

**Minutes of 1002nd Meeting of the
Town Planning Board held on 13.1.2012**

Present

Permanent Secretary for Development
(Planning and Lands)
Mr. Thomas Chow

Chairman

Mr. Stanley Y.F. Wong

Vice-chairman

Mr. Walter K.L. Chan

Ms. Maggie M.K. Chan

Mr. Raymond Y.M. Chan

Professor Eddie C.M. Hui

Ms. Anna S.Y. Kwong

Professor Paul K.S. Lam

Dr. C.P. Lau

Mr. Maurice W.M. Lee

Mr. Clarence W.C. Leung

Mr. Laurence L.J. Li

Dr. W.K. Lo

Mr. Roger K.H. Luk

Ms. Pansy L.P. Yau

Dr. W.K. Yau

Principal Assistant Secretary (Transport)
Transport and Housing Bureau
Mr. Fletch Chan

Deputy Director of Environmental Protection
Mr. Benny Wong

Assistant Director (2), Home Affairs Department
Mr. Eric Hui

Director of Lands
Miss Annie Tam

Director of Planning
Mr. Jimmy Leung

Deputy Director of Planning/District
Miss Ophelia Wong

Secretary

Absent with Apologies

Mr. K.Y. Leung

Mr. B.W. Chan

Professor Edwin H.W. Chan

Mr. Rock C.N. Chen

Mr. Y.K. Cheng

Mr. Felix W. Fong

Professor P.P. Ho

Dr. James C.W. Lau

Ms. Julia M.K. Lau

Mr. Timothy K.W. Ma

Ms. Anita W.T. Ma

Dr. Winnie S.M. Tang

Professor S.C. Wong

Mr. Stephen M.W. Yip

In Attendance

Assistant Director of Planning/Board
Mr. C.T. Ling

Chief Town Planner/Town Planning Board
Ms. Christine K.C. Tse

Senior Town Planner/Town Planning Board
Ms. Caroline T.Y. Tang

Agenda Item 1

Matters Arising

[Closed Meeting]

1. This item was recorded under confidential cover.

Hong Kong District

Agenda Item 2

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/H8/392

Proposed Office Development with Eating Place, and Shop and Services Uses in “Comprehensive Development Area (1)” zone, 14-30 King Wah Road, North Point, Hong Kong (TPB Paper No. 8992)

[The hearing was conducted in Cantonese and English.]

Presentation and Question Session

2. The Secretary reported that as the application was submitted by a subsidiary of Henderson Land Development Co. Ltd. (Henderson), the following Members had declared interests in this item:

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|-------------------------|--|
| Mr. Raymond Y.M. Chan | - had business dealings with Henderson |
| Mr. Clarence W.C. Leung | - being the director of a non-government organisation which had previously received a private donation from a family member of the Chairman of Henderson |
| Professor S.C. Wong | - had business dealings with the consultant of the applicant |

Ms. Anna S.Y. Kwong - had business dealings with the consultant of the applicant

3. Members noted that Mr. Raymond Y.M. Chan had not yet arrived and Professor S.C. Wong had tendered apology for being unable to attend the meeting. Members considered that Mr. Clarence W.C. Leung's interest was indirect and agreed that he could stay in the meeting. Members noted that Ms. Anna S.Y. Kwong had no direct involvement in the subject application and agreed that she could stay in the meeting.

4. The following representatives of the Planning Department (PlanD) and the applicant were invited to the meeting at this point:

Ms. Brenda Au - District Planning Officer/Hong Kong (DPO/HK), PlanD
Ms. Irene Lai - Senior Town Planner/Hong Kong, PlanD
Mr. Phill Black - Applicant's representative

5. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited DPO/HK to brief Members on the review application.

6. With the aid of a powerpoint presentation, Ms. Brenda Au presented the review application and covered the following main points as detailed in the Paper:

- (a) on 19.9.2008, the applicant sought planning permission for a proposed office development with eating place, and shop and services uses with a plot ratio (PR) of 13.5 and a building height (BH) of 123mPD at the application site, which fell within an area zoned "Comprehensive Development Area (1)" ("CDA(1)") on the draft North Point Outline Zoning Plan (OZP) No. S/H8/21. The zoning and development restrictions remained unchanged on the current OZP No. S/H8/24;
- (b) on 7.11.2008, the Metro Planning Committee (MPC) decided to defer a decision on the application pending the endorsement of the Planning Brief (PB);

- (c) in mid-2009, the then Harbour-front Enhancement Committee (HEC), Eastern District Council, Legislative Council Case Conference, local concern groups and the developer were consulted and briefed on the draft PB. On 4.9.2009, the PB, setting out the development parameters with a maximum PR of 7.5 and 11 for residential development and office development respectively, a maximum BH of 110mPD and the design requirements for the application site, was endorsed by the MPC;
- (d) based on the PB, the applicant submitted two further applications No. A/H8/398 for a residential development and No. A/H8/400 for an office development on 11.9.2009 and 18.12.2009 respectively. Application No. A/H8/398 was approved with conditions by the MPC on 18.12.2009 and Application No. A/H8/400 was subsequently withdrawn by the applicant on 13.5.2011;
- (e) on 15.9.2011, the applicant requested the Board to further defer a decision on the application to allow more time for the applicant to review the air ventilation assessment (AVA) of the application in view of the successful land sale of the adjacent “CDA” site at Oil Street and that a revised AVA, if found necessary, would be submitted within two months. On 23.9.2011, the MPC decided not to accede to the request for deferment taking into consideration that the application had been processed for more than three years and ample time had already been given for the applicant to resolve the technical issues;
- (f) the application was rejected by the MPC on 7.10.2011 and the reasons were:
 - (i) the PR and BH of the proposed office development exceeded the development parameters stipulated in the endorsed PB, which were formulated after due public consultation and consideration. The proposed scale of development was considered excessive having regard to the proximity of the site to the waterfront; and

- (ii) the applicant had failed to demonstrate that the proposed development would not have adverse visual and air ventilation impacts on the surrounding areas;
- (g) the applicant had not submitted any written representation in support of the review application;
- (h) under the OZP, the “CDA(1) zone was subject to a maximum PR of 15 and BH of 165mPD for the southern part; and a maximum BH of not exceeding the soffit level of Island Eastern Corridor for the northern part;
- (i) the proposed development consisted of a 30-storey office block (including three levels of basement carpark) with eating place, and shop and services uses at the southern part of the site. The proposed office would be developed at a BH of 123mPD. The proposed PR was 13.5 (based on the southern part) with a total gross floor area (GFA) of 37,475.5m² for office and 122m² for eating place, and shop and services uses. Sky gardens were proposed at 6/F and 16/F;
- (j) when compared to the endorsed PB, the proposed PR of 13.5 was 22.7% higher than the maximum PR of 11 in the PB. As regards BH, the proposed 123mPD in the subject scheme was higher than the maximum BH of 110mPD by 13m;
- (k) for the non-building area (NBA) requirements, 15m wide NBA along the north-western boundary was required in the endorsed PB. The applicant had provided the same in the subject scheme. As for the south-western boundary, a 10m wide NBA and 2m ground level setback from the 10m wide NBA were required in the PB. In the subject scheme, the applicant had only proposed a 9m wide and 13.5m high setback along the south-western boundary and a truncated G/F at the south-western corner. The PB required a 6m setback from King Wah Road while the applicant had provided a wider setback of 14.5m from the Road. Moreover, an additional 5m setback along the north-eastern

boundary, which was not required in the PB, was provided;

- (l) in the PB, not less than 10m wide at-grade public landscaped walkway along the south-western boundary was required. However, the applicant had only provided 9m wide at-grade landscaped public passage (1,577m²) along the south-western boundary;
- (m) in the PB, there was a minimum requirement of 20% greening ratio. However, the subject scheme could only achieve a greening ratio of 15.8% ;
- (n) the departmental comments were detailed in paragraph 4 of the Paper. The District Lands Officer/Hong Kong East, Lands Department advised that lease modification would be required for the proposed development. The Commissioner for Transport had no objection in-principle to the proposed office development but advised that the proposed residential development, which had been approved by the MPC, would have less significant impact on the adjacent road network. The Chief Town Planner/Urban Design and Landscape, PlanD (CTP/UD&L, PlanD) advised that the proposed scheme had not provided a 10m wide NBA along the south-western boundary of the site which was intended to serve as visual and wind corridor. On the air ventilation aspect, the CTP/UD&L, PlanD advised that the applicant's AVA should take into account the planned comprehensive redevelopment in the "CDA" site at Oil Street to reflect the planned development context for more realistic simulations of wind performance. The AVA had not provided simulated results to demonstrate the air ventilation implications of the proposed scheme under the subject application, in particular the effectiveness of the proposed building gap separating the proposed development from the adjacent hotel as an air path. The applicant's AVA was not conclusive and had not provided simulated results to demonstrate that the proposed development was effective in air ventilation terms. In this regard, CTP/UD&L, PlanD reserved her comments from air ventilation point of view;

- (o) public comments – on the s.16 application, a total of 2,770 comments, including 2,716 objecting to the application, were received. On the review application, a total of 644 public comments (including 642 in three types of standard letters) were received. They were submitted by an Eastern District Councillor, two companies, local residents and members of the public. All commenters objected to the application mainly on the grounds that the proposed development intensity in terms of PR and BH was excessive and not acceptable; the proposed BH was against the resolution passed by the Eastern District Council at its meeting in May 2008 requesting the adoption of a maximum BH of 80mPD and PR of 3 for the application site; the application site was close to the waterfront and should be used for low-density development; the proposed development would create wall effect and have adverse impacts on air ventilation, air quality and the general environment; Fook Yam Road served as a main wind/daylight/view corridor of the surrounding areas and there should be a NBA of at least 12m wide at the western part of the application site to tally with the width of Fook Yam Road or 15m wide to maintain a wind corridor;

- (p) PlanD's view – PlanD did not support the review application based on the planning considerations and assessments as set out in paragraph 6 of the Paper which were summarised below:
 - (i) in terms of uses, the proposed office development with eating place, and shop and services was generally in line with the planning intention of the “CDA(1)” zone, which was primarily to encourage comprehensive development of the area for residential, commercial, leisure and tourism related uses. However, the development parameters of the proposed office development under the current application were not in line with the endorsed PB, and were considered not acceptable. The proposed PR of 13.5 and BH of 123mPD were excessive as compared with the PR of 11 and BH of 110mPD in the endorsed PB. For the proposed office development at the site, taking

into account the existing and proposed developments in the surrounding areas and the location of the site near the waterfront, a maximum PR of 11 had been adopted in the PB. The maximum BH of 110mPD adopted in the PB had made reference to the stepped BH concept adopted in the OZP. The area around the site (including Harbour Heights and Fu Lee Loy Mansion with existing BH at 120-123mPD and 68mPD respectively, as well as the sites to the further south up to King's Road) was subject to a BH restriction of 110mPD, while the area to the south of King's Road was subject to 120mPD and 130mPD. A maximum BH of 110mPD for the site was compatible with the OZP restrictions for the adjoining commercial and residential sites within "Commercial", "Residential (Group A)" and "Commercial/Residential(2)" zones to the immediate southwest and southeast of the site and the maximum BH of 100mPD and 110mPD under the PB for the adjacent "CDA" site at Oil Street. The maximum PR and BH as recommended in the PB had struck a balance between community aspiration and optimisation of land resources. There was no strong justification for a departure from the development parameters which were endorsed after a due process of public consultation;

