

**Minutes of 1172nd Meeting of the
Town Planning Board held on 11.5.2018**

Present

Permanent Secretary for Development
(Planning and Lands)
Ms Bernadette H.H. Linn

Chairperson

Professor S.C. Wong

Vice-Chairperson

Mr Ivan C.S. Fu

Mr Stephen H.B. Yau

Dr F.C. Chan

Mr David Y.T. Lui

Dr Frankie W.C. Yeung

Mr Peter K.T. Yuen

Mr Philip S.L. Kan

Dr Lawrence W.C. Poon

Mr Wilson Y.W. Fung

Dr C.H. Hau

Mr Thomas O.S. Ho

Mr Alex T.H. Lai

Mr Stephen L.H. Liu

Professor T.S. Liu

Miss Winnie W.M. Ng

Ms Sandy H.Y. Wong

Mr Franklin Yu

Mr Stanley T.S. Choi

Mr L.T. Kwok

Mr Daniel K.S. Lau

Mr K.W. Leung

Professor John C.Y. Ng

Professor Jonathan W.C. Wong

Mr Ricky W.Y. Yu

Assistant Director/Regional 3, Lands Department

Mr Edwin W.K. Chan

Deputy Director of Environmental Protection (1)

Mr Elvis W.K. Au

Chief Engineer (Works),
Home Affairs Department

Mr Martin W.C. Kwan

Chief Transport Engineer (New Territories East),
Transport Department

Mr Ricky W.K. Ho

Director of Planning

Mr Raymond K.W. Lee

Deputy Director of Planning/District

Ms Jacinta K.C. Woo

Secretary

Absent with Apologies

Mr Lincoln L.H. Huang

Mr H.W. Cheung

Mr Sunny L.K. Ho

Mr K.K. Cheung

Dr Lawrence K.C. Li

Ms Lilian S.K. Law

Dr Jeanne C.Y. Ng

In Attendance

Assistant Director of Planning/Board

Ms April K.Y. Kun

Chief Town Planner/Town Planning Board

Ms W.H. Ho

Senior Town Planner/Town Planning Board

Mr Alex C.Y. Kiu

Agenda Item 1

[Open meeting]

Confirmation of Minutes of the 1170th Meeting held on 27.4.2018

[The item was conducted in Cantonese.]

1. The Chairperson said that the draft minutes of the 1170th Meeting held on 27.4.2018 were sent to Members on 11.5.2018 and tabled at the meeting. Subject to no proposed amendment by Members on or before 14.5.2018, the minutes would be confirmed without amendment.

[Post-meeting Note: As at 14.5.2018, no proposed amendment to the draft minutes was received.]

Agenda Item 2

Matters Arising

2. The Chairperson said that there was no item under Matters Arising.

Fanling, Sheung Shui and Yuen Long East District

Agenda Item 3

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/YL-KTS/693

Proposed Flat and House Development in “Other Specified Uses” annotated “Rural Use” Zone, Lots 547 RP (Part), 550 RP and 551 in D.D. 106 and adjoining Government Land, Kam Tin, Yuen Long

(TPB Paper No. 10391)

[The meeting was conducted in Cantonese.]

3. The Secretary reported that Albert So Surveyors Limited (Albert So Surveyors), Landes Limited (Landes), Ramboll Environ Hong Kong (Environ) and Driltech Ground Engineering Limited (DGE) were consultants of the applicant. In addition, the application site (the Site) had recently been rezoned for public housing development by the Housing Department (HD) which was the executive arm of the Hong Kong Housing Authority (HKHA). The following Members had declared interests in the item :

- Mr Raymond K.W. Lee - being a member of the Strategic Planning
(as Director of Planning) Committee (SPC) and Building Committee of
HKHA
- Mr Martin W.C. Kwan - being an alternate member for the Director of
(as Chief Engineer (Works), Home Affairs who was a member of SPC and
Home Affairs Department) Subsidized Housing Committee of HKHA
- Mr Ivan C.S. Fu - having current business dealings with Landes
and Environ, and past business dealings with
HKHA
- Dr C.H. Hau - the institute he served having current business
dealings with HKHA
- Mr Thomas O.S. Ho - having current business dealings with HKHA
and past business dealings with Albert So
Surveyors
- Mr K.K. Cheung] their firm having current business dealings with
Mr Alex T.H. Lai] HKHA and DGE
- Dr Lawrence W.C. Poon - his spouse being a civil servant of HD but not
involved in planning work
- Mr Stephen L.H. Liu] having past business dealings with HKHA
Mr Franklin Yu]

