

**Minutes of the 1133rd Meeting of the
Town Planning Board held on 10.3.2017**

Present

Permanent Secretary for Development
(Planning and Lands)

Mr Michael W.L. Wong

Chairman

Professor S.C. Wong

Mr Lincoln L.H. Huang

Vice-Chairman

Dr Wilton W.T. Fok

Mr Sunny L.K. Ho

Mr Dominic K.K. Lam

Mr Philip S.L. Kan

Dr Lawrence W.C. Poon

Mr K.K. Cheung

Mr Wilson Y.W. Fung

Mr Alex T.H. Lai

Dr Lawrence K.C. Li

Professor T.S. Liu

Miss Winnie W.M. Ng

Ms Sandy H. Y. Wong

Mr Franklin Yu

Principal Assistant Secretary (Transport 3)

Transport and Housing Bureau

Mr Andy S.H. Lam

Chief Engineer (Works), Home Affairs Department

Mr Martin W.C. Kwan

Deputy Director of Environmental Protection (1)

Mr C.W. Tse

Assistant Director of Lands (Regional 3)

Mr Edwin W.K. Chan

Director of Planning

Mr Raymond K.W. Lee

Deputy Director of Planning/District

Ms Jacinta K.C. Woo

Secretary

Absent with Apologies

Mr H.W. Cheung

Professor K.C. Chau

Mr Ivan C.S. Fu

Ms Janice W.M. Lai

Mr Patrick H.T. Lau

Ms Christina M. Lee

Mr H.F. Leung

Mr Stephen H.B. Yau

Dr F.C. Chan

Mr David Y.T. Lui

Dr Frankie W.C. Yeung

Mr Peter K.T. Yuen

Dr. C.H. Hau

Mr Thomas O.S. Ho

Mr Stephen L.H. Liu

In Attendance

Assistant Director of Planning/Board

Miss Fiona S.Y. Lung

Chief Town Planner/Town Planning Board

Ms Sally S.Y. Fong

Senior Town Planner/Town Planning Board

Mr T.C. Cheng

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 1133rd Meeting held on 25.1.2017

[The item was conducted in Cantonese.]

1. The minutes of the 1133rd meeting held on 25.1.2017 were confirmed without amendments.

Agenda Item 2

[Closed Meeting]

Consideration of Representations and Comments in respect of Draft The Peak Area Outline Zoning Plan No. S/H14/12
(TPB Paper No. 10243)

[The item was conducted in Cantonese.]

Deliberation Session

2. The meeting noted that the video recordings of the hearing session held on 25.1.2017 and the relevant minutes had been sent to Members on 27.1.2017 and 23.2.2017 respectively.

3. The Secretary said that Members' declaration of interests was reported in the minutes of the last meeting on 25.1.2017. No further declaration of interests had been received from Members since then. The declaration of interests in the item was as follows :

Mr Ivan C.S. Fu - having current business dealings with CKHH and being a Director of LWK

Mr Patrick H.T. Lau - having current business dealings with CKHH

Mr Stephen L.H. Liu	-	having current business dealings with CKHH and LWK
Dr C.H. Hau	-	being a member of the HKBWS and a past member of the Conservation Advisory Committee of WWF
Mr K.K. Cheung]	their company hiring Mary Mulvihill on a contract basis from time to time
Mr Alex T.H. Lai]	
Mr Thomas O.S. Ho	-	personally knowing the co-founder and Chief Executive Officer of DHK
Mr Dominic K.K. Lam]	personally knowing some representers/ commenters
Dr Lawrence K.C. Li]	
Professor T.S. Liu]	

4. Members noted that Mr Ivan C.S. Fu, Mr Patrick H.T. Lau, Mr Stephen L.H. Liu, Dr C.H. Hau and Mr Thomas O.S. Ho had tendered apologies for being unable to attend the meeting. Members also noted that Mr Dominic K.K. Lam, Mr K.K. Cheung, Mr Alex T.H. Lai, Dr Lawrence K.C. Li and Professor T.S. Liu had no discussion with the representers/commenters and agreed that they could stay in the meeting as their interests were indirect.