- (ii) the applicant had complied with the PB's requirements regarding the NBA along the north-western boundary of the site and setback from King Wah Road. Moreover, the applicant proposed a 5m setback along the north-western boundary as a breezeway gap. However, the applicant's public passageway of 9m wide and 13.5m high along the south-western boundary did not fully meet the PB's requirements of 10m wide NBA along the south-western boundary and 2m ground level setback from the 10m NBA which was designated to serve as a visual and wind corridor aligned with Fook Yum Road as well as a public landscaped walkway leading to the proposed public open

space on the waterfront. With a headroom of 13.5m, the proposed public passageway could not achieve the visual openness offered by the 10m wide NBA under the PB; and

- (iii) the AVA had not taken the redevelopment of the Oil Street “CDA” site into account. The applicant’s AVA had assessed two scenarios at the site, i.e. a Baseline Scheme (office development with BH of 147mPD and 3-storey podium with full coverage which is based on the adjacent hotel development) and a 128mPD Office Scheme (with BH of 128mPD, provision of a public passageway of 9m wide and 6m high along the south-western site boundary with a truncated G/F at the south-western corner, no podium design, setback from King Wah Road and the north-eastern site boundary and provision of a sky garden on 6/F) and the AVA indicated that the 128mPD Office Scheme would achieve better air ventilation. However, the effectiveness of the proposed development including the building gap along the north-western boundary in air ventilation term had not been demonstrated in the AVA.

7. The Chairman then invited the applicant’s representative to elaborate on the review application.

8. With the aid of a powerpoint presentation, Mr. Phill Black made the following main points:

Background

- (a) the application should have been approved under the normal time frame of planning application procedures. The application was submitted on 19.9.2008 but the consideration of the application had been delayed until the endorsement of the PB for the application site in September 2009;

- (b) there were two development sites within the “CDA(1)” zone, namely the eastern site and the western site. The eastern site had already been developed into Harbour Grand Hong Kong Hotel (HGHK) in accordance with the OZP restrictions. The western site, i.e. the application site, was however further regulated by the PB within the same “CDA(1)” zone;
- (c) the PR of 13.5 and BH of 123mPD for the proposed development under the current application were much lower than the development restrictions under the OZP (i.e. PR of 15 and BH of 165mPD);
- (d) the application was submitted well before the endorsement of the PB. Moreover, the PB, which was non-statutory, was prepared to act as guidance for the future development at the site. There was no reason why the application could not be considered on its own merits but had to rely on the PB;

Building Height

- (e) the proposed BH of 123mPD under the current application was much lower than the OZP restriction;
- (f) in January 2008, the MPC considered that a proposed residential development with a BH of 138mPD at the application site was ‘acceptable in principle’;
- (g) the application was supported by a visual impact assessment (VIA) which assessed the visual impact of the proposed development on the ridgeline, Harbour and local context. The VIA concluded that the proposed development would be well integrated with its future landscape and visual context, which was not challenged by any government departments;

- (h) the adoption of a lower BH in the PB did not negate the fact that the BH of 123mPD for the proposed development was acceptable in terms of its scale of development in the locality;

[Mr. Fletch Chan arrived to join the meeting at this point.]

- (i) the then HEC was a public body to oversee the planning, urban design and development in the harbourfront areas and hence its views on waterfront developments were overriding. In November 2008, the then HEC considered the scale of the proposed office development acceptable. It further suggested that the applicant should consider pursuing a development with a higher BH but a lower site coverage in order to alleviate the visual impact and improve the air ventilation;
- (j) when submitting the draft PB for MPC's consideration in April 2009, PlanD advised that a commercial development with a BH of 120mPD and PR of 13.5 would not have significant visual impact on the waterfront environment. However, in October 2011, PlanD considered the scale of development under application visually unacceptable;
- (k) CTP/UD&L, PlanD commented that the application was not acceptable because the endorsed PB had specified a lower BH for office development on the site. This comment only reflected the fact that the proposed development scale differed from that specified in the PB but it did not imply that the proposed development was out-of-character in the local waterfront setting from urban design point of view;
- (l) rejecting the application on the grounds that the proposed scale of development was considered excessive was unjustified;

Air Ventilation

- (m) according to the AVA Study (2007) for the Oil Street “CDA” site conducted by PlanD, the AVA model had assumed that the application site would be developed at a maximum permissible BH under the OZP;
- (n) in May 2008, DPO/HK advised the Board that the area around Oil Street was not a problem area for air ventilation and that there was little difference in wind velocity at street level with different scales of development at the Oil Street “CDA” site. In other words, air ventilation was not a critical determinant of BH at King Wah Road;
- (o) in August 2008, the applicant undertook an AVA for the application site in support of the subject application;
- (p) the applicant’s AVA had assessed two scenarios at the application site, i.e. a proposed scheme with a BH of 128mPD and a baseline scheme with 147mPD. 128mPD instead of 123mPD was assessed only because the office building was originally proposed with 128mPD. The AVA had proved that an office building of 128mPD would achieve better air ventilation performance and hence it was considered not necessary to redo the AVA for 123mPD which involved the deletion of one storey;
- (q) the applicant’s AVA did not assume any development for the ex-GSD site on Oil Street because at the time when the application was submitted, there was no committed development for the ex-GSD site. In fact, the PB for the “CDA” site at Oil Street was only endorsed in January 2009. Without adopting a building arrangement on the ex-GSD site would not invalidate the conclusion of the applicant’s AVA that an office building with a height of 128mPD with the design features adopted would produce better air circulation performance than the baseline office building of 147mPD;

- (r) while CTP/UD&L, PlanD pointed out that the applicant did not conduct an AVA for the BH of 123mPD, she did not object to the findings of the AVA or comment that the proposed office building of 123mPD would have adverse air ventilation impacts. CTP/UD&L, PlanD only reserved her comments on the AVA; and
- (s) the Board should approve the application by imposing an approval condition requiring the submission of a revised AVA rather than rejecting the subject application.

9. A Member asked whether there were BH restrictions imposed on the OZP for the subject area. Ms. Brenda Au said that BH restrictions had already been incorporated into the North Point OZP. With reference to Plan R-1 of the Paper, Ms. Brenda Au explained that the area surrounding the application site was restricted to a maximum BH of 110mPD, except for the subject “CDA(1)” zone and the “CDA” zone at Oil Street. The subject “CDA(1)” zone was restricted to a maximum BH of 165mPD and the eastern portion had already been developed into HGHK in 2009. Although the “CDA” zone at Oil Street was not subject to a BH control under the OZP, a maximum BH of 110mPD and 100mPD were set out in the PB, which were then set out in the lease conditions.

10. The same Member asked about the statutory status of the OZP and PB. In reply, Ms. Brenda Au said that the development restrictions on the OZP set out the maximum permissible level of the development parameters while the PB, which was non-statutory, was endorsed by the MPC to act as guidance for the future development at the site zoned “CDA(1)” on the OZP. Noting that the subject application had been submitted, the MPC on 7.11.2008 still considered that a PB for the application site had to be prepared as there were strong public concerns on the intensity and design of the future development. Ms. Brenda Au continued and said that after the MPC had agreed on 17.4.2009 to adopt the draft PB with a maximum PR of 12 for office development (or PR of 8 for residential development) and BH of 110mPD as the basis for public consultation, the then HEC, Eastern District Council and Legislative Council Case Conference were consulted and briefed on the draft PB between May and August in 2009. The Sub-Committee on Harbour Plan Review of the then HEC had raised the concern that the overall development intensity and BH should be reduced towards the harbourfront. After

considering the views collected including those from the then HEC, and having struck a proper balance among relevant factors, the MPC on 4.9.2009 endorsed the PB which specified a maximum PR of 7.5 and 11 for the proposed residential development and office development respectively and a maximum BH of 110mPD for the site.

11. Mr. Phill Black said that the BH restriction imposed on the OZP for the subject site was 165mPD. He invited Members to note the comments made by the then HEC on the subject application on 19.11.2008 that “further reduction of the width of the building to improve air circulation, though this might increase the building height, might be considered”. In view of this, PlanD’s comment that the proposed BH of 123mPD was considered excessive could not be established.

12. A Member asked why the 10m wide NBA along the south-western boundary of the site was required under the PB. In reply, Ms. Brenda Au said that the 10m wide NBA was designed to align with Fook Yum Road and it served as a visual and wind corridor, as well as a public landscaped walkway leading to the proposed open space on the waterfront. The applicant had failed to provide the visual corridor as specified in the PB in his proposal. Ms. Brenda Au further said that the applicant’s AVA had assessed two scenarios with a BH of 147mPD and a BH of 128mPD. The results of the applicant’s AVA indicated that the proposed scheme with a BH of 128mPD would achieve better air ventilation. According to CTP/UD&L, PlanD, the applicant should submit an AVA to compare his proposal with a PB compliant scheme. The applicant had not submitted any information to address the concerns on air ventilation in that respect in the review application.

13. Mr. Phill Black said that the main wind direction was from north to south in this area. As King Wah Road was running in the north-south direction, Mr. Phill Black said that the proposed setback of 14.5m from King Wah Road was much more than the 6m setback requirement under the PB and hence would help enhance air ventilation in the area. On the AVA, Mr. Phill Black opined that the difference in air ventilation performance for a development at 128mPD and a development at 123mPD should not be significant. If MPC considered an updated or revised AVA necessary, it could impose a relevant approval condition to that respect rather than rejecting the subject application.

14. Noting that Fook Yum Road would serve as visual and wind corridor in the area, a Member asked if Fook Yum Road would extend further across Electric Road. By reference to a plan, Ms. Brenda Au explained that Fook Yum Road would terminate at Electric Road.

15. In response to the same Member's enquiry on the then HEC's comments relating to the visual impact, Mr. Phill Black, with reference to the letter dated 23.1.2009 from the then HEC regarding the subject application, reiterated that the then HEC had considered that "the further reduction of the width of the building to improve air circulation, though this might increase the building height, might be considered".