4. Members noted that Mr K.K. Cheung had tendered apologies for not being able to attend the meeting. As the interests of Mr Raymond K.W. Lee, Mr Martin W.C. Kwan and Mr Thomas O.S. Ho with HKHA were considered direct, they were invited to leave the meeting temporarily for this item.

[Mr Raymond K.W. Lee, Mr Martin W.C. Kwan, Dr C.H. Hau, Mr Thomas O.S. Ho and Dr Lawrence W.C. Poon temporarily left the meeting at this point.]

5. Since Mr Ivan C.S. Fu and Mr Alex T.H. Lai had no direct involvement in the application or the subject public housing development; and the interests of Mr Franklin Yu and Mr Stephen L.H. Liu were not direct, they were allowed to stay at the meeting.

Presentation and Question Sessions

6. The following representatives from the Planning Department (PlanD), and the applicant's representatives were invited to the meeting at this point :

Ms Maggie M.Y. Chin - District Planning Officer/Fanling, Sheung Shui and Yuen Long East (DPO/FS&YLE), PlanD

Ms Ivy C.W. Wong - Senior Town Planner/Yuen Long East (STP/YLE), PlanD

Noble Phoenix Investments Limited]

Mr Chan Karm]

Mr Chan Kwong Tai William]

Mr Chan Man Hon Dennis]

Albert So Surveyors Limited] Applicant's Representatives

Mr So Chun Hin Albert]

Mr Wong Cheuk Wai Raymond]

Mr Cheng Wai Lam Rock]

Mr Wu Pak Yan Martin]

7. The Chairperson extended a welcome and explained the procedure of the review hearing. She then invited DPO/FS&YLE, PlanD to brief Members on the review application.

8. With the aid of a PowerPoint presentation, Ms Maggie M.Y. Chin, DPO/FS&YLE briefed Members on the background of the review application including the consideration of the application by the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board), justifications provided by the applicant, departmental and public comments, and planning considerations and assessments as detailed in TPB Paper No. 10391 (the Paper).

[Dr F.C. Chan, Mr Peter K.T. Yuen and Ms Sandy H.Y. Wong arrived to join the meeting during DPO's presentation.]

9. The Chairperson then invited the applicant's representative to elaborate on the review application.

10. With the aid of a PowerPoint presentation, Mr So Chun Hin Albert made the following main points in support of the review application :

- (a) ever since the applicant purchased the land in 1970, it had wanted to develop the Site for housing use on its own. The permitted plot ratio (PR) of 0.4 under the "Other Specified Uses" annotated "Rural Use" ("OU(RU)") zone on the approved Kam Tin South Outline Zoning Plan (KTS OZP) No. S/YL-KTS/13 was unreasonably low and substantially lower than the PR restriction of 3.0 under the current "Residential (Group A)" ("R(A)") zoning on the Draft KTS OZP No. S/YL-KTS/14. Hence, the applicant had not submitted the application until the Government had promulgated its intention to develop the area;
- (b) the applicant had no intention to delay the consideration of the application, which was submitted on 13.1.2016. However, it took almost two years to address departmental comments before the application could be considered by the RNTPC. As the application currently stood, there was no in-principle objection/adverse comment from all departments concerned except the Housing Department (HD);
- (c) the OZP in force at the time of submission was the approved KTS OZP No. S/YL-KTS/13, which did not mention anything about the public housing

development. The Site was rezoned to “R(A)” on the draft KTS OZP No. S/YL-KTS/14, which was gazetted only a week after the application was rejected solely based on the consideration that the Site was planned for public housing development, which was also the reason for HD’s objection;

