

**Minutes of 1185th Meeting of the
Town Planning Board held on 28.9.2018**

Present

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

Chairperson

Professor S.C. Wong

Vice-chairperson

Mr Lincoln L.H. Huang

Mr Sunny L.K. Ho

Mr Stephen H.B. Yau

Dr F.C. Chan

Mr David Y.T. Lui

Mr Peter K.T. Yuen

Mr Philip S.L. Kan

Dr Lawrence W.C. Poon

Mr K.K. Cheung

Dr C.H. Hau

Mr Alex T.H. Lai

Dr Lawrence K.C. Li

Mr Stephen L.H. Liu

Professor T.S. Liu

Ms Sandy H.Y. Wong

Mr Franklin Yu

Mr Daniel K.S. Lau

Ms Lilian S.K. Law

Mr K.W. Leung

Professor John C.Y. Ng

Professor Jonathan W.C. Wong

Assistant Director (Environmental Assessment)
Environmental Protection Department
Mr. C.F. Wong

Assistant Director (Regional 1)
Lands Department
Mr. Simon S.W. Wang

Principal Assistant Secretary for Transport and Housing
(Transport 3)
Transport and Housing Bureau
Mr Andy S.H. Lam

Chief Engineer (Works)
Home Affairs Department
Mr Martin W.C. Kwan

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

Mr Ivan C.S. Fu

Dr Frankie W.C. Yeung

Mr Wilson Y.W. Fung

Mr Thomas O.S. Ho

Miss Winnie W.M. Ng

Mr Stanley T.S. Choi

Mr L.T. Kwok

Dr Jeanne C.Y. Ng

Mr Ricky W.Y. Yu

In Attendance

Assistant Director of Planning/Board

Ms April K.Y. Kun

Chief Town Planner/Town Planning Board

Mr Kepler S.Y. Yuen

Senior Town Planner/Town Planning Board

Mr T.C. Cheng (a.m.)

Ms W.H. Ho (p.m.)

Agenda Item 1

Confirmation of Minutes of the 1184th Meeting held on 14.9.2018

[Open meeting] [The item was conducted in Cantonese.]

1. The minutes of the 1184th meeting held on 14.9.2018 were sent to Members on 28.9.2018 and tabled at the meeting. Subject to no proposed amendment by Members on or before 2.10.2018, the minutes would be confirmed without amendment.

[Post-meeting Note : On 2.10.2018, the minutes of the 1184th meeting were confirmed without amendment.]

Agenda Item 2

Matters Arising

[Open meeting] [The item was conducted in Cantonese.]

(i) New Judicial Review Application (HCAL 1916/2018) against the Decision of the Town Planning Board in respect of s12A Application No. Y/ST/38

2. The Secretary reported that the judicial review (JR) was lodged in respect of s12A Application No. Y/ST/38, which was submitted by Royal Billion Investment Limited (the Applicant) represented by Llewelyn-Davies Hong Kong Limited (LD). AEC Limited, AECOM Asia Company Limited (AECOM), AXXA Group Limited (HK) (AXXA), Ramboll Hong Kong Limited (Ramboll) and Ronald Lu & Partners (Hong Kong) Limited (RLP) were the consultants of the s12A Application. The following Members had declared interests on the item for having business dealings with the consultants, owning properties in Tai Wai, or having family members living in Sha Tin :

Prof. S. C. Wong]	
(Vice-chairperson)]	having current business dealings with
Dr. C. H. Hau]	AECOM
Mr Franklin Yu]	

- Mr Ricky W.Y. Yu - his firm having current business dealings with LD
- Mr K.K. Cheung] their firm having current business dealings
- Mr Alex T.H. Lai] with AECOM
- Mr Ivan C.S. Fu - having current business dealings with Ramboll and AECOM
- Mr Thomas O.S. Ho - having current business dealings with RLP and AECOM
- Mr Stephen L.H. Liu - having past business dealings with LD
- Mr Stanley T.S. Choi - owning a flat at Mei Tin Road, Sha Tin
- Dr Lawrence W.C. Poon - his family members living in Sha Tin

3. As the item was to report a new JR application, Members agreed that the above Members could stay in the meeting. Members noted that Mr Ricky W.Y. Yu, Mr Ivan C.S. Fu, Mr Thomas O.S. Ho and Mr Stanley T.S. Choi had tendered apologies for not being able to attend the meeting.

The JR Application

4. The Secretary reported that on 12.9.2018, a JR application (HCAL 1916/2018) was lodged by the Applicant against the Rural and New Town Planning Committee (RNTPC)'s decision on 15.6.2018 to reject the Applicant's application for amendment to the Approved Sha Tin Outline Zoning Plan No. S/ST/34 to rezone the Site from "Green Belt" and "Government, Institution or Community" to "Residential (Group B) 4" under section 12A of the Town Planning Ordinance. The Court granted leave to the JR application on 21.9.2018.

Grounds of JR

5. The grounds of JR against the Town Planning Board (the Board) were :
- (a) breach of principle of equality in dealing with private applications and government proposal while failed to give proper reasons;
 - (b) taking into account an irrelevant consideration, i.e. the technical feasibility of the road widening proposal;
 - (c) failure to take into account or give weight to relevant matters including the Government's prevailing policy and the Board's previous decision on other similar applications;
 - (d) breach of *Tameside* duty to inquire into matters related to the technical feasibility of the road widening works, the landscape and ecological impacts of the proposed development, and whether such concerns were remediable;
 - (e) procedural unfairness in that the Board had failed to give the Applicant an opportunity to review and comment on Planning Department's (PlanD)'s newly produced photomontage;
 - (f) erroneous understanding of the relevant planning principles in respect of the Visual Impact Assessment guidelines; and
 - (g) *Wednesbury* unreasonable or irrational of the Board to find that the Applicant failed to demonstrate the proposed development would not have adverse visual, landscape and nature conservation impacts and that the approval of the application would set an undesirable precedent for other similar applications in "GB" zone.

Relief Sought

6. The relief sought for the JR application included, inter alia, an order to quash the decision of the Board and an order to direct the Board to reconsider the Decision.

7. Members noted the new JR application and agreed that the Secretary would act on behalf of the Board in handling the JR application in consultation with the Department of Justice.

[Dr Lawrence W.C. Poon left the meeting at this point.]

Kowloon District

Agenda Item 3

Consideration of Representations and Comments in respect of the draft Ma Tau Kok
Outline Zoning Plan No. S/K10/23
(TPB Paper No. 10475)

[Open meeting (Presentation and Question Sessions only)]

[The item was conducted in English and Cantonese.]

8. The Secretary reported that one of the Amendment Items was related to a proposed public housing development by the Housing Department (HD), who was the executive arm of the Hong Kong Housing Authority (HKHA). The following Members had declared interests on the item for having affiliation/business dealings with HD/HKHA and Ms Mary Mulvihill (R2/C142) :

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 a representative of the Director of
(as Chief Engineer (Works), Home Affairs who was a member of SPC

- Home Affairs Department)* and the Subsidised Housing Committee of HKHA
- Mr K.K. Cheung] their firm having current business dealings
Mr Alex T.H. Lai] with HKHA and hiring Mary Mulvihill on
a contract basis from time to time
- Dr C.H. Hau - his institution having current business
dealings with HKHA
- Mr Thomas O.S. Ho - having current business dealings with
HKHA
- Mr Ivan C.S. Fu]
Mr Stephen L.H. Liu] having past business dealings with HKHA
Mr Franklin Yu]
- Dr Lawrence W.C. Poon - his spouse being a civil servant of HD but
not involved in planning work
- Miss Winnie W.M. Ng - her company owning two shops at Nam
Kok Road, Kowloon
- Ms Sandy H.Y. Wong - personally knowing Mr Chris Yu Wing
Fai, a representative of R1/C2
- Mr C.F. Wong - living in Ma Tau Kok
- Mr Daniel K.S. Lau - being the Director (Development &
Marketing) of the Hong Kong Housing
Society (HKHS), which was current in
discussion with HD on housing
development issues

9. Members noted that Mr Thomas O.S. Ho, Mr Ivan C.S. Fu and Miss Winnie W.M. Ng had tendered apologies for being unable to attend the meeting and Dr Lawrence W.C. Poon had left the meeting. Since the interest of Mr Raymond K.W. Lee and Mr Martin W.C. Kwan were direct, they should be invited to leave the meeting temporarily for this item. The interests of Dr C.H. Hau, Mr K.K. Cheung, Mr Alex T.H. Lai, Mr Stephen L.H. Liu, Mr Franklin Yu, Ms Sandy H.Y. Wong, Mr Daniel K.S. Lau and Mr C.F. Wong were indirect as they had no direct involvement in the project or their properties did not have a direct view of the representation sites. They should be allowed to stay in the meeting. Members noted that Mr Stephen L.H. Liu and Mr Franklin Yu had yet to arrive at the meeting.

[Ms Sandy H.Y. Wong and Mr K.W. Leung arrived to join the meeting. Mr Raymond K.W. Lee and Mr Martin W.C. Kwan left the meeting at this point.]

Presentation and Question Sessions

10. The Vice-chairperson said that reasonable notice had been given to the representers and commenters inviting them to attend the hearing, but other than those who were present or had indicated that they would attend the hearing, the rest had either indicated not to attend or made no reply. As reasonable notice had been given to the representers and commenters, Members agreed to proceed with the hearing of the representations and comments in their absence.