16. Noting the then HEC had commented that "the proposed 9m setback along the south-western boundary of the site for the public passage way could improve the accessibility to the waterfront", a Member asked why no such public access was provided under the current application. Mr. Phill Black clarified that under the subject scheme, the applicant had proposed a 9m setback along the south-western boundary of the site which allowed accessibility to the waterfront. The same Member further enquired if there would be landscaping proposals along the setback area. With reference to the landscape master plan, Mr. Phill Black explained to Members the landscaping proposal along the 9m setback area which included the pedestrian walkway to the waterfront. Mr. Black said that the landscaping proposal was acceptable to CTP/UD&L, PlanD.

[Mr. Benny Wong left the meeting temporarily at this point.]

17. A Member asked if the proposed setback of 9m along the south-western boundary which was less than the 10m required under the PB would offer an opportunity to reduce the BH of 123mPD. Ms. Brenda Au pointed out that the subject scheme only provided the 9m wide and 13.5m high setback whereas the PB required a 10m wide setback in full height and a further setback by 2m on the ground level along the south-western boundary to further enhance visual accessibility to the waterfront and air ventilation of the site. The BH of 123mPD was proposed as the PR of the subject scheme was 13.5, which was higher than the PR of 11 under the PB. As laid down in the PB, a BH of 110mPD would be sufficient for a development with PR of 11.

[Professor Paul K.S. Lam left the meeting temporarily at this point.]

18. The same Member further pointed out that whilst the setback requirement at King Wah Road in the PB was only 6m, the subject scheme had proposed a setback of 14.5m. If the additional 8.5m setback was not provided, then the BH could also be reduced. Ms. Brenda Au said that if the setback followed the PB requirement, there was scope to lower the BH and the overall design could also be changed.

[Mr. Benny Wong returned to join the meeting at this point.]

19. A Member asked whether it would be more practical for the applicant to design a scheme which complied with the requirements of the PB by reducing the setback at King Wah Road, increasing the setback at the south-western boundary and lowering the BH, rather than arguing on the merits of the proposed scheme under application.

20. Mr. Phill Black said that as the other buildings, including HGHK had built up to the boundary of King Wah Road, the applicant had decided to provide a 14.5m wide setback for this proposed development in order to create some differences in the visual and landscape impact along the street frontage. The setback would also help improve the air ventilation at street level. Mr. Phill Black said that while an alternative scheme could be prepared, there were different views on how the setback requirements and BH could balance each other to come up with a better scheme. He noted that PlanD considered that the proposed BH of 123mPD excessive but the Sub-committee on Harbour Plan Review of the then HEC suggested increasing the BH for better air ventilation.

[Professor Paul K.S. Lam returned to join the meeting at this point.]

21. A Member commented that the provision of a setback of 9m wide and 13.5 high might not be effective in terms of air ventilation. Mr. Phill Black responded that as the wind direction was mainly blowing from north to south, the setback of 14.5m from King Wah Road and the setback along the south-western boundary of the site would allow wind to pass through to the waterfront. The south-western corner of the proposed development was also truncated at ground level to enhance air ventilation at ground level for the easterly wind. The overall design and the proposed setbacks would help achieve

better air ventilation at pedestrian level.

22. A Member requested the applicant's representative to provide justifications for a higher PR of 13.5 for the proposed scheme. Mr. Phill Black said that the application site was subject to a maximum PR of 15 under the OZP and the applicant had already reduced the PR of his proposed scheme to 13.5 to meet the community's aspiration. According to the principle of "the lower, the better", it would be difficult for the applicant to justify a PR higher than the PR of 11 in the PB.

23. As the applicant's representative had no further comment to make and Members had no further question, the Chairman informed the applicant's representative that the hearing procedures for the review application had been completed. The Board would further deliberate on the review application in his absence and inform the applicant of the Board's decision in due course. The Chairman thanked the representatives of PlanD and the applicant for attending the meeting. They all left the meeting at this point.

Deliberation Session

24. A Member was of the view that the PB which set out the specific development parameters and detailed requirements to guide the future development of the subject "CDA(1)" site should be respected. This Member considered that the applicant should conduct an AVA to compare the proposed scheme of BH of 123mPD with that of 110mPD as specified under the PB, rather than comparing the two schemes of BH of 147mPD and 128mPD. This view was shared by other Members.

25. In response to the question raised by the same Member on the role of the then HEC in the subject application, the Chairman said that the then HEC (currently the Harbourfront Commission) was an advisory body providing comments on projects relating to the waterfront. The comments of HEC on the subject application could be one of the considerations of the Board.

26. A Member said that the proposed scheme under application was not acceptable as it failed to comply with various requirements set out in the PB, including BH, PR and NBA/setback, and the deviations were not well justified. It was noted that the applicant

did not even take the opportunity in the review application to conduct an AVA for the proposed scheme of a BH of 123mPD. The additional setback at King Wah Road was also not well justified.

27. The Vice-chairman said that it was the established practice of the Board to refer to the development parameters stated in the PB in considering Master Layout Plan (MLP) submission. Although the PB was not a statutory document, it was endorsed by the MPC after public consultation. Whilst the applicant had claimed that the proposed PR of 13.5 and BH of 123mPD of his proposed scheme were much lower than the OZP restrictions, they did not comply with the requirements of the PB endorsed in 2009. The additional setback at King Wah Road was not sufficient to be a planning gain to justify an increase in PR by 22% and BH by 11% over the PB requirements. In view of the above, he did not support the application.

28. The Secretary said that the BH and PR restrictions for the “CDA(1)” zone were the maximum permissible under the zone. Planning application in the form of a MLP was required for “CDA” zone. Starting from the 2000s, PBs were prepared for all “CDA” sites, after consulting the public, to provide guidance for future development.

29. The Chairman concluded that, having regard to the statutory control under the OZP for the application site and noting the function of the PB in providing guidance for future development at the site, the Board considered the development parameters specified in the PB appropriate. In this regard, the proposed development did not meet the requirements set out in the PB in terms of PR, BH and NBA/setback. The applicant had not provided strong planning justification to demonstrate why the requirements could not be complied with. Members agreed that the application should be rejected.

30. After deliberation, the Board decided to reject the application on review. Members then went through the reasons for rejection as stated in paragraph 7.1 of the Paper and considered that they were appropriate. The reasons were:

- (a) the plot ratio and building height of the proposed office development exceeded the development parameters stipulated in the endorsed Planning Brief, which were formulated after due public consultation and

consideration. The proposed scale of development was considered excessive having regard to the proximity of the site to the waterfront; and

- (b) the applicant had failed to demonstrate that the proposed development would not have adverse visual and air ventilation impacts on the surrounding areas.

Sha Tin, Tai Po and North District

Agenda Item 3

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/NE-KTN/147

Proposed Temporary Open Storage of Environmental Plastic Materials with Rural Workshop (Separation and Packing of Environmental Plastic Materials) for a Period of 3 Years in “Green Belt” zone, Lots 898 (Part), 899 (Part), 900 (Part) and 901 (Part) in D.D. 96 and Adjoining Government Land, Kwu Tung North, New Territories (TPB Paper No. 8991)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

31. The following representatives of the Planning Department (PlanD) and the applicant were invited to the meeting at this point:

Mr. W.K. Hui	- District Planning Officer/Shu Tin, Tai Po and North (DPO/STN), PlanD
Mr. Mok Sing Wah]
Mr. Chak Hung Kau] Applicant’s representatives
Mr. Tsang Kar Sun]

32. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited DPO/STN to brief Members on the review application.

33. With the aid of Plan R-1 of the Paper, Mr. W.K Hui presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for a proposed temporary open storage of environmental plastic materials with rural workshop (separation and packing of environmental plastic materials) for a period of three years at the application site which fell within an area zoned “Green Belt” (“GB”) on the approved Kwu Tung North Outline Zoning Plan (OZP) No. S/NE-KTN/8;

[Mr. Raymond Y.M. Chan arrived to join the meeting at this point.]

- (b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 23.9.2011 and the reasons were:
 - (i) the proposed development was not in line with the planning intention of the “GB” zone in the Kwu Tung North area which was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets and there was a general presumption against development within this zone. There was no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis;
 - (ii) the application did not comply with the Town Planning Board Guidelines for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance (TPB PG-No.10) in that the proposed development would cause adverse traffic, environmental and landscape impacts on the surrounding areas and there were no exceptional circumstances or strong planning grounds to justify the proposed development;

- (iii) the application did not comply with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No.13E) in that the application site fell within Category 4 area and there was no exceptional circumstance to justify the development; the applicant failed to demonstrate that the proposed development would not cause adverse traffic, environmental and landscape impacts on the surrounding areas; and there were adverse departmental comments and local objections against the application; and

- (iv) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such applications would result in adverse traffic, environmental and landscape impacts on the surrounding areas;

- (c) the applicant had submitted further information to address the comments of Transport Department (TD) on vehicular access and manoeuvring arrangement within the application site;

- (d) the application site which was largely vacant with temporary structures during the consideration of the s.16 application, was currently deposited with plastic components of computers and other computer parts;

- (e) the departmental comments were detailed in paragraph 4 of the Paper. The Commissioner of Transport (C for T) noted that the length of the light goods vehicles to be used on site was about 6m and had no further comment given the applicant’s confirmation of a low vehicular trip rate of about 3-4 trips per week. The Director of Environmental Protection (DEP) did not support the review application as there were sensitive uses in the vicinity of the application site and environmental nuisance was expected. The Chief Town Planner/Urban Design and Landscape, PlanD (CTP/UD&L, PlanD) objected to the application as the proposed open storage use was incompatible with the surrounding site context and

approval of the application would set an undesirable precedent and attract developments in the “GB” zone. The Project Manager/New Territories North and West, Civil Engineering and Development Department (PM/NTN&W, CEDD) advised that the application site fell within the Kwu Tung North New Development Area under the North East New Territories New Development Areas Planning and Engineering Study. As the site formation works for the NDAs development were tentatively scheduled to commence in 2017, PM/NTN&W, CEDD suggested that if approved, the temporary approval of the application should not go beyond 2016. The District Officer/North, Home Affairs Department said that the Residents’ Representative of Ma Tso Lung (South) had no comment on the application, whereas the concerned North District Councillor and the Chairman of the Sheung Shui District Rural Committee had raised objection to the application;

- (f) public comments – two public comments on the review application were received. One comment was submitted by a North District Councillor objecting to the review application mainly on the grounds that the proposed development was not compatible with the “GB” zone where natural features were found; operation of the development would result in polluted water contaminating surrounding river and land; as well as noise nuisance and air pollution brought about by the vehicles to and from the application site. Another commenter had concerns on the operation safety, soil and water pollution related to the proposed development; and the lack of planning, legal protection and enforcement action over agricultural land;
- (g) PlanD’s view – PlanD did not support the review application based on the planning considerations and assessments as set out in paragraph 6 of the Paper which were summarised below:
 - (i) the application site fell within Category 4 area under the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No.13E) promulgated by the

Board on 17.10.2008. In Category 4 areas, applications would normally be rejected except under exceptional circumstances;

- (ii) the proposed use of the site for temporary open storage of environmental plastic materials with rural workshop (separation and packing of environmental plastic materials) was not in line with the planning intention of the “GB” zone in the Kwu Tung North area;
- (iii) DEP did not support the application as there are sensitive uses in the vicinity of the site (with the nearest domestic use at a distance of less than 5m to the immediate south of the application site). The applicant had failed to demonstrate that the development would not generate adverse environmental impacts on the surrounding areas; and
- (iv) CTP/UD&L, PlanD objected to the application as the proposed development was incompatible with the surrounding site context with rural landscape character and the impact on landscape resources and character could not be ascertained without the submission of a tree preservation and landscape proposal. In addition, approval of the application would also set an undesirable precedent which would further deteriorate the landscape quality and undermine the intactness of the “GB” zone;

[Mr. Laurence L.J. Li arrived to join the meeting at this point.]