5. The Secretary continued to report that a letter dated 9.2.2017 from MasterPlan Limited submitted on behalf of the Aberdeen Country Park Concern Group (ACPCG) (R10) was received. Whilst ACPCG requested that their letter be tabled at the meeting, as the submission was made after the statutory publication period and the hearing session, it should be treated as not having been made under section 6(3)(a) of the Town Planning Ordinance (the Ordinance).

6. To facilitate deliberation, the Secretary briefly recapitulated the background of the representations and comments in respect of the draft The Peak Area Outline Zoning Plan (OZP) as follows :

- (a) the amendment to The Peak Area OZP was to take forward the decision of the Metro Planning Committee (MPC) to approve a section 12A application (No. Y/H14/4) submitted by the owner, JML (R1/C1), to rezone a site opposite 23 Coombe Road (the representation site) from “Green Belt” (“GB”) to “Residential (Group C)6” (“R(C)6”) for residential use, with a maximum plot ratio (PR) restriction of 0.5 and a maximum building height (BH) restriction of 2 storeys including carports and not exceeding 260 metres above Principal Datum (mPD), to facilitate a non in-situ land exchange for the conservation of the Grade 1 historic building (Carrick) at 23 Coombe Road;
- (b) the draft The Peak Area OZP No. S/H14/12 was exhibited for public inspection on 29.4.2016 under section 5 of the Ordinance. A total of 1,638 valid representations and 40 comments were received; and
- (c) except for the representation and comment (R1/C1) submitted by the owner of Carrick, the remaining representations and comments opposed the amendment item.

Major Grounds and Responses

7. The Secretary recapitulated the major points made by the representers and commenters in their written and oral submissions which were grouped under six main aspects.

Not in line with the “GB” Intention

8. The meeting noted that some representers/commenters had made the following

major points on planning intention :

- (a) the residential development at the representation site would involve extensive clearance of natural vegetation, which was not in line with the government policy and the Town Planning Board Guidelines No. 10 (TPB PG-No. 10); and
- (b) the residual 10m wide “GB” strip was too narrow, rendering it technically infeasible and not sustainable to serve as a buffer.

9. The meeting also noted that the relevant government departments had made the following responses :

- (a) all relevant factors including the technical feasibility, environmental impacts and potential implications on the integrity and functions of the wider “GB” zone had been considered in the rezoning application stage; and
- (b) the pros and cons of the options proposed by ACPCG and JML had been assessed.

Not in line with the Government’s Heritage Conservation Policy (HCP)

10. The meeting noted that some representers/commenters had made the following major points on HCP :

- (a) the non-in-situ land exchange was not on a ‘like-for-like’ basis in terms of land value. The ‘Proportionality Principle’ of balancing private rights and societal benefits should apply;
- (b) possible alternatives to preserve Carrick had not been fully explored and there were other feasible sites available; and

- (c) the heritage setting and the surrounding landscape/ambience of Carrick would be destroyed and the views towards Aberdeen Country Park (ACP) would be blocked. The ACP, a heritage in itself, and its “GB” buffer should be protected.

11. The meeting also noted that the relevant government departments had made the following responses :

- (a) appropriate economic incentives to compensate private owners’ loss of development rights would encourage owners to preserve historic buildings. A proper balance between preservation of historic buildings and respect for private property rights had to be struck;
- (b) the Commissioner for Heritage’s Office (CHO) advised that the replacement site for non-in-situ land exchange should be of similar land value or development potential, and on such a ‘like-for-like’ basis, a replacement site should be in proximity to the heritage site;
- (c) other options including adding a new house adjacent to Carrick had been considered but was not acceptable to the owner; and
- (d) residential development at the representation site would not affect the merit of Carrick in terms of its heritage value.

Inadequate Technical Considerations

12. The meeting noted that some representers/commenters had made the following major points on technical considerations :

- (a) the proposed rezoning of the representation site failed to take into account land use, visual, landscape, heritage preservation, environmental and ecological conservation aspects; and

- (b) the traffic, environmental and ecological impacts on ACP had not been assessed.

13. The meeting also noted that the relevant government departments had made the following responses :

- (a) relevant technical assessment reports in respect of heritage, environment, drainage, water supplies, geotechnical, landscape and visual aspects had been considered acceptable by government departments at the rezoning application stage; and
- (b) MPC had agreed that the owner's option was the preferable option in striking a balance among various considerations.