11. The following government representatives, as well as representers, commenters and their representatives were invited to the meeting at this point :

Government Representatives

Planning Department (PlanD)

Mr Tom C.K. Yip - District Planning Officer/Kowloon
(DPO/K)

Ms Johanna W.Y. Cheng - Senior Town Planner/Kowloon

Housing Department (HD)

Ms Emily W.M. Ip - Senior Planning Officer 9 (SPO 9)

Mr Lai Tsan Yip - Architect 94 (Arch 94)

Miss Vince W.S. Kok - Landscape Architect 14 (LA 14)

Representers/Commenters and their Representatives

R1/C2 – The Kowloon City Christians’ Church (KCCC)

C3 – Ng Cheung Hing

C6 – Li Wai To

C7 – 林麗珊

C12 – Tam Kwok Kwun

C18 – 基石進修中心學員的課程導師 Cheung Hoi Suen

C19 – 基石進修中心學員陳植平

C21 – 基石進修中心學員雷笑玲

C27 – 基石進修中心學員王錦全

C30 – 基石進修中心學員蘇嘉富

C32 – 基石進修中心學員陳小寶

C33 – 基石進修中心學員林有華

C34 – 基石進修中心學員馬燦光

C36 – 基石進修中心學員Ma Chun Yin

C38 – 基石進修中心學員劉惠卿

C40 – 基石進修中心學員湯明珠

C42 – 基石進修中心學員 Wong Ka Yin Jessie

C46 – Liu Mei Ki

C47 – OUHK Crystal Z.X. Chen

C51 – 基石進修中心學員呂苑珊

C52 – 基石進修中心學員彭秀冰

C57 – 基石進修中心學員陳得華

C59 – 基石進修中心學員葉燦光

C64 – 黃國強

C66 – Sin Sau Yin Juliana

C67 – 蘇細平

C68 – 趙燕雯

C69 – Rosi Hung

C71 – Daman Wong

C72 – Leung Suk Yee Wendy

C73 – 蘇婉麗

C74 – 朱得榮

C76 – 基石進修中心學員的家長張紅玲

C77 – 基石進修中心學員的課程導師程麗琼

C80 – 基石進修中心學員李綺文

C86 – 基石進修中心學員 Chan Ping Kwan

C90 – 基石進修中心學員區尚言

C91 – 基石進修中心學員張玉玲

C97 – 基石進修中心學員 Ling Chi Wai

C100 – 基石進修中心學員麥美艷

C102 – 鄧淑娟

C105 – 張靄笑

C106 – 蘇玉娟

C107 – Kitty Chu

C108 – 基石進修中心學員的課程導師 Lung Kwong Chau

C109 – 聶金麗

C110 – 朱寶兒

C111 – Lau Yuk Kam

C112 – 陳麗華

C114 – Ng Ching Man

C116 – 陳善祥

C119 – 基石進修中心學員孫杏蓮

C125 – Mak Chi Kong

C130 – 基石進修中心學員張麗雲

C138 – 基石進修中心學員張嘉麗

DeSPACE (International) Limited]

Mr Lam Kwok Chun, Greg]

Ms Lau Fung Yee, Rebecca]

Ms Hung Leong Man, Sabrina]

Mr Liu Sum Ming, Samuel]

Mr Ng Kai Yu, Aigo]

CTA Consultants Limited]

Mr Kelvin Leung]

Theotexture (Architect)]

Mr Ben Wong]

Cornerstone Education Centre (CEC)]

Ms Lee Fung Yee, Leona]

Members of KCCC]

Mr Siu Chun Keung]

Mr Chris Yu Wing Fai] Representers and Commenters'

Mr Mak Chi Kong] representatives

Rev Fong Kwai Sang]

Service provider of the Special Education]

Need Training School of KCCC, PolyU]

Dr Lau Kai Yan]

Service users of CEC]

Mr Wong Cheuk Chiu]

Mr Chu Kit Wah]

Mr Chow Chi Lai, Wemmich]

Mr Chan Kam Sun]

Mr Fu Sze Chak]

Mr Mak Chong Kei]

Mr Kwok Sze Yiu, Godfrey]
Ms Wong Fan Yi]
Ms Chan Suk Fan]
Ms Ho Cho Yi]
Mr Lai Wing Kuen]
]

R2/C142 – Mary Mulvihill

Ms Mary Mulvihill - Representer/Commenter

12. The Vice-chairperson extended a welcome and briefly explained the procedures of the hearing. He said that PlanD’s representative would be invited to brief Members on the representations and comments. The representers, commenters or their representatives would then be invited to make oral submissions in turn according to their representation and comment number. To ensure the efficient operation of the meeting, each representer, commenter or their representative would be allotted 10 minutes for making oral submission. There was a timer device to alert the representer, commenter or their representative two minutes before the allotted time was to expire, and when the allotted time limit was up. A question and answer (Q&A) session would be held after all attending representers, commenters or their representatives had completed their oral submissions. Members could direct their questions to government representatives, representers, commenters or their representatives. After the Q&A session, the representer, commenters or their representatives and the government representatives would be invited to leave the meeting. The Town Planning Board (the Board) would deliberate on all the representations and comments in their absence and inform the representers and commenters of the Board’s decision in due course.

13. The Vice-chairperson then invited PlanD’s representative to brief Members on the representations and comments.

14. With the aid of a PowerPoint presentation, Mr Tom C.K. Yip, DPO/K briefed Members on the representations and comments, including the background of the amendments, the grounds/views/proposals of the representers and commenters, planning assessments and PlanD’s responses to the representations and comments as detailed in TPB Paper No. 10475 (the Paper).

[Mr Stephen L.H. Liu and Mr Franklin Yu arrived to join the meeting during DPO/K's presentation.]

15. The Vice-chairperson then invited the representers, commenters and their representatives to elaborate on their representations and comments.

R1/C2 – The Kowloon City Christians' Church (KCCC)

C3 – Ng Cheung Hing

C6 – Li Wai To

C7 – 林麗珊

C12 – Tam Kwok Kwun

C18 – 基石進修中心學員的課程導師 Cheung Hoi Suen

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C125 – Mak Chi Kong

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C138 – 基石進修中心學員張嘉麗

16. With the aid of a PowerPoint presentation, Mr Greg Lam Kwok Chun (DeSPACE (International) Ltd), Ms Leona Lee Fung Yee (Head of School, CEC), Mr Siu Chun Keung (Member of KCCC), Mr Ben Wong (Theotexture (Architect)) and Mr Kelvin Leung (CTA Consultants Ltd) made the following main points :

- (a) KCCC supported the relaxation of building height restriction (BHR) of the site under Amendment Item A to facilitate the redevelopment of the Lok Sin Tong (LST) Primary School and the Lok Sin Tong Benevolent Society (LSTBS) headquarters and clinic at the representation site (the LST site). Similarly, the BHR of the “G/IC” site occupied by KCCC and the Cornerstone Education Centre (CEC) (R1’s site) at Lung Kong Road opposite the LST site should also be relaxed to facilitate the redevelopment of KCCC/CEC, which together with LSTBS had functioned as one government, institution or community (GIC) hub in the area;
- (b) although R1’s site was not the subject of any amendment item in respect of the draft Ma Tau Kok Outline Zoning Plan (OZP) No. S/K10/23, KCCC did not agree with PlanD’s response that their proposal to relax the BHR for R1’s site could not be considered under the representation hearing process. Section 6 of the Town Planning Ordinance (the Ordinance) stated that a representation should indicate, inter alia, the amendments (if any) proposed by the person to the draft plan. However, there was nothing in that section suggesting that such amendment proposal should only be related to amendment items on the OZP;
- (c) in considering representations on some rural OZPs, the Board had upheld representations submitted by green groups and agreed to rezone various sites on the OZP. Although the above proposal from green groups was on community welfare grounds, equal treatment should be given in considering their representation;

- (d) PlanD's advice that their redevelopment proposal should be considered by submitting an application under section 12A of the Ordinance was time consuming and could not meet the urgent need for more community facilities in the district. The BHR of R1's site could readily be relaxed if the Board upheld their representation and proposed amendment to the OZP under section 6 of the Ordinance;
- (e) KCCC had a long history of over 70 years, which was a non-profit making non-governmental organisation responsible for operating CEC. The existing building at Lung Kong Road was a 3-storey building with a chapel on ground floor, an administration office and 20 classrooms on the upper floors, providing about 70 tutorial classes for children, students with special educational needs and interest groups for the elderly at affordable fees. There was no lift, car parking spaces, loading and unloading (L/UL) space within the existing building at R1's site. The elderly or people with disability currently visiting KCCC/CEC had difficulties in accessing the classrooms by stairs;
- (f) as the existing building was old and dilapidated, the maintenance cost was very high. Due to the limited floorspace, students were always in a crowded environment and there was limitation on the number of classes that CEC could operate. Different classes had to share the classrooms at the same time. KCCC intended to redevelop the existing building to expand their services to benefit the community. A high-rise building was the only practical way of development. However, such a redevelopment proposal would require a relaxation of the current BHR of 3-storey for the site. As the welfare nature of KCCC/CEC was similar to LSTBS and their sites were in close proximity, the BHR for R1's site should also be revised accordingly;
- (g) a 12-storey building (60mPD) on top of two levels of basement carpark at plot ratio (PR) of 8.8 was proposed for R1's site. The PR and building height were compatible with that permitted under Amendment Item A for the LSTBS redevelopment. The proposed redevelopment

would provide additional floorspace for more facilities. A L/UL area as well as car parking would be provided to relieve the demand for on-street parking and L/UL activities arising from KCCC/CEC's operation;

- (h) a traffic impact assessment (TIA) and visual impact assessment (VIA) submitted in their representation demonstrated that similar to the LST site, the redevelopment at R1's site would not have adverse traffic and visual impacts as the nature and development intensity at those two sites, which were in close proximity, were similar;
- (i) while the LSTBS redevelopment was funded under the 'Special Scheme on Privately Owned Sites for Welfare Uses' (Special Scheme) launched by the Labour and Welfare Bureau (LWB), KCCC/CEC's redevelopment would be self-financed as KCCC decided not to join the Special Scheme; and
- (j) although PlanD considered that there was adequate GIC provision in Ma Tau Kok and Kowloon City to meet the requirements stipulated in the Hong Kong Planning Standards and Guidelines (HKPSG), such an assessment had not taken into consideration of demand for tutorial classes. The population in Kowloon City had increased from 121,180 in 2008 to 133,100 in 2018. However, the total land area zoned "G/IC" decreased from 8.99ha to 8.83ha during the same period. A relaxation of BHR for R1's site to facilitate a higher intensity development would increase the total floorspace for the provision of GIC facilities.