34. The Chairman then invited the applicant to elaborate on the review application.

35. Mr. Mok Sing Wah made the following main points:

- (a) the application site had been used for open storage and workshop uses since 1989;

- (b) in 2009, a letter from PlanD stating that the site could be used for open storage and workshop uses was received. However, another letter received from PlanD in 2010 indicated that the said uses on the site were unauthorised and required planning permission from the Board. A planning application was therefore submitted to regularise the storage and workshop uses on the site; and

[Dr. W.K. Lo left the meeting temporarily at this point.]

- (c) their operation under application was of small scale and the materials collected would be processed within a few days.

36. Upon the Chairman's request, Mr. W.K. Hui referred Members to the RNTPC Paper at Annex A and said that in 2009, PlanD had informed the applicant that the storage use at the subject site might be an "existing use" ("EU") and further investigation was required. The concerned uses were later confirmed as unauthorised development (UD) and an Enforcement Notice (EN) was issued to the concerned landowners in 2010. Subsequently, the UD had been discontinued and a Compliance Notice (CN) was issued in 2011. The applicant should have a clear understanding that the storage and workshop uses were UD.

[Ms. Anna S.Y. Kwong left the meeting at this point.]

37. Noting TD's comments at the s.16 application stage that the vehicular access from Ma Tso Lung Road to the application site was not under TD's management and the land status of the access road should be checked with LandsD, a Member asked about the land status of that access road. Mr. W.K. Hui replied that the local access road was not under the management or maintenance by government departments. This type of local access for use of the villagers was not uncommon in the rural areas. The main concern of TD was not on the land status of the access road but the vehicular access and manoeuvring arrangement within the site. Given that the applicant had provided further information on the length of the vehicles to be used on site and the uses would generate a low vehicular trip rate of about 3-4 trips per week, C for T had no further comment on the review application.

38. By referring to Photo 5 on Plan R-4B, the Chairman asked whether the 2-storey structure was located within the application site. Both Mr. Mok Sing Wah and Mr. W.K Hui answered in the affirmative. The Chairman further asked whether the structure was approved by the Buildings Department (BD). Mr. Mok said that the structure had been there for many years and was for residential use. Mr. Hui reported that according to BD, there was no record of approval by the Building Authority for the existing structures found on the site.

[Dr. W.K. Lo returned to join the meeting at this point.]

39. Mr. Mok Sing Wah pointed out that there were also other unauthorised open storages in the surrounding area. They all fell within “GB” zone and had started operation later than that in the subject site. Some of the larger sites were only served by narrow roads. Mr. Mok continued and said that he had started operation since 1989 and because of PlanD’s advice, he had discontinued the UD and submitted the application. He did not understand why PlanD would suddenly consider his case as UD when the operation had lasted for so many years.

40. As the applicant’s representatives had no further comment to make and Members had no further question, the Chairman informed the applicant’s representatives that the hearing procedures for the review application had been completed. The Board would further deliberate on the review application in their absence and inform the applicant of the Board’s decision in due course. The Chairman thanked DPO/STN and the applicant’s representatives for attending the meeting. They all left the meeting at this point.

Deliberation Session

41. The Chairman said that DPO/STN had already clarified that as the EU status could not be established, the concerned uses were UD and the site was previously subject to planning enforcement action.

42. The Vice-chairman was of the view that for “GB” zone, open storage use should not be allowed and there was no strong planning justification for approving the

application. This view was shared by another Member.

43. A Member asked why planning enforcement action was not taken earlier. In reply, the Secretary said that the Central Enforcement and Prosecution Section of PlanD needed time to collect evidence before confirming the UD status. In the subject case, once the UD was confirmed, an EN was issued in December 2010. As the UD had been discontinued, a CN was issued in August 2011. The enforcement action took about eight months for the site to be cleared.

44. Noting the other UDs in the surrounding area as mentioned by the applicant, a Member asked whether these UDs were subject to planning enforcement action. The Chairman said that PlanD would have to conduct investigations and if they were confirmed as UDs, they would be subject to planning enforcement action.

45. The Chairman concluded that Members agreed that the application should be rejected because the proposed development was not in line with the planning intention of the “GB” zone and there was no strong planning justification for a departure from such planning intention. The application did not comply with TPB PG-No. 10 and TPB PG-No.13E and the approval of the application would set an undesirable precedent for similar applications within the “GB” zone.

46. After further deliberation, the Board decided to reject the application on review. Members then went through the reasons for rejection as stated in paragraph 7.1 of the Paper and considered that they were appropriate. The reasons were:

- (a) the proposed development was not in line with the planning intention of the “Green Belt” zone in the Kwu Tung North area which was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets and there was a general presumption against development within this zone. There was no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis;

- (b) the application did not comply with the Town Planning Board Guidelines for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10) in that the proposed development would cause adverse environmental and landscape impacts on the surrounding areas and there were no exceptional circumstances or strong planning grounds to justify the proposed development;

- (c) the application did not comply with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No.13E) in that the application site fell within Category 4 area and there was no exceptional circumstance to justify the development; the applicant had failed to demonstrate that the proposed development would not cause adverse environmental and landscape impacts on the surrounding areas; and there were adverse departmental comments and local objections against the application; and

- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “Green Belt” zone. The cumulative effect of approving such applications would result in adverse environmental and landscape impacts on the surrounding areas.

[Mr. Eric Hui left the meeting at this point.]

Agenda Item 4

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/NE-KTN/145

Temporary Vehicle Repair Workshop (including Container Vehicle Repair Yard) for a Period of 1 Year in “Industrial (Group D)” zone, Lots 759 S.A, 759 RP (Part), 761 S.A, 761 S.C (Part), 762 S.A and 762 S.C in D.D. 95 and Adjoining Government Land, Kwu Tung North, New Territories (TPB Paper No. 8990)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

47. The following representatives of the Planning Department (PlanD) and the applicant were invited to the meeting at this point:

Mr. W.K. Hui - District Planning Officer/Sha Tin, Tai Po and North (DPO/STN), PlanD

Mr. Wong Kwok Fai, Eddie - Applicant’s representative

48. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited DPO/STN to brief Members on the review application.

49. With the aid of a powerpoint presentation, Mr. W.K. Hui presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for a proposed temporary vehicle repair workshop (including container vehicle repair yard) for a period of three years at the application site which fell within an area zoned “Industrial (Group D)” (“I(D)”) zone on the approved Kwu Tung North Outline Zoning Plan (OZP) No. S/NE-KTN/8;
- (b) on 2.9.2011, the application was approved with conditions by the Rural and New Town Planning Committee (RNTPC) for a period of one year

until 2.9.2012;

- (c) on 13.10.2011, the applicant applied for a review of the RNTPC's decision to approve the application subject to condition (a) relating to 'No night-time operation between 6:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the application site during the planning approval period'. The applicant requested to extend the operation hours from 8:00 a.m. to 8:00 p.m.;
- (d) the justifications put forth by the applicant in support of the review application were summarised below:
 - (i) the operation hours between 9 a.m. to 6 p.m. stated in the s.16 application form was the operation time of the company's office;
 - (ii) the application site was within "I(D)" zone. The operation hours for the vehicle repair workshop should be from 8 a.m. to 8 p.m., which was their practice in the past nine years. The operation of the company had not generated any adverse impacts to the local residents in the neighbourhood; and
 - (iii) restricting the operation hours as per approval condition (a) would adversely affect the operation and the survival of the company, hence creating hardship to the employees;
- (e) there had been no change of circumstances of the application site and its surrounding areas since the consideration of the s.16 application;
- (f) the application site fell within Category 1 area under the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13E) and was considered suitable for open storage/port back-up uses;

- (g) the departmental comments were detailed in paragraph 4 of the Paper. The Commissioner for Transport considered that the proposed development would have low traffic demand and had no comment on the applicant's request to extend the operation hours. Although the Director of Environmental Protection did not support the application as the traffic generated by the proposed use would cause environmental nuisance to the sensitive receivers in the vicinity, he noted that the approval condition to restricting the operation hours was to prevent the potential environmental nuisance. The District Officer/North, Home Affairs Department said that the Chairman of Sheung Shui District Rural Committee, Residents' Representative (RR) of Kwu Tung (South) and Indigenous Inhabitant Representatives of Ho Sheung Heung raised objection to the application while the RR of Kwu Tung (North) had no comment on the application. The objections were raised mainly on traffic and environmental grounds;
- (h) public comments – two public comments on the review application were received, including one submitted by a North District Councillor who indicated 'no comment' on the review application. The other commenter objected to the review application mainly on the grounds of pedestrian safety, adverse impact on the agricultural land and rivers, and the risk of flooding.
- (i) PlanD's view – PlanD had no objection to the review application based on the planning considerations and assessments as set out in paragraph 6 of the Paper which were summarised below:
- (i) the approval condition on operation hours was originally recommended as proposed by the applicant in the s.16 application. The applicant had clarified that the operation hours stated in the s.16 application form (i.e. 9:00 a.m. to 6:00 p.m.) was the operation hours of the company's ancillary office instead of the vehicle repair workshop, and the currently proposed operation hours (i.e. 8:00 a.m. to 8:00 p.m.) for the

workshop had been in force over the past nine years; and

- (ii) taking into consideration the “I(D)” zoning of the site and the predominant industrial uses in the vicinity, and the fact that no pollution complaints had been received in the past three years, the proposed extension of operation hours could be tolerated.

50. The Chairman then invited the applicant’s representative to elaborate on the review application.

51. Mr. Wong Kwok Fai, Eddie made the following main points:

- (a) the application site had been used for vehicle repair workshop use since July 2002 and there was no complaint received against their operation in the past;
- (b) the vehicle repair workshop mainly provided repairing services for vehicles involved in traffic accidents, so the vehicular trips generated were relatively low;
- (c) they would comply with the requirements of the relevant government departments such as the provision of landscaping; and
- (d) the operation hours had to be extended from 8 a.m. to 8 p.m. because they needed to conduct regular checking, repairing and maintenance for their own trailers before and after use. The operation would not generate noise nuisance to the local residents.