- (d) the proposed development complied fully with the planning intention of the “OU(RU)” zone. There were also two similar applications (No. A/YL-KTS/499 and 639) for low-rise, low-density residential development in the vicinity of the Site within the subject “OU(RU)” zone. On the other hand, the proposed public housing development, at PR 3.0 and 17 storeys high, was clearly not in line with the “OU(RU)” zoning;
- (e) Town Planning Appeal No. 15 of 2011 was relevant to the subject application, as it stated that the Board’s judgment to grant planning permission had to be exercised within the parameters of the relevant approved plan and the Board might grant permission only to the extent shown or provided for or specified in the plan. The relevant approved plan in this case was the approved KTS OZP No. S/YL-KTS/13;
- (f) furthermore, the Court of Appeal also ruled in the *International Trader Ltd v. the Town Planning Appeal Board (2007)* case that the Board did not have the power to have regard to any and all planning considerations which it believed would assist it to reach the right decision in the public interest. Accordingly, if the Board took into account material considerations which fell outside of the ambit of the OZP, considerations which were therefore not relevant to it, it acted ultra vires;
- (g) the applicant was of the view that the rejection reason was not appropriate as there was no statutory plan showing public housing development at the Site at the time of submission of the application and decision made by the RNTPC;
- (h) Government land (GL) within the Site was previously resumed from the applicant under the Roads (Works, Use and Compensation) Ordinance, which required the Government to give proper consideration to offering the unused land back to the person from whom it was resumed before disposal. As

such, the Government should consider re-granting it back to the applicant instead of disposing it for public housing development. In fact, the applicant was not satisfied with the resumption for the roadworks. It had applied to the District Lands Officer/Yuen Long (DLO/YL) for a re-grant of the land since 2004; and

- (i) the applicant's representative, Mr Chan Karm, was over 90 years old and had a strong sense of belonging to Hong Kong and the Kam Tin district. He had operated a plastic factory at the Site for many years. In recognition of the public housing demand, he was willing to enter into a public-private partnership (PPP) to develop the Site, which would avoid the lengthy resumption process. The presence of private housing would also enhance the environment and provide housing to extended families.

[Dr Frankie W.C. Yeung and Mr Franklin Yu arrived to join the meeting during Mr So Chun Hin Albert's presentation.]

11. As the presentation of DPO/FS&YLE, PlanD and the applicant's representative had been completed, the Chairperson invited questions from Members.

12. The Chairperson and some Members had the following questions :

- (a) whether legal advice had been sought from the Department of Justice (DoJ) on the application, taking into account the judgements on court/appeal cases cited by the applicant and the allegation that the Board had acted ultra vires in rejecting the application;
- (b) the relevant OZP for consideration of the application, and whether the Board could take into account other material planning considerations in addition to the provisions of the relevant OZP;
- (c) a detailed elaboration of the chronology of events regarding the proposed public housing development at the Site and the subject application;
- (d) whether PPP was part of the development proposal when the application was submitted in early 2016;

- (e) what the applicant specifically meant by willing to enter into a PPP with the Government to develop the Site; and
- (f) the feasibility of the proposed PPP.

13. In response, Mr So Chun Hin Albert advised that given the low permissible PR of 0.4 of the “OU(RU)” zone, the application merely served to express the applicant’s intention for development. There was no mentioning of PPP in the s.16 stage. The applicant expressed its willingness to enter into PPP with the Government at the s.17 stage. Any PPP development at the Site would need to be negotiated with the Government in the context of the statutory plan in force. The applicant had no objection to develop at a PR of 3.0 and a building height (BH) of 17 storeys at the Site under the PPP approach.