17. Mr Greg Lam Kwok Chun played a video clipping in which a number of KCCC and CEC users showed their supports for the redevelopment of KCCC/CEC in anticipation of a larger building for more activities and services. In addition, Ms Leona Lee Fung Yee, Mr Wong Cheuk Chiu, Mr Chu Kit Wah, Mr Wemmich Chow Chi Lai, Mr Chan Kam Sun, Mr Fu Sze Chak, Mr Mak Chong Kei, Mr Godfrey Kwok Sze Yiu, Ms Wong Fan Yi, Ms Chan Suk Fan, Ms Ho Cho Yi and Mr Lai Wing Kuen, representing some users, parents of users or staff of CEC, who were commenters, expressed their supportive views on the proposed

redevelopment of KCCC/CEC mainly for reasons that the existing building was old and there was inadequate floorspace for conducting activities. The BHR of R1's site should be relaxed to facilitate redevelopment to optimize the land use and to provide more facilities.

[The Chairperson arrived to chair the meeting and Mr David Y.T. Lui arrived to join the meeting during the presentation by R1/C2.]

R2/C142 – Mary Mulvihill

18. Ms Mary Mulvihill made the following main points :

- (a) the public consultation process in respect to the OZP amendment was not proper. KCCC, which was located across the road from the LST site, should have been consulted on the amendment made to the LST site and KCCC's redevelopment proposal could have been considered together in a comprehensive manner. In addition, the public was not aware of KCCC's proposal until the Paper was issued before the meeting. Hence, the public was not given any chance to comment on KCCC's redevelopment proposal;
- (b) the existing building at the LST site was one of those buildings included in the consultation brochure for the Rehabilitation and Revitalization Priority Area (RRPA) under the recommendation of Urban Renewal Plan (URP) for Kowloon City by the Kowloon City District Urban Renewal Forum (DURF) as heritage features. The RRPA gave the impression that the LST building would be retained. However, it seemed that only a plaque of the LST building would be retained. As demonstrated by the redevelopment of a church at Kennedy Road in which stone plaques of the old building were retained, the public would not notice the plaques in the new development;
- (c) the RRPA covering the LST site advocated that the optimum building height in that area would be maintained. Similar to the principle of maximising the enjoyment of the harbour view by the general public, it

was also important to ensure that the maximum number of people could enjoy the green view of Kowloon Walled City Park and Carpenter Road Park nearby. A lower building height should be adopted for buildings near these parks;

- (d) an application for rezoning the Kowloon City Plaza located next to Carpenter Road Park for residential development had been submitted and would be considered by the Board in due course. In considering the relaxation of BHR for the LST site, the Board should consider the cumulative effect of development proposals in the pipeline;
- (e) while there were newspaper reports on the aging population and the need for more elderly centres, “G/IC” sites were taken away for residential developments. There was a dire demand for GIC facilities in Ma Tau Kok and Kowloon City. The site under Amendment Item B, which was used as a temporary works area, should be retained for a mixed GIC and recreational use to realise the planning intention of the original “G/IC” zone. Opportunity could also be taken to address the shortage of public car park by providing a car park at the basement levels;
- (f) the site under Amendment Item B was not suitable for residential development as it would be affected by road traffic noise from the East Kowloon Corridor and the surrounding roads. The need to install acoustic windows/balconies in the future residential development was an indication that the site was not a suitable site. For noise reason, acoustic windows could not be opened for ventilation. The future residents would be living in a substandard development if windows could not be opened for ventilation; and
- (g) the trees within the site were healthy and in good shape, but they would be felled for the proposed residential development. Those trees could be retained if the site was kept for low intensity GIC use. The trees along the periphery of the site should also be retained as they provided shades and helped improving air ventilation and air quality.

19. As the presentation from government representatives, representers, commenters and their representatives had been completed, the meeting proceeded to the Q&A session. The Chairperson explained that Members would raise questions and invite the representers/commenters, their representatives and/or the government representatives to answer. The Q&A session should not be taken as an occasion for the attendees to direct questions to the Board or for cross-examination between parties.

20. The Chairperson started by asking the Secretary to clarify the interpretation of the Ordinance regarding representations relating to the draft OZP. The Secretary clarified that, in gist, the consideration of representations and comments on the current draft Ma Tau Kok OZP should be focused on the amendment items only as the draft OZP was not a new plan but was referred back to the Board for amendment under section 12(1)(b)(ii) of the Ordinance. In such circumstances, as provided under section 12(3), the reference to the 'draft plan' under section 6 of the Ordinance referred to the parts of the OZP showing the amendments made to the plan. In this regard, any amendments proposed by a representer under section 6(2)(a)(iii) of the Ordinance should actually be related to the amendment items on the draft OZP, and not on any other site which was not the subject of any amendment items. For proposals to amend the OZP to facilitate private development, they should be dealt with through planning application under section 12A of the Ordinance. The Chairperson then invited other questions from Members.

Amendment Item A

Special Scheme launched by LWB and funding on KCCC/CEC redevelopment

21. Some Members had the following questions :
- (a) why KCCC declined the invitation to join the Special Scheme launched by LWB;
 - (b) whether the cost of KCCC/CEC redevelopment and all related consultancy fees would be funded by the church;

- (c) when KCCC considered that they would not join the Special Scheme in 2014, had they considered self-financing the proposed redevelopment at that time; and
- (d) the responsible bureau/department for giving policy support for the redevelopment of KCCC/CEC.

22. In response, Mr Greg Lam Kwok Chun and Mr Siu Chun Keung, representatives of R1/C2, said that :

- (a) while KCCC/CEC had met the selection criteria of LWB in joining the Special Scheme, they decided to decline LWB's invitation as the Special Scheme was financed by Lotteries Fund. Due to the religious background of their organisation, the acceptance of capital funding from Lotteries Fund might be disputable to members of the church;
- (b) KCCC would raise funds from members of the church to support the redevelopment of KCCC/CEC, including any consultancy fees involved. The consultants would charge KCCC in full;
- (c) since declining LWB's invitation to join the Special Scheme in 2014, KCCC had taken several years to consider their financial situation before making a decision on their redevelopment proposal. KCCC had received donations of about \$1.2 million for the project and the total redevelopment cost would be financed through donation from church members and loan from banks; and
- (d) Home Affairs Bureau (HAB), Social Welfare Department (SWD) and Education Bureau (EDB) might be the relevant bureau/department to give policy support to the redevelopment proposal of KCCC/CEC.

Public consultation on the OZP

23. Some Members had the following questions :

- (a) details on the public consultation process for the proposed amendments on the draft Ma Tau Kok OZP; and
- (b) when did KCCC submit their representation and what were the comments from government departments on R1/C2's proposal.

24. In response, Mr Tom C.K. Yip, DPO/K said that :

- (a) the public consultation process for the amendments to the Ma Tau Kok OZP had followed the statutory requirements under the Ordinance and the established administrative procedures. In essence, the Kowloon City District Council (KCDC) was consulted on the proposed amendments to the OZP in January 2018 before it was gazetted. The draft Ma Tau Kok OZP was exhibited for public inspection and the public was notified in the gazette and newspapers advertisements on the time and places for inspecting the OZP, as well as the deadlines for submitting representations and comments; and
- (b) KCCC submitted their representation (R1) within the statutory plan exhibition period, together with a planning statement and technical assessment reports on their redevelopment proposal. All representations, including that made by R1, were available at the public enquiry counters of PlanD for public inspection, and circulated to the relevant departments for comment. However, most departments did not express any view on the redevelopment proposal at R1's site, as the proposal was not related to any amendment items and should not be considered in the context of considering representations and comments on the OZP.

KCCC/CEC's redevelopment proposal and the relevance to section 6 of the Ordinance

25. Some Members had the following questions :

- (a) whether R1/C2's proposal could be included as an amendment item on the draft OZP if KCCC had raised their concerns during the public consultation;
- (b) whether the Board had agreed to rezone sites in other OZPs as claimed by R1/C2, which was not the subjects of amendment items, to meet the representation of green groups;
- (c) whether exception could be given to accommodate R1/C2's proposal to relax the BHR of their site, given that the intention was to increase the provision of GIC facilities;
- (d) the difference between joining the Special Scheme launched by LWB and obtaining policy support from the relevant bureau;
- (e) before commissioning consultants to prepare their proposal on redeveloping R1's site, whether KCCC/CEC had been advised by PlanD that their redevelopment proposal on the site, which was not the subject of any amendment items, should be submitted in the form of a planning application under section 12A of the Ordinance; and
- (f) whether KCCC/CEC and/or its consultant had obtained any legal opinion in interpreting section 6 of the Ordinance.