52. As the applicant’s representative had no further comment to make and Members had no further question, the Chairman informed the applicant’s representative that the hearing procedures for the review application had been completed. The Board would further deliberate on the review application in his absence and inform the applicant of the Board’s decision in due course. The Chairman thanked DPO/STN and the applicant’s representative for attending the meeting. Both of them left the meeting at this

point.

Deliberation Session

53. Members considered that the application to extend the operation hours set down in the approval condition could be accepted.

54. After further deliberation, the Board decided to approve the review application. The planning permission should be valid on a temporary basis for a period of one year until 2.9.2012 as originally approved by the RNTPC on 2.9.2011, on the terms of the application as submitted to the Board and subject to the following conditions (with the original approval condition (a) amended as proposed by the applicant, the other approval conditions updated, where appropriate, to reflect the latest situation, and the advisory clauses remained unchanged):

- (a) no night-time operation between 8 p.m. and 8 a.m., as proposed by the applicant, was allowed on the application site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, was allowed on the application site during the planning approval period;
- (c) the existing drainage facilities on the application site should be properly maintained and rectified if found inadequate/inefficient during operation at all times during the planning approval period;
- (d) the existing peripheral fencing on the application site should be maintained at all times during the planning approval period;
- (e) the submission of proposals for water supplies for fire-fighting and fire service installations within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 2.3.2012;

- (f) in relation to (e) above, the provision of water supplies for fire-fighting and fire service installations within 9 months from the date of planning approval to the satisfaction of the Director of Fire Service or of the Town Planning Board by 2.6.2012;
- (g) the submission of tree preservation and landscape proposals within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 2.3.2012;
- (h) in relation to (g) above, the implementation of tree preservation and landscape proposals within 9 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 2.6.2012;
- (i) if any of the above planning conditions (a), (b), (c) or (d) was not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (j) if any of the above planning condition (e), (f), (g) or (h) was not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

55. The Board also agreed to advise the applicant of the following:

- (a) prior planning permission should have been obtained before commencing the applied use at the application site;
- (b) to resolve any land issue relating to the development with the concerned owner(s) of the application site;
- (c) a shorter compliance period was proposed to monitor the progress of compliance of approval conditions;

- (d) should the applicant failed to comply with the approval condition again resulting in the revocation of the planning permission, sympathetic consideration might not be given to any further application;
- (e) to note the Chief Engineer/Development(2), Water Supplies Department's comments that the site was within flood pumping ground;
- (f) to follow the environmental mitigation measures as set out in the 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' issued by the Director of Environmental Protection in order to minimise any possible environmental nuisances;
- (g) to note the comments of the Chief Town Planner/Urban Design and Landscape, Planning Department that:
 - (i) one dead tree stump and two trees in fair condition were found at the northern boundary. The applicant was required to replace the dead stump and the trees if found dead. Besides, tree planting opportunity was available along the eastern boundary; and
 - (ii) it was observed that dumping/stacking objects were close to the tree trunks which might damage the planted trees and compact the soil for tree planting. The applicant was required to provide at least 1m space between the trees and the stored material or park vehicles/container trailers;
- (h) to note the comments of the Chief Building Surveyor/New Territories West, Buildings Department as follows:
 - (i) if the existing structures were erected on leased land without approval of the Buildings Department (BD), they were unauthorised under the Buildings Ordinance (BO) and should not be designated for any approved use under the application;

- (ii) before any new building works including any temporary structure were to be carried out on the application site, the prior approval and consent of the Building Authority (BA) should be obtained, otherwise they were Unauthorised Building Works (UBW). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO;
- (iii) for UBW erected on leased land, enforcement action might be taken by the BA to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the application site under BO;
- (iv) if the proposed use under application was subject to the issue of a licence, the applicant should be reminded that any existing structures on the application site intended to be used for such purposes were required to comply with the building safety and other relevant requirements as might be imposed by the licensing authority;
- (v) the temporary converted containers for site office were considered as temporary buildings subject to control under the Building (Planning) Regulations Pt. VII;
- (vi) the site shall be provided with means of obtaining access thereto from a street under the Building (Planning) Regulations 5 and emergency vehicular access shall be provided under the Building (Planning) Regulation 41D;
- (vii) if the site was not abutting on a specified street having a width not less than 4.5m, the development intensity shall be determined under the Building (Planning) Regulations 19(3) at

building plan submission stage; and

- (viii) formal submission under the BO was required for any proposed new works, including any temporary structures;
- (i) to note the comments of the Director of Fire Services that:
 - (i) if no building plan would be circulated to his department via the Centralised Processing System of Buildings Department and covered structures (e.g. container-converted office, temporary warehouse and temporary shed used as workshop) were erected within the proposed site, the applicant was required to submit relevant layout plans incorporated with the proposed FSIs to his department for approval and to subsequently provide the FSIs in accordance with the approved proposals. In preparing the submission:
 - (1) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (2) the location of where the proposed FSI to be installed and the access for emergency vehicles should be clearly indicated on the layout plans; and
 - (ii) detailed fire safety requirements would be formulated upon receipt of formal submission of general building plans;
- (j) to note the comments of the Chief Engineer/Mainland North, Drainage Services Department that the site is in an area where no public sewerage connection is available. EPD should be consulted regarding the sewage treatment/ disposal facilities for the proposed development; and
- (k) to note the comments of the Director of Electrical and Mechanical Services that:

- (i) the applicant should approach the electricity supplier for the requisition of cable plans to find out whether there was any underground cable (and/or overhead line) within or in the vicinity of the application site. Based on the cable plans obtained, if there was underground cable (and/or overhead line) within or in the vicinity of the application site, the applicant shall carry out the following measures:
- (1) for application site within the preferred working corridor of high voltage overhead lines at transmission voltage level 132kV and above as stipulated in the Hong Kong Planning Standards and Guidelines published by the Planning Department, prior consultation and arrangement with the electricity supplier was necessary;
 - (2) prior to establishing any structure within the application site, the applicant and/or his contractors shall liaise with the electricity supplier and, if necessary, ask the electricity supplier to divert the underground cable (and/or overhead line) away from the vicinity of the proposed structure; and
 - (3) the “Code of Practice on Working near Electricity Supply Lines” established under the Electricity Supply Lines (Protection) Regulation shall be observed by the applicant and his contractors when carrying out works in the vicinity of the electricity supply lines.

Tuen Mun and Yuen Long District

Agenda Item 5

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/TM-LTY/219

Proposed Temporary Car Exhibition Area and Office

for a Period of 1 Year in “Village Type Development” zone,

Lot 1996 S.B RP (Part) in D.D. 130, Tuen Mun, New Territories

(TPB Paper No. 8987)

[The hearing was conducted in Cantonese.]

Deliberation (Request for Deferment)

56. The Chairman said that on 12.1.2012, Allied Surveyors Limited, the applicant’s representative, submitted a letter dated 13.1.2012 to the Secretary of the Board requesting the Board to defer a decision on the application. The letter was tabled at the meeting for Members’ consideration.

[Mr. Maurice W.M. Lee arrived to join the meeting at this point.]

57. The Secretary reported that the applicant claimed that the request for deferral was to allow sufficient time for the applicant’s consultants to submit the required proposals in order to demonstrate to the Board that the proposed development would not cause adverse impact on the surrounding areas. The applicant also claimed that the presumption made in paragraph 98 of the minutes for the RNTPC meeting on 23.9.2011 that “..... the applicant did not intend to use the application for the applied use” was unfair to him as he had identified prospective tenants for such uses. The applicant said that the application was for a period of one year only and he had already engaged independent engineering consultants to prepare the required proposals.

58. The Secretary further said that according to the Town Planning Board Guidelines No. 33 on Deferment of Decision on Representations, Comments, Further Representations and Applications, if a deferment was requested after the issue of the

relevant TPB Paper, the applicant should be invited to explain to the Board the reasons for deferral so that Members would have a chance to ask him/her questions. The Secretary highlighted that the application site was already in operation. The Secretary asked Members to consider whether the applicant's representative should be invited to explain the reasons for deferment to the Board.

59. In response to the Chairman's enquiry, the Secretary said that the previous planning permissions had been revoked several times and as a result the application site was not covered by a valid planning permission. According to a recent site inspection conducted by PlanD, the vehicle repair/car washing workshop was still found on the site.

60. The Vice-chairman queried if it was necessary to invite the applicant's representative to explain the reasons for deferment. The Secretary explained that Members should consider whether the applicant had provided reasonable grounds to support the request for deferment. She drew Members' attention to the fact that the applicant was informed of RNTPC's decision about three months ago and he should have had time to prepare the required proposals before the review hearing. It was noted that the applicant requested for deferral only after receiving the TPB Paper which contained PlanD's recommendation.

61. After discussion, Members agreed to invite the applicant's representative to explain the reasons for deferment before making a decision.

[Mr. Clarence W.C. Leung left the meeting at this point.]

Presentation and Question Session (Request for Deferment)

62. The following representatives of the Planning Department (PlanD) and the applicant were invited to the meeting at this point:

- | | |
|---------------------|--|
| Ms. Amy Cheung | - District Planning Officer/Tuen Mun and Yuen Long (DPO/TMYL), PlanD |
| Mr. Tang Kei Cheung | - Applicant's representative |

63. The Chairman extended a welcome and requested the applicant's representative to explain to the Board the reasons for the request for deferment.

64. Mr. Tang Kei Cheung explained that as the application was rejected by the RNTPC mainly for the reason that the proposals on drainage, vehicular access and fire service installations were not submitted, the applicant had appointed consultants to prepare the proposals. Owing to the holidays in the last two months, there was insufficient time for the consultants to prepare the required proposals.

65. The Chairman asked Mr. Tang why the relevant technical proposals were not prepared earlier noting that the planning permissions at the application site had been revoked a number of times. In reply, Mr. Tang said that the revoked planning permissions were not for the same uses as in the subject application. The subject application was for car exhibition area and office use.

66. A Member said that according to some photos in the RNTPC Paper and TPB Paper, the current use on the application site was different from the applied use, as could be seen from a display board which indicated that the site was used as vehicle repair workshop. Mr. Tang said that the display board had already been removed and the applicant had already identified another tenant for the applied uses.

67. Another Member pointed out that as the subject application was rejected by the RNTPC on 23.9.2011, there should have been sufficient time for the applicant to engage consultants to draw up the required proposals. Mr. Tang said that even though the application was considered on 23.9.2011, the decision and the relevant minutes were only received by the applicant in around mid-October 2011. The applicant had taken some time to consider whether or not to apply for review the Board's decision. The Secretary informed Members that the application was rejected by the RNTPC on 23.9.2011 and the letter informing the applicant of RNTPC's decision was sent out on 7.10.2011. On 28.10.2011, the Board received a letter from the applicant applying for a review of the Board's decision.