14. With the aid of some Powerpoint slides, Ms Maggie M.Y. Chin also made the following points :

- (a) the cases quoted by the applicant were of different contexts from, irrelevant to and might not be directly comparable to the subject application. No legal advice from DoJ had been sought on the point of ultra vires raised by the applicant;
- (b) the application was submitted when the approved KTS OZP No. S/YL-KTS/13 was in force. The Board might process the application based on the provisions of the approved KTS OZP No. S/YL-KTS/13. That said, the Board should take into account all relevant planning considerations, including changes in the planning circumstances, the latest planning intention, public and departmental comments in making a decision on the application;
- (c) the proposed public housing development at the Site was first made known to the public as one of the 150 potential housing sites in the Policy Address in early 2014. The related Land Use Review for Kam Tin South and Pat Heung (LUR) to ascertain the broad technical feasibility of the proposed housing developments was completed and presented to the Board in April 2014. Upon the Board’s agreement, extensive public consultation on the LUR was carried out between April to December 2014. In view of the pressing housing demand, amendments to rezone the two West Rail sites (i.e. Kam Sheung Road Station and Pat Heung Maintenance Centre) for private

residential/commercial development were gazetted on 29.5.2015 and the planning procedure was completed in August 2016. The applicant submitted the application in January 2016. Meanwhile, HD and the Civil Engineering and Development Department (CEDD) were carrying out detailed technical assessments on the public housing developments at the Site and its vicinity, the findings of which were presented to the Kam Tin and Pat Heung Rural Committees (RCs) and the Yuen Long District Council (YLDC) for consultation on 26.7.2017, 2.8.2017 and 5.9.2017 respectively. The related proposed amendments to the OZP were considered by the Rural and New Town Planning Committee (RNTPC) on 13.10.2017, and gazetted on 3.11.2017 upon RNTPC's agreement; and

- (d) the Development Bureau (DEVB) considered it premature to evaluate the feasibility of the PPP proposal as no detailed proposal had been given by the applicant. On the other hand, the proposed public housing development at the Site was already at an advanced stage with its rezoning process initiated. The approval of the application would frustrate the implementation of the proposed public housing development.

15. A Member asked about the land ownership history of the Site, and whether the current factory use on-site was a legal establishment or not. The Member further enquired whether the private lots owned by the applicant and other parties would need to be resumed for the proposed public housing development, and the general resumption procedures.

16. In response, Mr So Chun Hin Albert advised that the land was purchased by the applicant in 1970, which had since been used as a plastic factory for over 30 years. The factory use on-site was a legal establishment. While he had no information on the previous landowner, the information should be readily available at the Land Registry.

17. Ms Maggie M.Y. Chin made the following points :

- (a) most of the GL within the Site originally belonged to the applicant. Subsequently, four private lots within the Site were resumed for the construction of Tung Wui Road, which was completed in 2003. After the completion of the roadworks, the unused GL was leased back to the applicant for plastic factory use under a Short Term Tenancy (STT);

- (b) the current plastic factory was in operation before the Kam Tin South Interim Development Permission Area (IDPA) Plan came into effect in 1990. It was an 'Existing Use' tolerated under the Town Planning Ordinance (the Ordinance). The use was currently covered by a STT (the GL portion) and a Short Term Waiver (STW) (the private land portion);
- (c) under the Roads (Works, Use and Compensation) Ordinance, the Government would give proper consideration but was not obliged to offering the land not used for the roadworks back to the person from whom it was resumed. The Government could also put any resumed but unused land into appropriate uses. The applicant had applied to the Government for re-granting the land formerly resumed for the Tung Wui Road project in 2004, but the re-grant application was unsuccessful;
- (d) all private land within the proposed public housing sites would need to be resumed to facilitate the proposed public housing developments. The three public housing sites in Kam Tin South had an area of about 18 ha, about 75% of which was private land; and
- (e) upon completion of the planning procedures, Lands Department (LandsD) would commence the land resumption procedures, including gazetting and applying for funding to compensate the owners concerned. There would be established statutory procedure for any aggrieved party to object to the land resumption.

18. In response to a Members' follow-up question on guidelines for considering re-grant applications, Mr Edwin W.K. Chan, Assistant Director/Regional 3, LandsD advised that a number of considerations would need to be taken into account before it could be decided to re-grant unused land back to the original landowner. These included the after use of any land so resumed, whether the land concerned was capable of development on its own, whether re-granting the land to the original owner would affect the Government's development of the area, etc.