26. In response, Mr Tom C.K. Yip said that :

- (a) the representation should focus on the amendment items on the OZP. In considering the representations on the draft Pok Fu Lam OZP in May 2018, the Board also adopted the same stance and decided not to uphold representations to rezone sites that were not the subject of amendments on the OZP;
- (b) R1/C2 had not cited any specific OZP to illustrate their views that the Board had agreed to rezone sites other than those which were subject of

amendment items to meet the representations of some green groups. It was possible that in considering some new OZPs in the rural area such as Hoi Ha, Pak Lap and So Lo Pun which covered the country park enclave areas, the Board had proposed amendments to those OZPs to meet representations made by some green groups. However, those OZPs were new plans to replace the relevant Development Permission Area plans for which, representations could be made in respect of any zoning within the extent of the OZP. Hence, the proposed amendments made by the Board to meet the representations of some green groups were in line with the provisions of the Ordinance. Other than that, he was not aware of any precedent case where the Board had proposed amendment to a site, which was not the subject of any amendment items to meet a representation; and

- (c) in the event that KCCC/CEC wanted to propose relaxation of the BHR of their site, a planning application for amendment to the OZP under section 12A of the Ordinance should be submitted for the Board's consideration. Alternatively, KCCC/CEC might seek policy support from the relevant bureaux and to demonstrate that their proposal was technically feasible such that PlanD, on the advice of the relevant bureaux, could initiate the process of amending the OZP for the Board's consideration. Based on the current information, the services to be provided by KCCC/CEC seemed to be religious and educational in nature, policy support from HAB and EDB should be obtained respectively. PlanD could assist KCCC/CEC in liaising with the relevant bureaux, if necessary. Policy support could also be obtained in the context of the Special Scheme launched by LWB.

27. The Chairperson supplemented that PlanD would not normally take initiative to revise the BHR of a particular site for private development in the absence of policy support from the relevant bureau in the first place, unless such revision was carried out under a comprehensive review of BHR of the OZP in general. Individual land owner could also submit a planning application to the Board under section 16 of the Ordinance for minor relaxation of BHR or under section 12A for a revision to the BHR.

28. Mr Greg Lam Kwok Chun and Mr Siu Chun Keung, representatives of R1/C2, said that :

- (a) KCCC/CEC considered that section 6(2) of the Ordinance did not explicitly state that any proposed amendments to the draft OZP had to be related to the amendment items. They tried to arrange a meeting with PlanD after submitting their representation in May 2018 with a view to seeking some feedback on their submission, but PlanD refused to meet with them. Prior to the hearing, they did not know that the representation and proposed amendment to the draft OZP should only be made to those amendment items. As there was an urgent need to provide better GIC facilities at R1's site, the Board should consider their representation flexibly; and
- (b) they had not obtained any legal opinion on the interpretation of the Ordinance.

29. In response to a Member's question on the advice given to R1/C2's consultants, Mr Tom C.K. Yip, DPO/K clarified that the consultants of R1/C2 had been advised prior to the submission of their representation that their proposal to relax the BHR of R1's site to facilitate redevelopment, which was not the subject of any amendment item, should be dealt with by way of an application under section 12A. While the consultants had requested for a meeting to discuss Government's response to their representation, PlanD declined their request for a meeting as the redevelopment of R1's site should not be dealt with under the representation process and that submission of further information on a representation would not be accepted under the provisions of the Ordinance.

Provision of GIC facilities

30. Some Members had the following questions :

- (a) whether there was information on the amount of additional gross floor area (GFA) at the LST site upon its redevelopment, and whether

KCCC/CEC had approached LSTBS for incorporation of some of their tutorial classes/interest groups in the new building of LSTBS;

- (b) apart from LSTBS and KCCC/CEC, whether there were any other organisations in Ma Tau Kok providing welfare services in other “G/IC” sites, and whether they had the same constraint in redeveloping their sites; and
- (c) whether the responsible bureau/department would coordinate the services provided by LSTBS and KCCC/CEC, or any other welfare service operators in Ma Tau Kok.

31. In response, Mr Tom C.K. Yip, DPO/K said that :

- (a) the existing LSTBS headquarters and clinic, which were for welfare use, was estimated to have a GFA of slightly over 1,000m². Upon redevelopment of the LST site, the total GFA for welfare use would be about 16,000m². There would be a nursing home/care and attention home for the elderly with 400 beds, a day care centre for the elderly and an early education and training centre to cater for the need of the community and that would meet LWB’s target facilities under the Special Scheme. The proposed classes for the children and the elderly provided by KCCC/CEC were mainly education services whereas the children and elderly facilities provided by LSTBS were for welfare purpose; and
- (b) apart from KCCC/CEC, there was no other known redevelopment proposal on “G/IC” sites in the Ma Tau Kok area. Suitable sites were zoned “G/IC” on the OZP to reserve land for various GIC uses. In addition, population based GIC facilities were planned according to HKPSG. The relevant bureaux would assess the demand for other types of non-population based welfare facilities/services.

32. Mr Greg Lam Kwok Chun, representative of R1/C2, said that the children and elderly services provided by LSTBS were welfare oriented while that provided by KCCC/CEC were education oriented. The two organisations had served the community throughout the years by serving people with different needs. HAB and SWD would liaise with welfare operators in Ma Tau Kok to discuss the services to be provided according to the demand. KCCC/CEC had a good working relationship with LSTBS and the two organisations would refer clients to each other.

Amendment Item B

33. Some Members had the following questions for Amendment Item B :

- (a) whether the proposed public housing development was in the form of subsidised housing for sale;
- (b) whether all 37 trees within the site would need to be felled;
- (c) whether it was necessary to reserve a site to facilitate the future redevelopment of Lok Man Sun Chuen nearby and whether the rezoning of the site for public housing development was related to the redevelopment of Lok Man Sun Chuen; and
- (d) as this item was related to rezoning a “G/IC” site for residential development, whether there was any deficit in open space, recreational or GIC facilities in Ma Tau Kok.

34. In response, Ms Emily W.M. Ip, Senior Planning Officer, HD said that :

- (a) subsidised sale flats in a single block design was planned for the site;
- (b) in carrying out the feasibility study for the proposed public housing development at the site, HD had examined the possibility of retaining the trees. Due to the sloping topography of the site and the need for a

vehicular ingress/egress, most of the trees within the site could not be retained; and

- (c) the site was planned for public housing development to be carried out by HKHA. The nearest public housing estate of HKHA to the site was Ma Tau Wai Estate and there was no redevelopment plan for that estate at this stage. Lok Man Sun Chuen was developed by the Hong Kong Housing Society.

35. Mr Tom C.K. Yip, DPO/K, supplemented that there was a surplus of about 4 ha of district open space and a deficit of about 7 ha of local open space in Ma Tau Kok OZP. However, there was a surplus of local open space in the Kowloon City District. Ma Tau Kok planning area was relatively small, and residents would also use the open space in the adjacent Ho Man Tin, Hung Hom and Kai Tak areas. There was also provision of basketball courts at the parks within the area. The planned provision for various major community facilities in the area was generally sufficient except for secondary classrooms that were assessed on a wider district basis, and there was surplus provision in Kowloon City District. In view of the above, the rezoning of the site under Amendment Item B for residential development was considered appropriate.

[Professor S.C. Wong, Mr David Y.T. Lui and Mr Stephen L.H. Liu left the meeting during the Q&A session.]

36. As Members had no further questions to raise, the Chairperson said that the hearing procedure for the representations had been completed. The Board would further deliberate on the representations and comments and inform the representers and commenters of the Board's decision in due course. The Chairperson thanked the representers, commenters and their representatives and the government representatives for attending the meeting. They left the meeting at this point.

Deliberation Session

Amendment Item A

37. A Member said that section 6(2) of the Ordinance stated that a representation should indicate the particular matter in the draft plan to which the representation related, and asked whether 'the particular matter' should refer to the amendment items on the draft plan. The Secretary clarified that the Chief Executive in Council agreed to refer the approved Ma Tau Kok OZP to the Board for amendment under section 12(1)(b)(ii) of the Ordinance. Section 12(3)(b)(i) stated that a reference to 'the draft plan' under section 6(1) and 6(2)(a) was a reference to any of the amendments. Hence, the representation on the draft Ma Tau Kok OZP should only relate to the amendment items on the plan.

38. The Chairperson said that the Secretary had already clarified during the hearing session on the interpretation of 'draft plan' under the Ordinance and that representations should be made only with regard to amendment items. Despite the good intention of KCCC/CEC in providing better services to the community, their proposal to relax the BHR of R1's site, which was not related to any amendment items, could not be considered through the representation process. KCCC/CEC would need to either submit a planning application under section 12A of the Ordinance to facilitate its redevelopment proposal, or to obtain policy support from the relevant bureaux in order that PlanD could initiate the process of amending the OZP to facilitate redevelopment of their site.

39. Members generally agreed that although there was a genuine need to redevelop the existing building at R1's site, the proposal to relax the BHR of the site should not be considered under the representation hearing of the current plan making process and it was not necessary to discuss R1/C2's proposal in detail.

40. Regarding R1/C2's proposal in respect of their site, a Member said that the Board should explain to R1/C2 clearly that the amendments (if any) proposed by any representer should only be related to the amendment items on the current draft OZP. The Chairperson noted that DPO/K had explained during the Q&A session that his office had advised KCCC, before their submission of the representation, that their proposal should be processed under section 12A of the Ordinance. She also noted KCCC's response during the Q&A session saying they had not obtained legal advice.