68. Noting that the applicant had decided to apply for a review on 28.10.2011, the Chairman queried why the applicant did not appoint the consultants earlier. Mr. Tang

said that as a number of technical proposals were required, the applicant who did not have much knowledge and experience in engaging consultants had taken some time to select the suitable consultants, in particular when there were many holidays during that period of time.

69. In response to the Chairman's enquiry on the current use on site, Mr. Tang said that he needed to consult the applicant as he had not visited the site for some time.

70. A Member pointed out that as stated in the applicant's letter dated 28.10.2011 requesting for a review of the RNTPC's decision, the applicant had committed to submit the drainage, vehicular access and fire installation proposals. In this relation, this Member asked Mr. Tang, who signed the letters of 28.10.2011 and 13.1.2012, to confirm if the applicant had already appointed the consultants at the time when the review application was submitted on 28.10.2011. If the answer was in the affirmative, then the applicant should have some knowledge of the technical proposals needed before deciding to proceed to the review application. Mr. Tang said that there might be problems in engaging consultants and two months were too tight given that there were many holidays in between.

71. The Chairman asked Mr. Tang if the consultants had been appointed. Mr. Tang replied that suitable consultants had been appointed. A Member further requested Mr. Tang to provide the names of the consultants to the Board. The Chairman asked if Mr. Tang had the appointment letters to prove that the applicant had already appointed the consultants. In response, Mr. Tang said that if the Board wanted to see the appointment letters, then he needed to consult the applicant as he was not the one who appointed the consultants.

72. A Member asked Mr. Tang if the Board decided not to accede to the deferral request, whether he had sufficient information to present the subject review application. Mr. Tang said that the s.16 application was rejected mainly on the grounds that the drainage, vehicular access and fire service installation proposals were not submitted. The proposals were not available at this stage.

73. Upon a Member's enquiry on when the deferral letter dated 13.1.2012 was submitted by the applicant, Mr. Tang clarified that the date was wrongly typed on the said

letter and the letter was submitted on 11.1.2012. The Secretary pointed out that the letter was submitted on 12.1.2012 by fax and the date of fax transmission was shown on the header of the letter.

74. A Member requested Mr. Tang to answer clearly whether he had any presentation to make if the Board decided not to accede to his deferral request. Mr. Tang said that he would not make a presentation.

75. The applicant's representative had no further point to make and Members had no further question on the proposed deferment of the review application. The Chairman said that the Board would deliberate on the applicant's request for deferment in the absence of the representatives of PlanD and the applicant. The Chairman requested DPO/TMYL and the applicant's representative to leave the meeting temporarily. Both of them left the meeting temporarily at this point.

Deliberation Session (Request for Deferment)

76. The Chairman said that according to the letter of 13.1.2012 submitted by the applicant's representative, the applicant had engaged consultants to prepare the proposals.

77. A Member said that he had recently visited the site and the site was used as vehicle repair workshop with car washing services. The Chairman advised Members to consider the use under the current application as the applicant had indicated in the letter dated 13.1.2012 that he had identified another tenant for the applied uses.

78. The Vice-chairman considered that there was insufficient reason to accept the deferral request. The information provided by the applicant's representative at the meeting was not supported by evidence.

79. A Member considered that since the review application was submitted on 28.10.2011, there had been sufficient time for the applicant to appoint consultants. It was not until one day before the review hearing that the applicant's representative wrote to the Board to request for a deferment. In this regard, this Member did not support the deferral request.

80. After further deliberation, Members agreed that the deferment should not be acceded to. The Board agreed to proceed with the review hearing at this meeting.

Notification of Decision

81. The Chairman invited Ms. Amy Cheung and Mr. Tang Kei Cheung back to the meeting. The Chairman informed Mr. Tang that the Board had decided not to accede to the applicant's request for deferral and would proceed to consider the review application at this meeting as sufficient notice had been given and the applicant's representative had failed to provide reasonable grounds for the request of deferment.

Presentation and Question Session (Review Application)

82. The Chairman explained the procedures of the review hearing. He then invited DPO/TMYL to brief Members on the review application.

83. With the aid of a powerpoint presentation, Ms. Amy Cheung presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for a proposed temporary car exhibition area and office for a period of one year at the application site which fell within an area zoned "Village Type Development" ("V") on the approved Lam Tei and Yick Yuen Outline Zoning Plan (OZP) No. S/TM-LTYY/6;
- (b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 23.9.2011 and the reasons were:
 - (i) the applicants had not submitted any proposal on drainage, vehicular access and fire service installations to demonstrate that the proposed development would not cause adverse sewerage and traffic impacts, nor pose fire safety problem on the surrounding area; and

- (ii) the application involved two previously revoked planning permissions for the same uses due to non-compliance of the approval conditions. The applicants failed to demonstrate in the submission that the relevant conditions would be complied with. Approval of the application with repeated non-compliances with approval conditions would set an undesirable precedent for other similar applications, thus nullifying the statutory planning control mechanism;

[Miss Annie Tam arrived to join the meeting at this point.]

- (c) the justifications put forth by the applicant in support of the review application were summarised in paragraph 3 of the Paper and below:
 - (i) the application was for a temporary car exhibition area and office for a period of one year;
 - (ii) the applicants were committed to submit proposals on drainage, vehicular access and fire service installations to demonstrate that the temporary development would not cause sewerage, traffic impacts and fire safety problem on the surrounding area;
 - (iii) three previous applications covering the application site were approved; and
 - (iv) the applicants would comply with the approval conditions.
- (d) the application site was occupied by a temporary structure of 2 storeys, with G/F used as a car repairing area and 1/F for storage and ancillary office. The application site abutted Castle Peak Road – Lam Tei section on the west. There were some residential dwellings nearby;
- (e) the departmental comments were detailed in paragraph 5 of the Paper. The Commissioner for Transport commented that the operation of the

car exhibition area and office should not create disturbance/nuisance to the road users on the footpath and cycle track. The Chief Highway Engineer/New Territories West, Highway Department advised that if any run-in/out was to be constructed, adequate drainage measures should be provided at the entrance to prevent surface water from flowing out from the lot onto the public road/footpath via the run-in/out. The Chief Engineer/Mainland North, Drainage Services Department indicated that as no drainage related proposal had been submitted, he was not able to provide comments on the review application. Besides, since no direct public stormwater drainage connection was available, the applicant should arrange their own stormwater disposal facilities. The Director of Fire Services advised the applicant to submit relevant layout plans incorporated with the proposed fire services installation for his approval;

- (f) public comments – 10 public comments on the review application were received. Nine of them objected to the review application mainly because the approval conditions of previous applications were not complied with or approval of the application with repeated non-compliance with approval conditions would set an undesirable precedent. A Tuen Mun District Councillor supported the review application without giving any reason;
- (g) PlanD's view – PlanD did not support the review application based on the planning considerations and assessments as set out in paragraph 7 of the Paper which were summarised below:
 - (i) the applicants should demonstrate that the temporary uses were compatible with the surroundings and that any possible adverse impacts could be adequately addressed;
 - (ii) the application site involved two previously revoked planning permissions for the same uses due to non-compliance with the approval conditions;

- (iii) the RNTPC had already advised the applicants of previous Application No. A/TM-LTYYY/180 including Mr. To Wai Kit (one of the applicants) that favourable consideration would not be given to any further application if the planning permission was revoked due to non-compliance of the approval conditions;
- (iv) it appeared that the application site had continuously been used for vehicle repairing and cleaning instead of the applied uses; and
- (v) approval of the application with repeated non-compliance and revocation would set an undesirable precedent and nullify the statutory planning control.

84. The Chairman then invited the applicant's representative to elaborate on the review application.

85. Mr. Tang Kei Cheung asked why the two previous applications for the same applied uses at the same site were approved by the RNPTC without the requirement for the submission of any technical proposals but the subject application was rejected because the drainage, vehicular access and fire service installation proposals were not submitted.

86. The Chairman invited DPO/TMYL to provide details of the previous applications. Ms. Amy Cheung explained that the application site was the subject of four previous applications (No. A/TM-LTYYY/112, 145, 180 and 209). The first three applications were for the same car exhibition area and office uses as in the subject application. At the time when permissions were granted for Applications No. A/TM-LTYYY/145 and 180, the RNTPC considered that the application site might have drainage, vehicular access and fire service installation problems which could be addressed by the imposition of approval conditions. The two approvals were subsequently revoked due to non-compliance with approval conditions relating to the drainage, vehicular access and fire service installation aspects. Against such background, the submission of the technical proposals was required before the current application could be approved.

87. A Member asked DPO/TMYL at what time they realised that the applied uses did not match with the current use found on site. Ms. Amy Cheung said that when the s.16 application for car exhibition area and office was submitted, there was evidence showing that the applied use was different from the actual use on site. This was mentioned in the relevant RNTPC Paper. In fact, the Central Enforcement and Prosecution Section of PlanD had inspected the site and found that the site had been used as vehicle repair and car washing workshop.

88. Regarding Mr. Tang's early query, the Chairman said that in the past, the planning permissions were granted with conditions. However, the applicant had repeatedly failed to comply with the approval conditions. As such, in the subject application, the applicant was required to submit the required technical proposals at the application stage.

89. As the applicant's representative had no further comment to make and Members had no further question, the Chairman informed the applicant's representative that the hearing procedures for the review application had been completed. The Board would further deliberate on the review application in his absence and inform the applicant of the Board's decision in due course. The Chairman thanked DPO/TMYL and the applicant's representative for attending the meeting. Both of them left the meeting at this point.

Deliberation Session (Review Application)

90. The Chairman said that the applicant had failed to demonstrate that he could properly address the drainage, vehicular access and fire service installation concerns. In view of the repeated revocation of planning approvals and the RNTPC's advice given to the applicant when approving Application No. A/TM-LYTT/180 in 2009 that favourable consideration would not be given to any further application if the planning permission was revoked due to non-compliance of the approval conditions, the applicant still failed to address the concerns. Hence, the subject application should be rejected. Members agreed.

91. After further deliberation, the Board decided to reject the application on review. Members then went through the reasons for rejection as stated in paragraph 8.1 of the Paper and considered that they were appropriate. The reasons were:

- (a) the applicants had not submitted any proposal on drainage, vehicular access and fire service installations to demonstrate that the proposed development would not cause adverse sewerage and traffic impacts, nor pose fire safety problem on the surrounding area; and
- (b) the application involved two previously revoked planning permissions for the same uses due to non-compliance of the approval conditions. The applicants failed to demonstrate in the submission that the relevant conditions would be complied with. Approval of the application with repeated non-compliances with approval conditions would set an undesirable precedent for other similar applications, thus nullifying the statutory planning control mechanism.

[Professor Paul K.S. Lam left the meeting at this point.]