19. The Chairperson supplemented that land resumption was a statutory process, be it under the Roads (Works, Use and Compensation) Ordinance or the Land Resumption Ordinance depending on the nature of the public purpose involved. All affected parties

could raise objection to the resumption, and the Chief Executive in Council (CE in C) would ultimately decide on the resumption of any land required for public purpose.

20. The Chairperson requested the applicant to confirm whether compensation arising from land resumption related to the Tung Wui Road works had been received. In response, Mr So Chun Hin Albert advised that the Government did offer some \$7 million as compensation to the applicant under the Roads (Works, Use and Compensation) Ordinance. However, the applicant was aggrieved by the large amount of land resumed which were more than what was required for the roadworks, and it had to rent back such unused land afterwards under STT. Therefore, it refused to draw down the payment.

21. In response to a Member's follow-up question, Mr Edwin W.K. Chan advised that any dispute on the amount of compensation could be settled at the Lands Tribunal on application by LandsD or the concerned landowner. Once a judgment had been made or the concerned landowner had accepted the compensation, LandsD would release the compensation amount, with reasonable interests, to the concerned landowner. There was no time limit for receiving resumption compensation, and in some cases, the process could drag on for years.

22. The Vice-Chairperson and some Members had the following questions :

- (a) whether the zoning amendments gazetted on 3.11.2017 was based on the assumption/understanding that the Site was intended for public housing development;
- (b) whether land resumed under the Roads (Works, Use and Compensation) Ordinance could be used for public housing development;
- (c) whether the applicant was consulted on/aware of the public housing development at the Site;
- (d) an elaboration on the planning intention of the "OU(RU)" zone; and
- (e) what reasons were given by the applicant for the four deferments of the subject planning application.

23. In response, Ms Maggie M.Y. Chin made the following points :
- (a) the zoning amendments gazetted on 3.11.2017 was based on the assumption/understanding that the Site was intended for public housing development. This was spelt out clearly in the Explanatory Statement (ES) of the draft KTS OZP No. S/YL-KTS/14;
 - (b) the Site was within an “Undetermined” zone prior to 2006. A landuse review was conducted and the Site was rezoned to “OU(RU)” in 2006 in view of the predominantly rural character of the area back then. The planning intention then was primarily for the preservation of the character of the rural area; and
 - (c) the four deferments requested by the applicant and the 12 further information submissions were mainly to address the technical comments of various Government departments including the Chief Town Planner/Urban Design and Landscape (CTP/UD&L) and the Director of Environmental Protection (DEP) regarding the landscape design and the potential environmental impacts.
24. The Chairperson supplemented that once a piece of land was resumed, it became GL, and the Government was in a position to decide on its use.
25. Mr So Chun Hin Albert advised that the applicant was not specifically consulted, but only knew from the press about the proposed public housing development at the Site. He considered that it had no statutory effect as the planning intention had yet not been stated in the approved KTS OZP No. S/YL-KTS/13.
26. A Member asked about the channel through which the concerned landowners were consulted on proposed development at/zoning amendments to a site. Ms Maggie M.Y. Chin advised that although each landowner/local resident was not consulted individually, many residents actually formed concern groups among themselves to initiate dialogs with PlanD since the Government’s announcement of the LUR. The District Officer/Yuen Long (DO(YL) had also assisted in liaising with residents and local concern groups in the public consultation process. The Kam Tin and Pat Heung RCs and the YLDC were consulted on the proposed public housing development. The LUR was submitted to the Board for

consideration in April 2014, and the related minutes of meeting were still available on the Board's website for public inspection to date. The OZP amendment process was also a consultation process in itself, and members of the public could submit their representation to the Board. The applicant had also submitted a representation to the draft KTS OZP No. S/YL-KTS/14.

27. A Member asked whether the applicant was of the view that the Board could only take the relevant approved plan (KTS OZP No. S/YL-KTS/13) into account when considering the application, but not the proposed public housing development even though the Board had full knowledge about it and had already agreed to proceed with the related zoning amendments. Mr So Chun Hin Albert replied in the affirmative in view of the previous Appeal and Court cases cited.