Inadequate Planning Control to Preserve Carrick

14. The meeting noted that some presenters/commenters had made the following major points on preservation of Carrick :

- (a) MPC had been misled on the owner's right to demolish Carrick and accordingly had made a wrong decision;
- (b) the Board could mitigate any threat of demolition by rezoning Carrick for heritage preservation; and
- (c) the proposed "Other Specified Uses" ("OU") zone could provide flexibility for the future land use of the Carrick site.

15. The meeting also noted that the relevant government departments had made the following responses :

- (a) the owner had obtained a set of approved building plans and a demolition permit for the redevelopment of the Carrick site;

- (b) applications for consent to commence demolition works would be considered under section 16(3)(d) of the Buildings Ordinance (BO). According to the Buildings Department (BD), section 16(3)(d) of BO would not be invoked to enforce approved or draft OZP introduced under the Ordinance after the approval of the demolition plan; and
- (c) MPC had agreed that the merits of each option from a land use planning viewpoint should be considered, and the decision should not be dictated by the wish of the owner.

Undesirable Precedent

16. The meeting noted that some representers/commenters had made the following major point on setting of precedent :

the rezoning would set an undesirable precedent for similar land exchange proposals, which would lead to further encroachment onto “GB” zones and Country Parks.

17. The meeting also noted that the relevant government departments had made the following responses :

- (a) the rezoning of the representation site would not set an undesirable precedent for similar land exchange proposals as it had to be justified on strong planning grounds; and
- (b) the Board would consider each application on its own merits.

Other Aspects

18. The meeting noted that some representers/commenters had made the following major points :

- (a) the rezoning was only beneficial to the owner of Carrick. The premium negotiation between the Government and the owner of Carrick was conducted privately. There was no active engagement of stakeholders and the general public in the land exchange process; and
- (b) Mr Ruy Barretto (R13/C3) considered that his representation was not included, nor adequately represented or summarized in the Paper, which was procedurally unfair.

19. The meeting also noted that the relevant government departments had made the following responses :

- (a) the land exchange would be processed through a well-established mechanism which was beyond the Board's purview; and
- (b) the representation concerned had been included in the Annex of the Paper.

Representers' Proposals

20. The meeting noted that some representers/commenters had made the following proposals :

- (a) Option 1 – in-situ preservation cum development at the Carrick site by rezoning the site from “Residential (Group C) 2” (“R(C)2”) to “OU” annotated “Historical Building Preservation and Residential Development” and to retain the “GB” zoning for the representation site. A maximum gross floor area (GFA) of 549.98m² in addition to the existing GFA of Carrick and maximum BH of four storeys including carport would be permitted for the Carrick site. A 10m setback from Carrick could be provided to avoid blockage of the

northern facade;

- (b) Option 2 – non-in-situ land exchange for a “GB” site to the north (the Northern site) of the Carrick site whereby the Northern site would be rezoned from “GB” to “R(C)2”, the Carrick site would be rezoned from “R(C)2” to “OU” annotated “Historic Building Preservation” and to retain the “GB” zoning for the representation site;
- (c) to rezone the Carrick site for heritage preservation and/or upgrade Carrick from Grade 1 historic building to a Declared Monument to prevent demolition and ensure preservation; and
- (d) to retain the “GB” zoning of the representation site.

21. The meeting also noted that the relevant government departments had made the following responses :

- (a) both Option 1 and Option 2 had been considered by MPC under application No. Y/H14/5. Although some of the representations attempted to address the technical issues raised by MPC, the merits and feasibility of both options had yet to be demonstrated satisfactorily. It was also premature to consider the rezoning of the Carrick Site; and
- (b) under the current policy, the Government would not unilaterally declare a privately-owned building as monument without the consent of the owner. While the Government might unilaterally declare a historic building as a proposed monument for an effective period of 12 months, it might not be realistic for both parties to agree on other alternative proposal within the 12-month effective period, noting that agreement on the current land exchange proposal was reached after a lengthy discussion for about five years.

22. The Chairman then invited Members to express their views, noting that the grouping of issues under the above main aspects served only as a framework for reference to facilitate discussions. Members would be free to raise any issues and aspects as they saw fit.