Agenda Item 6

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/YL-PH/622

Temporary Vehicle Repair Workshop for a Period of 3 Years in “Agriculture” zone,

Lot 303 (Part) in D.D. 110, Tsat Sing Kong, Yuen Long, New Territories

(TPB Paper No. 8986)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

92. The following representative of the Planning Department (PlanD), the applicant and her representative were invited to the meeting at this point:

- Ms. Amy Cheung - District Planning Officer/Tuen Mun and Yuen Long (DPO/TMYL), PlanD
- Ms. Li Kwai Wai - Applicant
- Ms. Li Kwai Fong - Applicant's representative

93. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited DPO/TMYL to brief Members on the review application.

94. With the aid of a powerpoint presentation, Ms. Amy Cheung presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for a temporary vehicle repair workshop for a period of three years at the application site which fell within an area zoned "Agriculture" ("AGR") on the approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11;

[Mr. Walter K.L. Chan left the meeting temporarily at this point.]

- (b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 23.9.2011 and the reasons were:
 - (i) the development was not in line with the planning intention of the "AGR" zone which was intended primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It was also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification had been given in the submission for a departure from the planning intention, even on a temporary basis;
 - (ii) the application did not comply with the Town Planning Board Guidelines No. 13E in that no previous planning approval had been granted for the applied use on the site, no relevant technical assessments had been included in the submission to

demonstrate that the development would not generate adverse environmental and landscape impacts on the surrounding areas, and there were adverse departmental comments on and local objections to the application. The proposed development was also not compatible with the agricultural and rural residential uses in the surrounding areas; and

- (iii) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in the encroachment of good agricultural land, causing a general degradation of the rural environment of the area.

- (h) the justifications put forth by the applicant in support of the review application were summarised in paragraph 3 of the Paper and below:
 - (i) the proposed use would not generate adverse environmental, sewerage and landscape impacts on the surrounding areas, and a temporary approval of one year was considered acceptable;

 - (ii) there would be no night-time operation between 7:00 p.m. to 9:30 a.m. and no operation on Sundays and public holidays on the site during the planning approval period. No heavy goods vehicle exceeding 24 tonnes, including container tractor/trailer, would be allowed to enter/exit the site;

 - (iii) more landscaping would be implemented and existing trees would be preserved;

 - (iv) the approval conditions imposed by the Board would be complied with; and

- (v) if the application was approved, then the applicant's brother could operate the vehicle repair workshop so as to provide financial support to the family;

[Mr. Raymond Y.M. Chan left the meeting at this point.]

- (c) according to the proposal, there would be no structure on site. The vehicle repair workshop would only be used for repairing of private cars and light goods vehicles. The application site could only accommodate a maximum of three vehicles;
- (d) the application site was vacant. There were predominately agricultural land and vacant land mixed with storage sites and residential structures in the surroundings. To its north were two residential dwellings. About 25m to its east and south was a nullah. Except a vehicle park and an open storage yard to its southwest which were approved under Applications No. A/YL-KTN/340 and A/YL-PH/618, the other storage uses in the vicinity were suspected unauthorised developments subject to planning enforcement action by the Planning Authority;

[Mr. Walter K.L. Chan returned to join the meeting at this point.]

- (e) as the applied use mainly involving open-air vehicle repairing activities was skin to an open storage yard, the Town Planning Board Guidelines No. 13E for "Application for Open Storage and Port Back-up Uses" was applicable. The application site fell within Category 3 area under the Town Planning Board Guidelines No. 13E;
- (f) the departmental comments were detailed in paragraph 5 of the Paper. The Director of Environment Protection did not support the application as there were sensitive receivers of residential uses to the north and in the vicinity of the application site, and environmental nuisance was expected. The Chief Town Planner/Urban Design and Landscape, PlanD had reservation on the application on the grounds that the submission failed

to demonstrate that the existing trees would be preserved and protected; the subject “AGR” zone also served as a buffer between the “Village Type Development” zone to the northwest, the “Conservation Area” zone to the north, and the “Open Storage” zone to the south; and approval of the application might encourage more similar uses in the “AGR” zone, eroding tree buffer and further degrading the local landscape character;

- (g) public comments – there was no public comment received on the review application. However, two public comments were received during the s.16 application stage. The commenters objected to the application mainly on the grounds of environmental impact, violation of planning intention and setting of undesirable precedent;
- (h) PlanD’s view – PlanD did not support the review application based on the planning considerations and assessments as set out in paragraph 7 of the Paper which were summarised below:
 - (i) the application was not in line with the planning intention of the “AGR” zone. Although the Director of Agriculture, Fisheries and Conservation did not consider the application site to have high potential for agricultural rehabilitation, many areas within the same “AGR” zone was still under active cultivation;
 - (ii) the application did not comply with the Town Planning Board Guidelines No. 13E in that no previous planning approval had been granted for the applied use on the site, no relevant technical assessments had been included in the submission to demonstrate that the development would not generate adverse environmental and landscape impacts on the surrounding areas, and there were adverse departmental comments on and local objections to the application. The proposed development was also not compatible with the agricultural and rural residential uses in the surrounding areas; and

- (iii) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in the encroachment of good agricultural land, causing a general degradation of the rural environment of the area.

95. The Chairman then invited the applicant and her representative to elaborate on the review application.

96. Ms. Li Kwai Wai made the following main points:

- (a) she lived to the south of the application site across the nullah;
- (b) the application site was previously used as pigsty and chicken farm which was operated by the applicant’s mother and brother. The farm had ceased operation after the surrendering of the pigsty licence in 2007;
- (c) the potential for agricultural rehabilitation at the application site was low; and
- (d) the proposed vehicle repair workshop would not cause any adverse environmental impact on the surroundings. No car washing activity would be carried out at the site.

97. Ms. Li Kwai Fong made the following main points:

- (a) she lived near to the application site;
- (b) her sister was the applicant and her brother would be the operator of the proposed vehicle repair workshop;
- (c) since the closure of the pigsty and chicken farm at the application site, her brother had become unemployed. The proposed development was

intended to provide a job opportunity for her brother so that he could provide financial support to the family;

- (d) the pigsty licence was surrendered in 2007. As her brother had become unemployed, he had started operating a vehicle repair workshop on the site recently. Planning enforcement action was taken against the vehicle repair workshop shortly after it began operation;
- (e) the proposed development would mainly provide vehicle repair services for the vehicle parks in the vicinity;
- (f) she did not understand why the other sites such as the metal workshop which created even more environmental problems such as noise and nuisance to the local residents were not subject to planning enforcement action;
- (g) she thought that the other sites in the area were covered by planning permissions. Therefore, after receiving an Enforcement Notice from the PlanD, her sister submitted an application to the Board at once in order to regularise the use on site;
- (h) it was unexpected that there was objection to the application. She queried if the objectors had sufficient knowledge of the local context;
- (i) as the proposed vehicle repair workshop would not have adverse impact on the environment, she did not expect that the application would be rejected by the RNTPC;
- (j) since the vehicle repair workshop was small in scale, they could not afford to employ the consultants for drawing up the required technical proposals;
- (k) they were committed to complying with the approval conditions to minimise the environmental impact, if any; and

- (l) a temporary approval of one year should be granted so that the Board could keep monitoring the situation.

98. Noting that there were quite a number of vehicle parks, storage and workshop uses found in the area as mentioned by the applicant's representative, a Member requested DPO/TMYL to confirm the status of these developments. By referring to the aerial photo shown on Plan R-3 of the Paper, Ms. Amy Cheung said that two sites to the south of the nullah had obtained planning approvals. One of them was located to the south of the application site which was used as an open storage of construction materials and machinery while another was used as a vehicle park which was located to the immediate west of that open storage. In approving these applications, the RNTPC had taken into account the change in landscape character of the surrounding areas by the proposed works area of the Hong Kong Section of Hong Kong Express Rail Link (XRL) project which was located to the south of these two sites. Other than these two sites, the other open storage uses in the vicinity, particularly those to the north of the nullah, were suspected unauthorised developments (UDs) and would be subject to planning enforcement action by the Planning Authority. Members noted that the two sites to the west of the application site were not covered by planning permissions.

99. A Member asked if there was any complaint received relating to the application site. Ms. Amy Cheung said that according to the record of the Environmental Protection Department, there was no complaint received on the application site in the past three years. The same Member asked for information about a large piece of formed land to the north of the application site. Ms. Amy Cheung replied that that piece of land was related to a planning application which was rejected by the RNTPC.

100. The Chairman enquired if the Planning Authority would require the sites involving UD's to be reinstated. In reply, Ms. Amy Cheung said that the Central Enforcement and Prosecution Section of the PlanD was in the process of collecting evidence at these sites. Once UD's were confirmed, appropriate enforcement action, including requiring discontinuation of the UD's and reinstatement of the sites, would be taken.

[Ms. Pansy L.P. Yau left the meeting at this point.]

101. The Chairman asked why the subject site, but not the other sites, was chosen for the proposed development. Ms. Li Kwai Fong said that the application site was previously part of their pigsty farm. This piece of land was owned by them and was not covered by any structures.

102. In response to a Member's enquiry about the current situation of the site, Ms. Li Kwai Fong confirmed that the vehicle repair workshop had ceased operation and the site had already been cleared.

103. As the applicant and her representatives had no further comment to make and Members had no further question, the Chairman informed the applicant and her representative that the hearing procedures for the review application had been completed. The Board would further deliberate on the review application in their absence and inform the applicant of the Board's decision in due course. The Chairman thanked DPO/TMYL, the applicant and her representative for attending the meeting. They all left the meeting at this point.

Deliberation Session

104. Noting that the application site did not have high potential for agricultural rehabilitation and that no complaint or substantial local objection was received regarding the application site, two Members held the view that the granting of a temporary approval of one year with conditions could be considered.

105. The Chairman said that although some Members might be sympathetic to the circumstances of the applicant, the Board should also consider whether the planning intention of the site would be compromised and if a precedent effect would be set for other similar applications.

106. A Member pointed out that that it might not be practical to retain the site for agricultural use if the Agriculture, Fisheries and Conservation Department (AFCD) regarded the site as not having high potential for agricultural rehabilitation. This Member said that temporary uses could be considered for areas with low potential for agricultural rehabilitation. This Member went on to say that regarding the concern on setting of

undesirable precedent, it could be set out clearly that only areas that did not have high potential for agricultural rehabilitation should be considered for the granting of temporary approval.

107. The Secretary drew Members' attention to the Town Planning Board Guidelines No. 13E which stipulated that applications falling within Category 3 areas would normally not be favourably considered unless the applications were on sites with previous planning approvals. The Secretary also clarified that it was not uncommon for AFCD to comment that a site did not have high potential for agricultural rehabilitation once the site had already been spoiled and formed.