41. Some Members considered that R1/C2's representation/comment should have been ruled as invalid in the first place as it was not related to any amendment items. While

the Board was accommodating in listening to R1/C2's oral presentation, R1/C2 should be reminded to focus on the amendment item. The Secretary said that as R1 explicitly stated in their representation that they supported Amendment Item A regarding the LST site, the representation could not be ruled invalid and PlanD had already advised KCCC that their proposal should be dealt with by way of a planning application under section 12A of the Ordinance. The Chairperson said that there were constraints in ruling a representation as invalid when it was presented as one related to an amendment item. Members generally considered that a more stringent approach could be taken in future in the hearing of representations which were not genuinely related to any amendment items.

[Dr Lawrence K.C. Li, Mr Daniel K.S. Lau and Mr Andy S.H. Lam left the meeting at this point.]

42. A Member considered that it was appropriate for PlanD to refuse KCCC's request for a meeting after submission of their representation, knowing that it was not a proper means to process KCCC's proposal on their site, which was not an amendment item.

Amendment Items B and C2

43. The Chairperson said that Amendment Item B was related to a rezoning for subsidized housing for sale while Amendment Item C2 was minor boundary adjustment to reflect the existing as-built residential use. Noting that there was a shortage of land supply for residential development and the site was one of those sites identified as suitable for residential development, Members generally did not consider that the site should be retained for GIC use.

44. A Member said that the OZP amendment to facilitate public housing development was supported, and commented that there was a need to continue to identify suitable site to facilitate redevelopment of existing old public housing estates in the To Kwa Wan area.

45. Members generally agreed that there was no strong justification to amend the draft OZP to meet the adverse representations on Amendment Items B and C2, and the major grounds of the representations and comments had been addressed by the departmental

responses as detailed in the Paper and the presentations and responses made by the Government representatives at the meeting.

46. After deliberation, the Board decided to note the supportive view of R1(part) on Item A, and not to uphold R1(part) and R2 to R6, and agreed that the OZP should not be amended to meet the representations for the following reasons:

“Item A

- (a) the relaxation of the building height restriction (BHR) for the Lok Sin Tong (LST) site will facilitate the proposed social welfare complex development to provide the much needed social welfare facilities for the community. With suitable mitigation measures, the proposed redevelopment would not be subject to adverse environmental impacts and will induce no significant traffic, visual and air ventilation impacts onto the surrounding areas (R3 to R6);
- (b) the historic elements of the LST site will be preserved, retained and exhibited in the redevelopment. The redevelopment is not contrary to and will not jeopardise the recommendation of the Urban Renewal Plan for Kowloon City (R2);

Item B

- (c) land suitable for housing development in Hong Kong is scarce and there is a genuine need for optimising the use of land available to meet the pressing demand for public housing. The Ko Shan Road (KSR) site is considered suitable for public housing development. It is compatible with the surrounding environment, and sustainable from traffic, environment, air ventilation, visual and landscape perspective (R2 to R6);
- (d) there is surplus provision of district open space in Ma Tau Kok area as well as the wider Kowloon City district. Sufficient local open space will be provided within the KSR site. The planned provision for community facilities in Ma Tau Kok is generally sufficient. Public car

parking facilities will be provided at KSR site and social welfare facilities will be provided at the LST site to serve the local residents and community (R2 to R6);

Item C

- (e) the amendment under Item C2 covers part of the podium of an existing development. It is to reflect the existing as-built residential use, and there is no tree at that strip of land (R2); and

Other

- (f) the site at 40 Lung Kong Road is not the subject of any amendment items under the current draft Outline Zoning Plan (R1).”

[The meeting was adjourned for a 5 minutes break.]

[Professor Jonathan W.C. Wong and Mr Alex T.H. Lai left the meeting at this point.]

Tuen Mun & Yuen Long West District

Agenda Item 4

Review of Application No. A/TM-LTYT/273-1

Proposed Extension of Time for Commencement of the Proposed Residential Development (Flat) for a Period of 4 Years until 17.10.2022 in “Residential (Group E)” Zone, Lots 212 RP, 232, 233, 234, 235, 236 RP, 237, 238, 239, 243, 244, 246 RP, 246 S.A, 246 S.B, 247, 367 and 368 RP in D.D. 130 and Adjoining Government Land, Lam Tei, Tuen Mun (TPB Paper No. 10476)

[Open meeting (Presentation and Question Sessions only)]

[The item was conducted in English and Cantonese.]

Presentation and Question Sessions

47. The Secretary reported that the application to the Town Planning Board (the Board) under s.17(1) of the Town Planning Ordinance, Cap. 131 (the Ordinance) for a review of the decision of the Rural and New Town Planning Committee (the RNTPC) of the Board

dated 15.6.2018 to reject application No. A/TM-LTYYY/273-1 (the review application) was submitted by Join Smart Limited which was a subsidiary of Sun Hung Kai Properties Limited (SHK), with Llewelyn-Davies Hong Kong Limited (LD), Ronald Lu & Partners (Hong Kong) Limited (RLP), Mayer Brown and AECOM Asia Company Limited (AECOM) as the consultants of the applicant, and Masterplan Limited (HK) (Masterplan) was the representative of the applicant. According to the Government, the application site (the Site) would encroach into a public housing development site at San Hing Road and Hong Po Road proposed by the Housing Department (HD), which was the executive arm of the Hong Kong Housing Authority (HKHA). The following Members had declared interests on the item for having business dealings/affiliation with the concerned parties :

- | | | |
|--|-----|---|
| Mr Raymond K.W. Lee
<i>(as Director of Planning)</i> | - | being a member of the Strategic Planning Committee (SPC) and Building Committee of HKHA |
| Mr Martin W.C. Kwan
<i>(as Chief Engineer (Works),
Home Affairs Department)</i> | - | being a representative of the Director of Home Affairs who was a member of SPC and the Subsidised Housing Committee of HKHA |
| Mr Ivan C.S. Fu | - | having current business dealings with SHK, Masterplan and AECOM and past business dealings with HKHA |
| Mr K.K. Cheung
Mr Alex T.H. Lai |]] | their firm having current business dealings with SHK, HKHA and AECOM |
| Dr C.H. Hau | - | having current business dealings with AECOM and the institute he served having current business dealings with HKHA |

- Mr Thomas O.S. Ho - having current business dealings with SHK, RLP, AECOM and HKHA

- Professor S.C. Wong - having current business dealings with and being the traffic/engineering consultant of AECOM; being the Chair Professor of the University of Hong Kong, SHK had sponsored some activities of the Department before

- Mr Stephen L.H. Liu - having past business dealings with SHK, LD, RLP and HKHA

- Mr Franklin Yu - having past business dealings with SHK, AECOM and HKHA, and his spouse was an employee of SHK

- Miss Winnie W.M. Ng - being a Director of the Kowloon Motor Bus Company (1933) Ltd. (KMB) and SHK was one of the shareholders of KMB

- Mr Ricky W.Y. Yu - his firm having current business dealings with LD

- Mr Daniel K.S. Lau - being the Director (Development & Marketing) of the Hong Kong Housing Society, which was currently in discussion with HD on housing development issues

- Dr Lawrence W.C. Poon - his spouse being a civil servant of HD but not involved in planning work

[Mr Franklin Yu left the meeting at this point.]

48. Members noted that Mr Ivan C.S. Fu, Mr Thomas O.S. Ho, Miss Winnie W.M. Ng and Mr Ricky W.Y. Yu had tendered apologies for being unable to attend the meeting. Professor S.C. Wong, Dr Lawrence W.C. Poon, Mr Raymond K.W. Lee, Mr Martin W.C. Kwan, Mr Stephen L.H. Liu, Mr Franklin Yu, Mr Alex T.H. Lai and Mr Daniel K.S. Lau had left the meeting. Members agreed that as Mr K.K. Cheung and Dr C.H. Hau had not participated in the project, they could stay at the meeting.

49. The following Government representatives and representatives of the applicant were invited to the meeting :

Planning Department (PlanD)

Mr David Y.M. Ng	-	District Planning Officer/Tuen Mun & Yuen Long West (DPO/TM&YLW)
Ms Stella Y. Ng	-	Senior Town Planner/Tuen Mun 2 (STP/TM2)
Mr Kent K.H. Lee	-	Town Planner/Tuen Mun 1 (TP/TM1)
Mr Simon P.S. Lee	-	Legal Advisor of the Town Planning Board Section (TPB Section)

Applicant

<i>Join Smart Limited</i>]	
Mr Grant Yuen]	
<i>Masterplan Limited</i>]	
Mr Ian Brownlee]	Applicant's representatives
Mr Benson Poon]	
<i>Mayer Brown</i>]	
Mr Robert Lynn]	

50. The Chairperson extended a welcome and explained the procedure of the review hearing. She then invited DPO/TM&YLW to brief Members on the review application.

51. Mr David Y.M. Ng, DPO/TM&YLW said that a replacement page of the TPB Paper No. 10476 (the Paper) was tabled for Members' reference. With the aid of a PowerPoint presentation, Mr Ng briefed Members on the background of the review application including the consideration of the application by the RNTPC, departmental and public comments, and planning considerations and assessments as detailed in the Paper.