Conservation of “GB” vs preservation of Carrick

23. Some Members made the following main points :

- (a) conservation of “GB” and preservation of Carrick were both important. In general, land within “GB” zone should be protected. If the preservation of Carrick was not involved, rezoning of the representation site from “GB” to “R(C)6” would likely be disapproved;
- (b) the representation site might not be suitable for residential development as it was situated on a steep slope within “GB” zone providing a buffer for ACP; and
- (c) the proposed residential development at the representation site might not be compatible with the adjacent ACP.

24. Some other Members took a different view and made the following main points :

- (a) the proposed residential development at the representation site seemed to be compatible with Carolina Gardens located to the west, which was zoned “R(C)2” on the OZP and was immediately adjoining ACP;
- (b) the buffering effect of the subject “GB” zone might not be as significant as anticipated as it had already been disturbed by man-made features like Aberdeen Reservoir Road;

- (c) the Board should not just consider the suitability of rezoning the representation site in isolation. Other factors e.g. the need to preserve Carrick, the fact that the representation site was the only land exchange site considered acceptable, and the availability of options to address possible concerns should all be considered in a holistic manner; and
- (d) the heritage value of Carrick was significant and there were planning merits in the preservation. Furthermore, the size of the “GB” site that would be rezoned to “R(C)6” was relatively small in the context of areas zoned as “GB” on the OZP. Rezoning of the representation site was therefore an acceptable option which would greatly facilitate the preservation of Carrick.

Exploration of other alternative options

25. Several Members made the following main points :

- (a) it might not be essential to have the non-in-situ land exchange site to be in close proximity to Carrick for land exchange on a ‘like-for-like’ basis. Land exchange sites at other locations with less ecological impact should be explored;
- (b) ACPCG had presented some revised options at the hearing and it might be useful to allow the owner of Carrick some time to further consider those options;
- (c) further possibilities could include, for instance, relaxing the development restrictions on the Carrick site, or on other land exchange sites that might come up, with a view to providing incentives to the owner of Carrick; and

- (d) rezoning of the representation site should only be considered after these other options had been fully explored.

26. Some other Members took a different view and made the following main points :

- (a) it was not the role of the Board to identify a suitable land exchange site for the preservation of Carrick. The Board should make a decision on whether the representation site was suitable for rezoning based on the applicable circumstances and planning consideration;
- (b) there had been a long negotiation between the Government and the owner of Carrick;
- (c) as advised by the Commissioner for Heritage's Office (CHO), the representation site was the only site acceptable to the owner of Carrick for the non-in-situ land exchange. It was unlikely that further negotiation, even if initiated, would yield any fruitful outcome; and
- (d) the availability of other alternative options to provide more incentive to the owner of Carrick should be considered in the context of Heritage Conservation Policy (HCP), under which the non-in-situ land exchange would be based on a 'like-for-like' principle.

Demolition threat

27. Some Members made the following main points :

- (a) according to the owner of Carrick, the redevelopment of Carrick had already been delayed for several years in order to come to a mutually agreed land exchange proposal. It was thus seemed doubtful that JML would be prepared to conduct further negotiations if the current land exchange proposal fell through; and

- (b) it was noteworthy a set of general building plans and demolition plan for the redevelopment of Carrick had already been approved, with the implication that it might be possible to commence demolition works accordingly.

28. The Chairman drew Members' attention to the fact that whilst the relevant demolition plan had been approved in 2011, JML would still need to obtain the consent of the Buildings Authority (BA) before commencing any demolition works. Different views as to whether such consent should or would be given had been expressed during the hearings. In the final analysis, that decision would be for BA, rather than the Board, to make.

29. Mr Raymond K.W. Lee, Director of Planning, noted that under section 16(3)(d) of BO, BA might refuse to give his consent to the commencement of any building works where a period exceeding 2 years had elapsed since the approval of any of the prescribed plans in respect of building works. Pursuant to paragraph 14 of Practice Note for Authorized Persons and Registered Structural Engineers (PNAP APP-97) issued by the Buildings Department, BA would not invoke section 16(3)(d) of the BO to enforce approved or draft OZPs introduced under the Ordinance after the approval of the building plans.

[Mr K.K. Cheung left the meeting at this point.]

Setting of precedent

30. Some Members made the following main points :

- (a) the rezoning of the representation site was meant to facilitate the land exchange for preservation of a Grade 1 historical building;

- (b) on a case by case basis, development at the fringe area of a “GB” zone would be acceptable for a good cause after careful balancing of all relevant considerations; and
- (c) approving the rezoning application in this case did not mean that all applications involving non-in-situ land exchange to facilitate the preservation of heritage buildings would be automatically approved in the future.