28. As Members had no further question to raise, the Chairperson said that the hearing procedure for the review application had been completed. The Board would further deliberate on the review application. The Chairperson thanked DPO/FS&YLE, PlanD, and the applicant's representatives for attending the meeting, and they left the meeting at this point.

Deliberation Session

Planning Intention and Legal Advice

29. Noting the applicant's claim that the Board/PCs should only consider applications within the context of the plan in force at the time of submission of the application (i.e. the approved KTS OZP No. S/YL-KTS/13), some Members had concern on how far the Board could take into account other material considerations such as changes in the planning circumstances and the latest planning intention. The Secretary confirmed that the subject applications could be considered based on the provisions of the approved KTS OZP No. S/YL-KTS/13, which was in force when the application was submitted. That said, the Board should also take into account all relevant factors including the latest planning circumstances/intention for the Site in making a decision on the application. There were precedent cases that the Board had taken into account the latest planning intention in considering planning applications before the zoning amendments were gazetted. In the subject case, the planning intention for public housing development at the Site was announced in as early as 2014, though the Government needed some time for completion of

the technical assessments and public consultation before taking forward the proposed amendments to the OZP. The applicant also admitted that it was well aware of the planning intention at the time of submission of the subject application.

30. A Member said that as planning was a dynamic process, it would not be appropriate for the Board to merely consider the application in the context of the approved KTS OZP No. S/YL-KTS/13, ignoring the fact that the proposed public housing development at the Site would be gazetted for public inspection on 3.11.2017. Otherwise, the Board could not perform its statutory function. He considered that the rejection of the application by the RNTPC was proper and in line with the established practice of the Board. However, the rejection reason could be elaborated to fully reflect the consideration of the Board.

31. A Member considered that although the latest planning intention for public housing development at the Site had already been made known to the public, it did not form part of the approved KTS OZP No. S/YL-KTS/13, on the basis of which the application was submitted. While the Board had previously taken into account the latest planning intention in considering planning applications, the applicant's concern had to be addressed.

32. A Member agreed that the Board could take into account other relevant planning considerations in addition to the provisions of the plan in force at the time of application. Noting that the proposed flat supply in the subject application was substantially less than that in the proposed public housing development, he saw no justification to approve the subject application.

33. Some Members said that planning intention had all along been a consideration of the Board, though the weight varied from application to application. In view of the acute shortage in the supply of public housing, more weight should be assigned to public housing development at the Site. However, it could be further considered on whether this should be the only rejection reason for the application.

34. Members generally agreed that apart from the provision of the approved KTS OZP No. S/YL-KTS/13, the Board should also take into account other relevant factors such as the latest planning circumstances and intention in considering an application. However, noting that the applicant had quoted the legal points in the two appeal/court cases, it would be more prudent for the Board to acquaint with the substances of those cases and be provided with relevant legal advices to facilitate Members to make an informed decision.

35. In response, the Secretary advised that legal advice had previously been sought on similar cases. According to the legal advice, while a planning application should be considered based on the provisions of the relevant plan in force when the application was submitted, the Board should also take into account other relevant considerations, including the latest planning circumstances/intention in making a decision on the application. Regarding the two appeal/court cases cited by the applicant, they were irrelevant to the subject application in view of their different contexts. If Members would like to have more details regarding the two said cases before making a decision on the subject application, the Board could consider deferring its decision.

36. The Vice-Chairperson shared the concerns of the Members on the legal views, but reminded that the applicant's representative had only extracted parts of the verdict without providing the full contexts to support the application. Noting that the zoning amendments had already been agreed by the RNTPC and were gazetted one week after the rejection of the subject application, he tended not to agree with the applicant's view that the Board could not consider anything other than the relevant plan in force when the application was submitted. He considered that the application should be rejected. That said, he preferred, as a precaution, to defer a decision on the application pending clarification on the two appeal/court cases cited by the applicant.

Land Resumption Issues

37. In response to some Members' query on why an area of land more than which was eventually required for the road works had been resumed, Mr Edwin W.K. Chan, Assistant Director/Regional 3 of LandsD, advised that this could be possible when the boundary of the works area required for constructing the road might be refined in the course of a project. Secondly, many landowners actually preferred resumption on whole lot basis rather than resumption of part of the lot. In any case, the Government should have acted in good faith when seeking the authorisation of CE in C for a resumption proposal, by proposing an area which was considered to be required for the public purpose at the time of submission.