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

53. With the aid of a PowerPoint presentation, Mr. Ian Brownlee, Mr Benson Poon and Mr Robert Lynn made the following main points :

Introduction

- (a) the majority of the land in the Site was private land which accounted for about 95% of the site area. While only two strips of land fell within government land (about 5%), the situation posed the major obstruction in the applications for land exchange and general building plan (GBP) approval;
- (b) the Site fell within the "Residential (Group E)" ("R(E)") zone on the draft Lam Tei and Yick Yuen Outline Zoning Plan No. S/TM-LTYYY/9 (the OZP). The general planning intention for the planning scheme area, amongst others, was to encourage upgrading for the environment through comprehensively planned development by private sectors and infrastructural improvement works by government departments. The planning intention for the "R(E)" zone was for phasing out of existing industrial uses through redevelopment for residential use on application to the Board, based on which planning application No. A/TM-LTYYY/273 was approved. After the planning permission was granted, there was no change in the land use zoning and planning intention of the Site;

- (c) there was no mentioning of public housing development in relation to the Site on the OZP. Although applications for the extension of time (EOT) for commencement of the approved development were considered in accordance with the Town Planning Board Guidelines No. 35C on Extension of Time for Commencement of Development (TPB PG-No. 35C), it should be noted that it was just a guideline while the planning intention was contained in the OZP with statutory status. For complex project like the subject case, it was not uncommon that the development might not be able to commence within the four-year validity period. It was noted that the Board used to give sympathetic consideration to EOT applications and only under very exceptional situation would an EOT application be disapproved;

- (d) given the Board was an independent statutory authority between the public and the Government, it should be independent of the Lands Department (LandsD), Buildings Department (BD) and Planning Department (PlanD). The Board should not mix up its plan-making and planning application approval functions. As the proposed public housing development at the Site was premature and speculative, the statutory OZP amendment process had not commenced yet. As the Board had yet to propose and accept the zoning amendment for the proposed public housing development at the Site, there was uncertainty with regard to the way forward and the Board should not reject the EOT application based on PlanD's recommendation. Only after the zoning of the Site was amended and the OZP was approved, the Board should consider the proposed public housing development within the legal context provided in the new zoning of the OZP;

Background

- (e) in September 2014, HD presented a potential public housing scheme at San Hing Road with a site area of 8.7 ha and partly overlapping with the Site to the Tuen Mun District Council (TMDC). The scheme was not supported by TMDC as it was conceptual with no indication of traffic and other impacts and there was inadequate public consultation;

- (f) in October 2014, the applicant's section 16 application for private housing development was approved by RNTPC on the considerations that the proposed private housing development complied with the planning intention of the "R(E)" zone; there was no adverse impact from technical standpoint; the proposed private housing scheme was more advanced in terms of readiness for implementation but the proposed public housing development was still at a conceptual stage, and TMDC strongly opposed public housing scheme with legitimate concerns. There were other section 16 applications No. A/TM-LTY Y/282 and 337 for private housing development located in the same "R(E)" zone in the vicinity and overlapping with the proposed public housing development. Those other section 16 applications were approved by RNTPC on 13.3.2015 and 23.6.2017 respectively. At about the same time of the approval of application No. A/TM-LTY Y/337, the project profile for applying the Environmental Impact Assessment (EIA) Study Brief with the site boundary for the proposed public housing development enlarged was submitted to the Environmental Protection Department (EPD) by the Civil Engineering and Development Department (CEDD). The feasibility study for the proposed public housing development at San Hing Road and Hong Po Road was commenced in February 2018 for tentative completion in Q1 2020. However, the latest status of the two approved schemes for private housing development had not been taken into account;
- (g) the applicant's EOT application was rejected in June 2018. The applicant did not agree with RNTPC's rejection reasons including that there had been a material change in planning circumstances and the applicant failed to demonstrate that there was a good prospect to commence the proposed development within the extended time limit on the following grounds:

No Material Change in Planning Circumstances

- (h) the scheme presented by HD to TMDC in September 2014 was based on a land use review and all of the sites in the scheme were earmarked as

“potential public housing sites” as the recommendations of the land use review were conceptual. The subsequent feasibility study and the EIA for the proposed public housing development were aiming to identify development options and ascertain whether there were adverse impacts on the surrounding area. There were examples that the proposed public housing schemes would change after feasibility study or not accepted by the Board. For example, the scale of the proposed public housing development in Pokfulam South was reduced after technical studies in 2015 and the zoning amendments for public housing developments in Tsing Yi and Tseung Kwan O OZPs were reverted back to the original zoning in 2016 and 2018 respectively after consideration by the Board;

- (i) according to TPB PG-No. 35C, one of the criteria for assessing EOT applications was whether there had been any material change in planning circumstances since the original permission was granted, such as a change in planning policy or land-use zoning for the area. It should be noted that the planning policy, i.e. the planning intention of the “R(E)” zone, had not been changed. Besides, there was no change in the land-use zoning and development parameters, and no rezoning proposals for the Site. Given there was no change in planning policy and land-use zoning at the Site, there was no material change in planning circumstances. PlanD had adopted a wrong assumption to conclude that the issuance of Study Brief for EIA and the commencement of feasibility study for the proposed public housing development could be regarded as a material change in planning circumstances;
- (j) HD’s scheme would prolong the development process as the zoning amendment to the OZP could only commence after 2020 and would take at least 18 months to complete. Further delays might be caused by objections and judicial reviews (JR) which would take 12 to 15 years before any public housing units would be ready for occupation. On the other hand, the applicant's approved scheme could be completed within 4 to 5 years’ time;

Good Prospect to Commence Development

- (k) reasonable actions had been taken by the applicant to implement the approved development, including compliance with the approval conditions and clearing the Site to facilitate construction works. The applicant had also made five GBP submissions and applied for land exchange. As compared with HD's proposed public housing development, the private housing project was more advanced in terms of readiness for implementation in the development process;

- (l) the GBP submission process was frustrated by unreasonable objections from the District Planning Office (DPO) of PlanD. The first three GBP submissions were disapproved in August 2015, April 2017 and December 2017 respectively with DPO's objection that some of the approval conditions needed to be complied with before GBP approval, the change in internal layout was a Class B amendment to the approved development proposal and required planning permission, and/or the landscape provision deviated from the accepted landscape proposal. District Lands office (DLO) considered that the GBP submission was not acceptable as the proposed land exchange of the Site was yet to be approved and completed. To address departmental comments, the Site was reduced to exclude the Government land in the fourth submission and divided into two parts (each contained half of the Site) with the Government land in the southern part in the fifth submission. However, the GBPs were disapproved in June 2018 and September 2018 respectively with DPO's objection that the change in planning parameters deviated from the approved scheme, and there was no indication that the proposed development would be implemented by phases. DPO's objection was unreasonable as the Site was one site with separate GBP submissions without phasing. Even if there was phasing, it was a Class A amendment to the approved development proposal which was always permitted. Therefore, it should not be a planning issue at the GBP stage. Besides, it was noted that there was a precedent case at Yuen Long North-east of Au Tau round-about in that separate GBP submissions for a site with planning permission were approved in 2012 with no objection

from DPO. In view of the above, two appeals had been lodged to the Buildings Appeal Tribunal on 24.9.2018 to refute the unreasonable rejection of GBP submissions;

- (m) the applicant had submitted a land exchange application in January 2015. At the request of DLO in July 2016, the applicant had prepared site survey plan for DLO's consideration. However, DLO in commenting on the current review application in July 2018 stated that the processing of the land exchange had to be put on hold, pending the results of the feasibility study for the proposed public housing development at San Hing Road and Hong Po Road being undertaken by CEDD. DLO's decision to put on hold the land exchange application until the feasibility study was completed in Q1 2020 was a deadlock stance;

EOT Decision based on Incomplete Information by DPO

- (n) TMDC's standpoint on the proposed public housing development was not adequately reflected by DPO's presentation. While it was mentioned in the RNTPC Paper No. A/TM-LTYT/273-1A that TMDC indeed supported the proposed public housing development at San Hing Road, it was noted from the discussion of the TMDC meeting in November 2016 that TMDC only supported in principle the proposed public housing development at San Hing Road, provided that their concerns on inadequate public consultation, adverse traffic impact, and insufficient details of the public housing scheme were addressed. Besides, it was noted that TMDC and the locals had strongly objected to new public housing developments in the representation hearing of the Tuen Mun (TM) OZP in August 2018;

Legal Context not Respected by the Government

- (o) the key issue in the *International Trader Limited v Town Planning Appeal Board* [2009] 3 HKLRD 339 (International Trader case) was whether the Board, when determining a section 16 application was entitled, or required, to have regard to all planning considerations it reasonably judged to be

relevant. The Court of Appeal (CA) held that the discretion of the Board had to be exercised within the parameters of the relevant approved plan. If material considerations which fell outside of the ambit of the approved plan were taken into account, the Board acted *ultra vires*;

- (p) the relevance of the International Trader case on the subject EOT application was that HD's proposed public housing development was still in a preliminary stage and was not within the parameters of the OZP. If the Board took into consideration HD's plan which was not contemplated by the OZP, it would act *ultra vires*;
- (q) the applicant did not agree with PlanD's view that the *Hysan Development & Ors v Town Planning Board* (FACV 21/2015) (Hysan Development case) was not applicable as the applicant's development right had not been deprived. The applicant had a right to carry out the proposed residential development in accordance with the OZP and the planning permission. If the EOT application was rejected by the Board based on a "material change in planning circumstances", the applicant's right would be affected and the Basic Law Articles 6 and 105 would be engaged. A proportionality test would need to be carried out to ensure that the societal benefits of the proposed public housing had to be balanced against the inroads made into the constitutionally protected rights of the applicant. Given that the feasibility of the proposed public housing development had not been established yet, it was manifestly unreasonable to use it as a reason to encroach upon the applicant's right of development;