31. In response to a Member’s enquiry on the number of Grade 1 historic buildings in Hong Kong, the Secretary referred Members to paragraph 50(i) of the minutes of meeting on 25.1.2017 and said that Antiquities and Monument Office (AMO) had previously advised that there were a total of 152 Grade 1 historic buildings in Hong Kong. While 57 of those buildings were owned by the Government, the remaining 95 were privately-owned. The Chairman noted that approval or disapproval of one case would not automatically compel the Board to act in a specific manner in another case as the Board would consider each specific application on the basis of its individual merits, having regard to factors such as site characteristics and applicable planning considerations. Another Member remarked that out of those 95 likewise privately-owned Grade 1 buildings, many were Tsz Tong and religious buildings and not all of them had redevelopment value.

Appropriate control to minimize impact

32. Some Members made the following main points :

- (a) the future residential development at the representation site would be highly visible from Aberdeen Reservoir Road and might block the view of Carrick towards ACP;
- (b) to deal with the possible visual impact, requirements on visual and design treatments for the future residential development at the representation site could be incorporated into the lease conditions at

the land exchange stage, such as by way of a design, disposition and height (DD&H) clause; and

- (c) on the other hand, imposing too many restrictions in the lease of the land exchange site might reduce the incentive for JML to proceed with the land exchange.

[The meeting was adjourned for a short lunch break.]

[Mr Andy S.H. Lam left the meeting at this point.]

Conclusion

33. The Chairman noted that Members' views seemed to be divided with some Members supporting the rezoning of the representation site from "GB" to "R(C)6" to facilitate the non-in-situ land exchange for the preservation of Carrick, having regard to factors such as that the long negotiation between the owner of Carrick and CHO would likely have covered options that were feasible and acceptable by the two sides, and that it would be possible to address concerns relating to visual impact and design through appropriate means. However, some other Members were inclined to disapprove the rezoning in the hope that the owner of Carrick and CHO would then explore other options.

34. A Member opined that not agreeing to the "R(C)6" zoning of the representation site could not necessarily compel the owner of Carrick to adopt other options as it might choose to redevelop the Carrick site and seek to demolish Carrick in accordance with the approved demolition plan. Another Member agreed and observed that CHO and the owner of Carrick had gone through a long negotiation process. It was doubtful if they could come to a mutually agreeable solution on other options in the near future.

35. As Members' views remained divided, the Board agreed to take a vote. A majority of Members were in support of the rezoning of the representation site from "GB"

to “R(C)6” and considered that the draft The Peak Area OZP No. S/H14/12 should not be amended to meet the adverse representations, on the following grounds :

- “(a) the rezoning of the representation site from “Green Belt” (“GB”) to “Residential (Group C)6” (“R(C)6”) is the preferred option for the preservation of Carrick, which is a Grade 1 historic building, from the land use planning point of view, as it has struck a balance among various relevant considerations, including land use, visual, landscape, heritage conservation, public interest and respect for private development rights;
- (b) the rezoning of the representation site would be the first step to facilitate the proposed land exchange for the preservation of Carrick. The zoning of the Carrick Site itself could be considered in due course when the Government has come up with a firm plan regarding its future uses;
- (c) the rezoning of the representation site would not set an undesirable precedent case for rezoning of “GB” to other zoning as such rezoning must be justified on very strong planning grounds. The Board would consider each application based on its own merits; and
- (d) the proposed residential development at the representation site is not unacceptable as no insurmountable technical problem is anticipated, and the possible impacts could be minimized at the detailed design stage through appropriate mitigation measures as required under relevant legislation, conditions of the government lease and other government requirements.”

36. In reaching the above view, the Board also noted the supportive view of R1 and decided not to uphold R2 to R1479, R1481 to R1497 and R1499 to R1640.

37. The Board also agreed to advise the Government that if the land exchange to preserve Carrick failed to materialize, the Government should not seek to dispose of the

rezoned site for residential development through land sale, but should rezone the representation site back to “GB” when an opportunity arose.

38. There being no other business, the meeting was closed at 1:50pm.