and possible obstruction to the view to the ridgeline. Noting that the commercial/office building did not require planning permission, a Member asked whether appropriate restriction on building height could be imposed in the lease at the lease modification stage.

55. Mr. James Merritt said that since there was no restriction on building height for the subject site under the Outline Zoning Plan, the Lands Department (LandsD) might not incorporate a building height restriction under the lease.

[Ms. Margaret Hsia left the meeting at this point.]

56. The Secretary said that there was an established mechanism within the Administration to deal with matters relating to the imposition of building height restrictions in the lease for the sites which were not yet subject to such control under the OZP. The Chairperson said that in view of Members’ concern on the building height of the commercial/office building, PlanD would further liaise with LandsD with a view to imposing an appropriate building height restriction under the lease for the subject site as the development would require lease modification. The Committee agreed.

57. After deliberation, the Committee decided to approve the application, on the terms of the application as submitted to the Town Planning Board (TPB). The permission should be valid until 18.8.2010, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The permission was subject to the following conditions :

- (a) the application premises should only be for the residence of the senior executive of the applicant's company and no separate alienation of the premises from the commercial/office portion of the same building was allowed;
- (b) the provision of fire-fighting and fire service installations to the satisfaction of the Director of Fire Services or of the TPB; and
- (c) the submission and implementation of a landscape proposal to the satisfaction of the Director of Planning or of the TPB.

58. The Committee also agreed to advise the applicant :

- (a) to note the comments of the Chief Town Planner/Urban Design and Landscape, Planning Department that greening opportunity should be maximized as far as possible to soften the built-up area. Also, consideration should be given to provide landscape treatment at ground floor, podium and flat roof areas to improve the green setting of the development; and
- (b) to consider lowering the height of the proposed building since a 45-storey building would look extraordinarily tall when viewed from Quarry Bay Park and the Kowloon side, as its immediate surroundings were predominantly medium-rise buildings of mainly less than 30 storeys.

[The Chairman thanked Ms. Christine K.C. Tse, DPO/HK, and Ms. Donna Y.P. Tam, STP/HK, for their attendance to answer Members' enquiries. Ms. Tse and Ms. Tam left the meeting at this point.]

Agenda Item 7

Any Other Business

59. There being no other business, the meeting was closed at 11:45 p.m.