38. Some Members said that while the applicant's grievances on the resumption of its private land were understandable, the land resumption issues should not be a relevant planning consideration in the subject application. Nevertheless, the communication with the landowners in the land resumption process could be further enhanced. In particular, a

number of private lots would need to be resumed for the proposed public housing development, there was a need to have better communication with the affected parties.

Implementation Prospect of the Proposed Development

39. Some Members remarked that it was most unlikely that the proposed development would materialise given the large amount of GL involved and when the Government had clearly expressed its intention for public housing development at the Site well before the application was submitted. Specifically, LandsD had advised that an application for land exchange which involved additional GL would not be considered if the land concerned had foreseeable public use. Therefore, they considered that even if the Board granted planning permission, the development proposal could not be implemented.

Public-Private Partnership

40. Some Members noted that the application was submitted with the applicant's full knowledge of the Government's intention to develop the Site for public housing, and the PPP proposal had not been raised in the s.16 stage, but an additional justification in support of the review application taking account of the recent public discussions on PPP.

41. While some Members considered that the Government should be open-minded towards the applicant's PPP proposal which might have indirect positive effect on housing provision, they noted that the PPP approach was only a concept proposed by the Task Force on Land Supply, and the details of the approach had yet to be worked out.

42. The Meeting noted that the proposed development under application was a purely private housing development without any PPP element. Any PPP proposal the applicant might submit in future would be irrelevant to the subject application, and had to be separately considered by the Government outside the planning application process. Members generally considered it inappropriate take into account the PPP approach proposed by the applicant as a planning consideration for the subject application.

[Miss Winnie W.M. Ng, Mr L.T. Kwok and Professor Jonathan W.C. Wong, left the meeting during the latter part of deliberation session.]

43. After deliberation, the Chairperson noted that Members were generally supportive of RNTPC's decision to reject the application, on the premise that it was appropriate for the Board to consider the latest planning intention in addition to the provisions of the approved plan in force when the application was submitted. In this regard, Members noted the latest planning intention of the Site was for public housing development. Members further noted that the proposed development under application could hardly materialise regardless of the Board's decision on the application, given the need for a land exchange which was unlikely to be approved. That said, noting that the applicant had cited the two previous Appeal/Court decisions, the Chairperson requested the Secretariat to provide the relevant case details and previous legal advice for Members' reference before making a decision on the application. As such, the Board decided to defer a decision on the application on review.

[Mr Raymond K.W. Lee, Mr Martin W.C. Kwan, Dr Lawrence W.C. Poon, Mr Thomas O.S. Ho and Dr C.H. Hau returned to the meeting at this point.]

Procedural Matters

Agenda Item 4

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Representations and Comments on the Draft Kam Tin South Outline Zoning Plan No. S/YL-KTS/14
(TPB Paper No. 10423)

[The meeting was conducted in Cantonese.]

44. The Secretary reported that the representation sites were related to public housing development by the Housing Department (HD) which was the executive arm of the Hong Kong Housing Authority (HKHA). Masterplan Limited (Masterplan) (R3/C3), Mass Transit Railway Corporation Limited (MTRCL) (R318), World Wide Fund for Nature Hong Kong (WWF-HK) (R319), Ms Mary Mulvihill (R320/C132) and Temple Chambers (C4) were representers/commenters. The following Members had declared interests on the item for being associated/having business dealings with HKHA or the representers/commenters :