The Government must Explore Alternatives

- (r) a physical and social mix of public and private housing was desirable. Given the acute need for private housing to meet community aspirations, private housing development should be accorded with the same importance as public housing development. The role of the Board was to provide a planning framework including land use zoning and development parameters to guide development and redevelopment in the plan-making

stage. Under section 16 applications, the Board should not define the housing type (i.e. public or private) or the agent to implement the zoning, which were beyond the parameters of the OZP;

- (s) while it was the requirement under the EIA Study Brief to take account of the existing developments and approved development proposals when preparing alternatives, and DPO had mentioned in the consideration of the section 16 application that the Government had already explored whether the proposed housing developments in the area could be adjusted to take into account the approved private housing developments, however, no assessment result had been given, no liaison with the private landowners had been conducted, and no alternative had been proposed. Besides, as the surrounding area was pre-dominantly occupied by three-storey houses and green belt areas, the development of high-rise public housing would lead to a substantial change in the planning intention of the area, which might not be acceptable to the Board. As such, it was premature to reach a conclusion that the proposed public housing development was more appropriate;
- (t) the applicant had prepared an alternative scheme in noting the requirement of the EIA's Study Brief to prepare land use options with regard to the approved planning applications. The alternative showed that both the proposed private and public housing developments could proceed together which would not only provide a better mix of private/public housing, but also meet the population target as recommended in CEDD's study;

Implementation Process if the EOT Application was Approved

- (u) if the EOT application was approved, the applicant could take all legal steps to implement the proposed development including seeking approval of the GBP. The planning permission under the subject application would remain valid until 2022, which was about the time that amendment to the OZP might have been made. After completion of the amendment to the OZP for a more intensive development in the area, the Government could

then decide whether the landowner could proceed with the development according to the new land use zone, or to resume the private land for the implementation of public housing. The land resumption and compensation process was a more proper step to proceed with the proposed public housing development than rejecting the EOT application by the Board; and

- (v) the Board, as an independent authority, should act in accordance with its lawful role and make a decision within the parameters of the OZP. Given there was no material change in planning circumstances and a reasonable good prospect of implementation, the Board was urged to grant permission to the EOT application.

[Ms Lilian S.K. Law left the meeting at this point.]

54. As the presentations from DPO/TM&YLW and the applicant's representatives had been completed, the Chairperson invited questions from Members.

Material Change in Planning Circumstances

55. Noting that one of the criteria for assessing EOT applications as stated in TPB PG-No. 35C was "whether there had been any material change in planning circumstances since the original permission was granted (such as a change in the planning policy/land-use zoning for the area)", the Chairperson asked how the applicant would interpret the words "such as", specifically whether the part of that criterion put in brackets was meant to be exhaustive. In response, Mr Ian Brownlee and Mr Benson Poon, the applicant's representatives, made the following main points :

- (a) while "such as" meant "for example", it should be noted that carrying out feasibility study or EIA had not been included as examples for material change in planning circumstances. The Government's sounding out of the proposed public housing development, the commencement of the feasibility study and the issuance of EIA Study Brief could not be considered as material change in planning circumstances as the public housing

development was still in a conceptual stage and it was premature to conclude that it was feasible; and

- (b) as public housing development had not been included in the Notes and Explanatory Statement (ES) of the OZP, it was not within the OZP parameters and did not fall within the scope of section 16 applications. Not until amendment to the OZP to facilitate the proposed public housing development was put forward, the representation hearing process was completed and the final decision on the zoning amendment was made, it could not be considered as a material change in planning circumstances.

56. The Chairperson and some Members raised the following questions to the government's representatives:

- (a) how to demonstrate the Government had greater commitment in the proposed public housing development after the planning permission for application No. A/TM-LTY Y/273 was granted and whether the Government's actions could be considered as material change in planning circumstances as set out in TPB PG-No. 35C;
- (b) how the applicant was made known of the Government's commitment of public housing development in the area and whether the relevant documents related to the proposed public housing development had been provided to the applicant; and
- (c) the time frame for the implementation of the proposed public housing development.

57. In response, Mr David Y.M. Ng, DPO/TM&YLW, made the following main points with the aid of some PowerPoint slides:

- (a) planning application No. A/TM-LTY Y/273 was approved by RNTPC on 17.10.2014 mainly on the ground, amongst others, that the proposed public housing development at San Hing Road was still at the conceptual stage.

After the planning permission was granted, the Development Bureau (DEVB) consulted TMDC on the identified housing sites in Tuen Mun (TM) including the San Hing Road public housing development in January 2015. In November 2016, HD briefed TMDC on the latest progress of the proposed public housing development in TM including the San Hing Road public housing development. The Transport and Housing Bureau, in replying a Legislative Council (LegCo) question in November 2016, had highlighted the formulation of an appropriate development proposal for public housing development at San Hing Road. With a view to meeting the acute short to medium-term housing needs, the Government had stepped up its effort in increasing housing land supply. In order to maximise the development potential of the public housing sites, the San Hing Road project (with a site area of about 8ha and a plot ratio (PR) of 5 for the development of 11 blocks) was enlarged and another site at Hong Po Road was included in the proposed public housing development, making up a total site area of more than 20 ha. The San Hing Road and Hong Po Road public housing project was a “Designated Project” under the EIA Ordinance. The enlarged site for the proposed public housing development was included in the project profile for applying the EIA Study Brief which was submitted to the EPD in June 2017 and the Study Brief was issued in August 2017. The feasibility study commissioned by CEDD was commenced in February 2018 and scheduled for completion in Q1 2020. As compared with the situation in 2014, the Government had a clearer policy on the planned land use for the area and greater commitment in the proposed comprehensive public housing development. As such, there was material change in planning circumstances;

- (b) as all of the documents including the LegCo reply and district council (DC) papers were open to the public and available on relevant websites, the applicant could get known of the Government’s latest commitment on the public housing development at San Hing Road and Hong Po Road in the public domain. The documents had not been provided to the applicant separately by the relevant bureau/department; and

- (c) subject to the recommendation of the feasibility study, which would be completed in Q1 2020, that the proposed public housing development was technically feasible without insurmountable problems and the proposed development option was acceptable by relevant government departments, PlanD would submit the zoning amendments to the OZP for the Board's consideration in Q2 2020.

58. In response, Mr Ian Brownlee said that all of the existing commitments of the Government were related to the carrying out of studies. Only amendments to the OZP could be taken as the Government's commitment to the proposed public housing development and considered as a material change in planning circumstances.

Legal Considerations

59. In response to a Member's question on the background and implication of the International Trader case, Mr Ian Brownlee and Mr Robert Lynn, the applicant's representatives, said that part of the site in concern was a stepped street site originally zoned "Residential (Group A)" ("R(A)") without restriction on development intensity. The site was subsequently rezoned to "Residential (Group C)7" ("R(C)7") with a maximum PR of 5 and a maximum building height of 12 storeys due to inadequate access for servicing and fire fighting and it was stated in the ES of the relevant OZP that comprehensive development/redevelopment of the "R(C)7" sub-area could still be pursued with amalgamation of sites and favourable consideration might be given to relaxation of the development restrictions upon submission of comprehensive development/redevelopment proposals. However, when section 16 applications for proposed residential developments with higher development intensity and site amalgamation to address the access issue were submitted, the applications were rejected by the Board on review mainly on the grounds of insufficient planning merits, adverse visual and traffic impacts. The applicant's appeals to the Board's decisions were dismissed by the Town Planning Appeal Board (TPAB) and the applicant subsequently applied for judicial review (JR) against TPAB's decisions. The Court of First Instance (CFI) quashed the decisions of the TPAB. The Board lodged an appeal against CFI's judgment to the Court of Appeal (CA) but the appeal was dismissed by the CA. The CA ruled that when considering a section 16 application for permission under and in terms of an approved plan, the Board was not given a blank canvas. The canvas was

already painted with the relevant approved plan. The Board's discretion should be exercised within the limits of the relevant approved plan. If it took into account material considerations which fell outside of the ambit of an approved plan, it acted *ultra vires*. As such, the Board should not mix up its plan-making and planning application approval functions. While the Board could consider a basket of factors under its plan-making function, it did not have the power to have regard to any and all planning considerations in the consideration of planning applications, and its discretion had to be exercised within the parameters of the OZP. In the *Henderson Real Estate Agency Ltd. v Lo Chai Wai* [1997] HKLRD 258, it was established that while guidelines could be taken into account, they did not have the standing as the Notes of the OZP which was statutory. In the subject case, the planning intention of the "R(E)" zone in the Notes of the OZP was statutory document to be considered, and no public housing development had been mentioned in the planning intention of the "R(E)" zone.

60. The Chairperson asked the applicant's representatives whether CA's ruling on the International Trader case was applicable to the EOT application which was submitted under section 16A of the Town Planning Ordinance (the Ordinance). In response, Mr Robert Lynn said that according to section 16A(2) of the Ordinance, where any permission was granted under section 16, the person to whom the permission was granted might apply to the Board for acceptance of any amendments which were Class B amendments. Given the EOT application was an amendment to the approved scheme under section 16 of the Ordinance, the legal principles of CA's ruling were applicable. Mr Ian Brownlee said that section 16A application still needed to follow the basis of the original approval that was made under the "R(E)" zoning. Mr Benson Poon, the applicant's representative, supplemented that the material change in planning circumstances as mentioned in TPB PG-No. 35C needed to be considered within the planning parameters of the OZP. Otherwise, it would be outside the legal realm the community was entitled to look at.