108. The Chairman invited Members to consider whether a decision on the subject application should be deferred pending submission of technical proposals by the applicant. The Secretary reminded Members that if Members decided to defer consideration of the subject review application pending submission of technical proposals, Members should compare the circumstances of the subject application with those rejected applications on a fair basis.

109. A Member considered that the requirement for submission of technical proposals could be addressed by imposing approval conditions. The Secretary supplemented that if approval conditions were imposed, the applicant would be required not only to submit but also to implement the relevant technical proposals. Members should note that some applications were submitted with technical proposals but such proposals were not submitted in the subject application.

110. A Member opined that deferment of decision could be considered for the subject application. This Member said that the approval of the subject application would set a bad precedent for other similar cases including those sites located to the west of the application site.

111. Another Member held the view that if the application was approved on sympathetic consideration, this would set a bad precedent for other similar cases. The approval of the application would give the impression that for small scale and/or informal workshop type development, the submission of technical proposals would not be necessary.

This would have serious precedent effect on the other similar applications.

112. A Member questioned if the Board had the authority to impose an approval condition on restricting a change of operator. In this respect, the Secretary reported that there was a previously approved application in which the Board restricted the use of the site to the storage of the applicant's own cars. Although the approval condition was imposed, it would be difficult to be enforced.

113. The Chairman said that the Board should note with caution that if the Board decided to defer consideration of the application pending submission of technical proposals, there could still be the chance of the Board rejecting the application on land use grounds. Moreover, Members should note that the application site could be put to agricultural uses, e.g. nursery and gardening.

114. Mr. Benny Wong said that as the applicant or her family member had chosen to surrender the pigsty licence, the family should have been compensated. He pointed out that farming and vehicle repairing involved completely different skills. He shared the view that the application site could be put to agricultural uses.

115. Noting that the subject application fell within Category 3 areas under the Town Planning Board Guidelines No. 13E and was not covered by any previous approval, a Member was concerned that, such application, if approved, would set an undesirable precedent for other similar applications. By referring to Plan R-2 of the Paper, the Secretary added that the sites to the west of the application site were not "EU" cases nor were they covered by any planning approval.

116. Another Member considered a deferment of decision acceptable but he had reservation on granting approval to the subject application on sympathetic consideration. This Member pointed out that the submission requirement was not difficult to be complied with in view of the nature and scale of the development under application.

117. Mr. Jimmy Leung advised that planning permission given was not personal (i.e. permissions were transferrable) and that personal background was rarely a relevant planning consideration. There was only one type of planning applications, i.e. the small

house applications, in which the personal background - the indigenous villager status - would be one of the considerations that the Board should take into account when deciding on such applications.

118. The Secretary pointed out that the closure of pigsty farm should not be regarded as special circumstances. Members were invited to consider if there was any strong reason to depart from the normal practice of the Board. If yes, then the Board could grant an approval based on sympathetic consideration. If no, then the application should be considered according to the relevant Town Planning Board Guidelines.

119. A Member considered that the application should not be approved solely upon sympathetic consideration on the grounds that the vehicle repair workshop would be operated by the brother in the family to support the family. Given that the sites to the west of the application site were not "EUs", this Member did not consider that the subject application should be approved.

120. A Member opined that sympathetic consideration should only be given to borderline cases. This Member did not consider the subject application a borderline case. Noting that the change in landscape character would take place to the south of the nullah, this Member considered it reasonable for the Board to grant approvals for cases to the south of the nullah while the cases locating to the north of the nullah should be rejected. The Chairman said that planning intention should be one of the considerations in making a decision on the application. He further said that sympathetic consideration had previously been given to special cases, e.g. if the use/operation on site would be relocated to another site within a very short period of time, a temporary approval might be warranted.

121. The Vice-chairman opined that there was no strong reason to support a deferment. Even if the site might not be used for cultivation, it could be put to other agricultural uses. Besides, approval of the subject application would set an undesirable precedent for other similar applications. Based on the above reasons, the Vice-chairman considered that the application should be rejected. The Chairman added that that a piece of formed land could either be reinstated or be used for other agricultural activities, e.g. gardening.

122. After further deliberation, the Chairman concluded that Members agreed that the subject application should be rejected on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; the application did not comply with the Town Planning Board Guidelines No. 13E; the proposed development were also not compatible with the agricultural and rural residential uses in the surrounding areas; and the approval of the application would set an undesirable precedent for other similar applications.

123. The Board decided to reject the application on review. Members then went through the reasons for rejection as stated in paragraph 8.1 of the Paper and considered that they were appropriate. The reasons were:

- (a) the development was not in line with the planning intention of the “Agriculture” (“AGR”) zone which was intended primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It was also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification had been given in the submission for a departure from the planning intention, even on a temporary basis;
- (b) the application did not comply with the Town Planning Board Guidelines No. 13E in that no previous planning approval had been granted for the applied use on the site, no relevant technical assessments had been included in the submission to demonstrate that the development would not generate adverse environmental and landscape impacts on the surrounding areas, and there were adverse departmental comments on and local objections to the application. The proposed development was also not compatible with the agricultural and rural residential uses in the surrounding areas; and
- (c) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in the encroachment of good agricultural land, causing a general degradation of

the rural environment of the area.

Procedural Matters

Agenda Item 7

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Representations and
Comment to the Draft Wong Nai Chung Outline Zoning Plan No. S/H7/16
(TPB Paper No. 8994)

[The meeting was conducted in Cantonese.]

124. The following Members had declared interests in this item:

- | | |
|---------------------------------------|--|
| Miss Annie Tam
(Director of Lands) | - owned/co-owned with her spouse properties
at Broadwood Road |
| Miss Ophelia Wong
(the Secretary) | - owned a flat at Broadwood Road |
| Mr. Maurice W.M. Lee | - owned a flat at Link Road |
| Mr. Y.K. Cheng | - co-owned a flat with his spouse at Ventris
Road |

125. As the item was procedural in nature and no deliberation was required, Members agreed that the above Members could stay in the meeting.

126. The Secretary reported that on 26.8.2011, the draft Wong Nai Chung Outline Zoning Plan (OZP) No. S/H7/16 was exhibited for public inspection under section 7 of the Town Planning Ordinance. During the two-month exhibition period, 11 representations were received. On 4.11.2011, the representations were published for three weeks for public comments and one comment was received.

127. The Secretary continued and said that as the representations and comment, which were related to the rezoning of a church at 17A Ventris Road for senior hostels and

elderly care home and the relaxation of its building height restrictions, were similar in nature, it was recommended that they should be heard by the full Board collectively in one group.

128. After deliberation, the Board agreed that the representations and comment should be heard collectively by the Board in the manner as proposed in paragraph 2.5 of the Paper.

Agenda Item 8

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Representations to the Draft Tung A and Pak A Development Permission Area Plan No. DPA/SK-TA/1 (TPB Paper No. 8993)

[The meeting was conducted in Cantonese.]

129. The Secretary reported that on 19.8.2011, the draft Tung A and Park A Development Permission Area (DPA) Plan No. DPA/SK-TA/1 was exhibited for public inspection under section 5 of the Town Planning Ordinance. During the two-month exhibition period, four representations were received. On 28.10.2011, the representations were published for three weeks for public comments and no comment was received.

130. The Secretary continued and said that as the representations were similar in nature and inter-related, i.e. two representations supported the planning intention of the DPA Plan and two other representations requested for an enlargement of the “Village Type Development” zone, it was recommended that they should be heard by the full Board collectively in one group.

131. After deliberation, the Board agreed that the representations should be heard collectively by the Board in the manner as proposed in paragraph 2.2 of the Paper.

Agenda Item 9

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Representations and Comments to the Draft Kai Tak Outline Zoning Plan No. S/K22/3 (TPB Paper No. 8997)

[The meeting was conducted in Cantonese.]

132. The Secretary reported that on 26.8.2011, the draft Kai Tak Outline Zoning Plan (OZP) No. S/K22/3 was exhibited for public inspection under section 5 of the Town Planning Ordinance. During the two-month exhibition period, a total of 1,116 representations (excluding one representation as the representer indicated that he did not submit the representation) were received. On 8.11.2011, the representations were published for three weeks for public comments and 159 comments were received.

133. There were 1,106 representations (Representations No. R1 to R34, R41 to R1109(Part), R1110, R1115 to R1117) relating to Amendment Items in the North Apron of Kai Tak Development. Except R1115, all were related to the proposed development of the Twin Towers at the “Comprehensive Development Area (1)” (“CDA (1)”) and “CDA(2)” sites along the Kai Tak River. There were 11 representations (R35 to R40, R1109(Part), R1111 to R1114) generally in support of Amendment Items D, E and/or G9 in respect of the relocation of roads away from the waterfront area in the South Apron and Runway, the planning intention/alignment of the landscaped elevated walkways connecting the South Apron to Kowloon Bay. R1111, however, opposed the design and location of Road D3 abutting the Metro Park. Both R1111 and R1112 proposed to reserve land near the waterfront areas for water sports and related facilities.

134. The Secretary continued and said that as some of the representations were of similar or related nature, it was suggested that the hearing of the representations and comments be structured into two groups, as follows:

- (a) Group 1: collective hearing of 1,106 representations (R1 to R34, R41 to R1109(Part), R1110, R1115 to R1117) and two comments (C1(Part) and C2) in respect of the proposed amendment items in the Kai Tak City

Centre; and

- (b) Group 2: collective hearing of 11 representations (R35 to R40, R1109(Part), R1111 to R1114) and 157 comments (C1(Part), C3 to C157 and C159) in respect of the proposed amendments in the South Apron and the Runway.

135. After deliberation, the Board agreed that the representations and comments should be heard collectively in two groups by the Board in the manner as proposed in paragraph 2.6 of the Paper.

Agenda Item 10

[Open Meeting]

Information Note on Consideration of Representation to the Draft Ta Kwu Ling North Development Permission Area Plan No. DPA/NE-TKLN/2 (TPB Paper No. 8998)

[The meeting was conducted in Cantonese.]

136. The Secretary reported that on 28.10.2011, the draft Ta Kwu Ling North Development Permission Area (DPA) Plan No. DPA/NE-TKLN/2 was exhibited for public inspection under section 7 of the Town Planning Ordinance. The proposed amendments involved the rezoning of two sites from “Recreation” (“REC”) to “Village Type Development” (“V”), two sites from “Agriculture” (“AGR”) to “V” and a strip of land from “V” to “REC”. During the two-month exhibition period, one representation was received.

137. The Secretary continued and said that as the representer’s lots (though falling within “AGR” and “REC” zones) were not the subject of amendments to the DPA Plan, Members were invited to consider whether the representation should be considered as invalid and hence the representation would not be published for public comments.

138. After deliberation, the Board agreed that the representations should be treated as invalid and the representation would not be published for public comments.

Agenda Item 11

[Open Meeting]

Any Other Business

[The meeting was conducted in Cantonese.]

139. There being no other business, the meeting closed at 12:45 p.m..