- Mr Raymond K.W. Lee
(as Director of Planning)
- being a member of the Strategic Planning Committee (SPC) and Building Committee of HKHA
- Mr Martin W.C. Kwan
*(as Chief Engineer (Works),
Home Affairs Department)*
- being an alternate member for the Director of Home Affairs who is a member of SPC and Subsidized Housing Committee of HKHA
- Professor S.C. Wong
(Vice-chairperson)
- being a member of the Advisory Committee for Accredited Programme of the MTR Academy
- Mr Ivan C.S. Fu
- having current business dealings with MTRCL and Masterplan, and past business dealings with HKHA
- Dr C.H. Hau
- having current business dealings with HKHA, and being a past member of the Conservation Advisory Committee of WWF-HK
- Mr Thomas O.S. Ho
- having current business dealings with HKHA and MTRCL
- Mr K.K. Cheung
Mr Alex T.H. Lai
-] their firm having current business dealings with HKHA, MTRCL and Temple Chambers, and hiring Ms Mary Mulvihill on a contract basis from time to time
- Dr Lawrence W.C. Poon
- his spouse being a civil servant of HD but not involved in planning work
- Mr Stephen L.H. Liu
Mr Franklin Yu
-] having past business dealings with HKHA and MTRCL

Mr Peter K.T. Yuen - being a member of the Board of governors of the Arts Centre which collaborated with MTRCL on a number of arts project

45. Members noted that Mr K.K. Cheung had tendered apologies for not being able to attend the meeting. As the item was procedural in nature, the other Members were allowed to stay in the meeting.

46. The Secretary briefly introduced the Paper. On 3.11.2017, the draft Kam Tin South Outline Zoning Plan No. S/YL-KTS/14 was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). A total of 320 valid representations and 133 valid comments on the representations were received.

47. As the concerns of the representers and commenters were mainly on the proposed public housing developments, the representations and comments should be considered in **one group** collectively by the full Board.

48. To ensure the efficiency of the hearing, a maximum of 10 minutes' presentation time would be allotted to each representer/commenter in the hearing session. Consideration of the representations by the full Board was tentatively scheduled for July 2018.

49. After deliberation, the Board agreed that :

- (a) the representations/comments should be considered collectively in one group by the Board itself; and
- (b) a 10-minute presentation time would be allotted to each representer/commenter, subject to confirmation of the number of representers/commenters attending the hearing and the aggregate presentation time required.

Agenda Item 5

[Open Meeting]

Any Other Business

Application for Claim against the Town Planning Board in respect of the Tai Po Outline Zoning Plan No. S/TP/25

[The item was conducted in Cantonese.]

Declaration of Interests (利益申報)

50. The Secretary reported that the following Members had declared interests in this item :

Mr H.W. Cheung - owning a flat at Heung Sze Wui Street

Dr Frankie W.C. Yeung - his company owning a flat at On Chee Road

Mr Daniel K.S. Lau - owning a property at Ma Wo Road, Tai Po

51. Members noted that Mr H.W. Cheung had tendered apologies for not being able to attend the meeting. As the item was to report on an application for claim and no discussion was required, Dr Frankie W.C. Yeung and Mr Daniel K.S. Lau were allowed to stay in the meeting.

52. The Secretary reported that an application for claim against the Town Planning Board (the Board) was received by the Court on 17.4.2018. The document had been sent to Members for reference. The application was related to the rezoning of a site at 4770 Tai Po Road, Kon Hang, Tai Po (the Site) from “Green Belt” (“GB”) to “Residential (Group C) 8” (“R(C)8”) on the draft Tai Po Outline Zoning Plan No. S/TP/25 (the OZP). The Plaintiff was the tenant under the Short Term Tenancy (STT) of the Site, but not a representer/commenter of the OZP.

53. The Plaintiff alleged that the decision of the Board to rezone the Site from “GB” to “R(C)8” was invalid and illegal as it had not consulted the affected residents and tenants of the Site; and failed to take into account the relocation and compensation arrangements, the ecological and cultural values of the Site, and the land disputes and complaints in relation to the Site.

54. The Plaintiff claimed that he had devoted substantial resources on the development of the Site for preservation of cultural relics, and that his wife had suffered from illness as a result of the resumption of the Site. He claimed the Board on his personal loss, the medical cost and mental loss of his wife, and the legal costs arising from the Board’s decision.

55. After deliberation, the Board agreed to instruct the Department of Justice to represent the Board to contest the claim.

56. There being no other business, the meeting was closed at 11:35 a.m.