61. In response to a Member's question, Mr Simon P.S. Lee, legal advisor of the TPB Section, PlanD, said that CA's judgement was a legal view point rather than a planning policy. While the judgement had provided a guidance for the consideration of section 16 applications, the subject EOT application was a section 16A application for amendment to the approved development proposal. In the consideration of the subject application, while the Board was required to take into account the Notes of the OZP, the Town Planning Board

Guidelines could not be disregarded. TPB PG-No. 35C had provided clear guidelines with a number of assessment criteria for the consideration of EOT applications. The Board should consider whether the EOT application complied with TPB PG-No. 35C with reference to the comments from relevant government departments.

EOT Application

62. Some Members raised the following questions to the government's representatives:

- (a) whether it was a legitimate expectation for the approval of the EOT application by the applicant;
- (b) whether the approval conditions would need to be complied with before the commencement of the approved development;
- (c) whether the EOT application for four years was to facilitate the land exchange process; and
- (d) the consequence if the EOT application was not approved.

63. In response, Mr David Y.M. Ng, DPO/TM&YLW, made the following main points with the aid of some PowerPoint slides:

- (a) according to TPB PG-No. 35C and the Town Planning Board Guidelines No. 36B for Class A and Class B Amendments to Approved Development Proposals (TPB PG-No. 36B), if an approved development had not commenced within the specified time limit, the applicant might apply for an EOT for commencement of the development, which was a Class B amendment under section 16A of the Ordinance. Under the established practice, DPO would circulate the EOT application received for departmental comments. If there was no adverse comment from relevant government departments, the application might be approved by PlanD under the delegated authority by the Board. However, if the application

was considered unacceptable by the concerned government departments, it would be submitted to the Board for consideration. The subject application was submitted for the Board's consideration due to the objection of HD;

- (b) the approval conditions could be broadly divided into two types, i.e. those required to be complied with before building plan approval and those required to be complied with in the implementation stage, before occupation of the development. For application No. A/TM-LTTY/273, the applicant had generally complied with the relevant parts of the approval conditions before implementation;
- (c) according to TPB PG-No. 35C, any EOT for commencement of development should not result in an aggregate extension period longer than the original duration for commencement of the approved development proposal. Given the original duration for commencement of development in the approved scheme was four years, the applicant could apply for an EOT for commencement of development for a maximum period of four years; and
- (d) if the EOT application was not approved, the applicant could lodge an appeal to the TPAB according to the provision of the Ordinance. The applicant's appeals to the Buildings Appeal Tribunal were separate issues under the Buildings Ordinance.

64. The Chairperson supplemented that the land exchange process had to be premised on a proposed development permitted under the relevant OZP. The duration of the land exchange process would normally not be dictated by the duration allowed for commencement of development of an approved planning application.

65. Some Members raised the following questions to the applicant's representatives:

- (a) what actions had been taken for the implementation of the approved development;

- (b) the reason for application for a four years' EOT for the commencement of development; and
- (c) the actions that would be taken if the EOT application was disapproved.

66. In response, Mr Grant Yuen, Mr Ian Brownlee and Mr Robert Lynn, the applicant's representatives, made the following main points:

- (a) the applicant had taken all reasonable actions for the implementation of the approved development including applications for land exchange and GBP approval, compliance with approval conditions and clearing of the Site to make it ready for construction. It was expected that construction works could commence once the land exchange was approved;
- (b) as the original duration for commencement of the approved development was four years, the applicant was entitled to apply for an EOT for commencement of development for another four years, which would not result in the aggregate of all the periods of extensions exceeding the original duration for commencement of development. It was up to the Board to decide how many years of EOT for commencement of development to be approved for the subject application; and
- (c) if the EOT application was rejected, the applicant might lodge a JR against the Board's decision.

Impacts on the Proposed Public Housing Development

67. The Chairperson and a Member asked how the proposed public housing development would be affected by the planning application No. A/TM-LTYYY/273, including the number of units to be provided and the layout of development. In response, Mr David Y.M. Ng, DPO/TM&YLLW, said that the site area of application No. A/TM-LTYYY/273 was about 1.45 ha. According to the approved development with PR of 1, 13 blocks of five storeys including one storey of basement carpark were proposed to provide 96 duplex units

for the accommodation of 269 persons. As for the proposed public housing development, according to the latest project profile, the site covered a total area of about 27 ha, with a PR of 6, the development could accommodate 63,000 persons. There was no information on the number of units that would be affected by application No. A/TM-LTYT/273 based on the latest planning parameters. However, according to the previous public housing scheme in consultation with TMDC in September 2014, the numbers of units that would be accommodated at the Site was about 1,600 based on a PR of 5. As the PR of the proposed public housing development had been increased to 6, it was expected that the number of units that would be accommodated at the Site would be more than 1,600. Besides, as the Site was located in the middle of the San Hing Road site, it was noted that application No. A/TM-LTYT/273 would impose significant development constraints and reduce the synergy effect of the comprehensive public housing development, such as pedestrian linkages and internal road arrangements.

68. In response to the Chairperson's invitation, Mr Ian Brownlee, the applicant's representative, with the aid of the visualizer, said that according to paragraph 3.2.1 of the EIA's Study Brief, the EIA study should address the key issues including potential ecological, landscape and visual impacts, as well as the cumulative environmental impacts of the project, through interaction or in combination with other existing, committed and planned projects in the vicinity. Paragraph 3.3.3 of the Study Brief also stated that information regarding the approved planning applications within the project area should be taken into consideration, and different land use options and layout options of the proposed development with regard to the approved planning applications should be considered. Besides, the layout options should be compared with those of the project and with the likely future environmental conditions in the absence of the project. If the requirements of the Study Brief were followed, the approved private housing developments should be taken as committed developments within the area in the formulation of the preferred option for the proposed public housing development. The question on the number of public housing units that would be affected by the approved scheme was speculative. The proposed PR of 1 for the private housing development was to comply with the development restriction on the existing OZP. Notwithstanding, the applicant had provided an alternative scheme which could provide the same amount of private housing units as the public housing scheme if a PR of 6 was allowed. As such, it was premature to reject to the EOT application to facilitate the proposed public housing development. Should the Government decide to pursue public housing

development at a later stage, it could resume the land from the landowners under the established mechanism.

69. Mr Grant Yuen, the applicant's representative, with the aid of a PowerPoint slide, supplemented that DPO's comparison on the housing units was unfair as the units proposed in application No. A/TM-LTY/273 was based on the PR of 1 on the existing OZP, but the number of public housing units was estimated based on an assumed PR of 5 or 6. Should a higher PR be allowed, the applicant could also be able to provide the same amount of housing units. Besides, as the proposed public housing sites were accessible by various roads, they might not be affected by the approved private housing development. Given the proposed public housing development would occupy a very large site area, the areas surrounding the Site were of considerable size for public housing developments. For example, the area to the north-west of the Site was able to accommodate six public housing blocks according to an indicative layout prepared by the applicant. He also disagreed with DPO/TM&YLW's view that the applicant should be aware of the Government's plan for public housing development by the documents in the public domain, as such documents were not gazetted or legal documents. He queried why HD's conceptual public housing proposal was accorded with higher priority than the applicant's scheme which was approved by the Board. While the Government had a policy to provide more public housing units, the Chief Executive had also mentioned that there was a lack of private housing units. If both the public and private housing units were in need, one could not reasonably say that there was a clear planning intention for public housing development at the Site.

Land Exchange

70. A Member asked why LandsD had not responded to the land exchange application, which was submitted in January 2015, until July 2018. In response, Mr David Y.M. Ng, DPO/TM&YLW, said that after the land exchange application was submitted to LandsD on 13.1.2015, it was noted that LandsD had provided comments and the applicant had submitted further information in response. There were correspondences between LandsD and the applicant on the land exchange application. On 26.7.2018, after the EOT application had been disapproved by RNTPC, LandsD advised that as the Site fell within the potential public housing development area under the feasibility study of the proposed public housing development at San Hing Road and Hong Po Road, the land exchange application for

the proposed private housing development at the Site had been put on hold pending the results of the feasibility study scheduled for completion in Q1 2020.

Uncertainty of the Proposed Public Housing Development

71. A Member asked what was the relevance of the three potential public housing sites involving amendments to the scope of development in Pokfulam, Tsing Yi and Tseung Kwan O on the proposed public housing development at San Hing Road and Hong Po Road. In response, Mr Ian Brownlee, the applicant's representative, said that the relevance was that not until the zoning amendments to the OZP had gone through the representation hearing process and accepted by the Board, the Government should not assume that the proposed public housing development under study was going to be implemented as envisaged. As the commencement of the feasibility study/issuance of Study Brief for EIA, the LegCo reply and the DC paper did not have legal status, they could not be considered as the Government's commitment for public housing development. The reverting back of the zoning amendments on the Tsing Yi and Tseung Kwan O OZPs to the original zonings for various reasons including public objections had demonstrated that the Government's proposed public housing schemes might not be proceeded at the end. For the subject case, for example, the Board might not accept the proposed zoning amendments to the OZP for high density public housing development at San Hing Road and Hong Po Road for the reason that it was incompatible with the existing low-rise developments in the suburban area. As the current zoning of the Site remained as "R(E)", it was premature for the Board to reject the EOT application for the approved private housing development. A proper process to take forward the proposed public housing development at the Site was to resume the land after the statutory plan-making process was completed.

72. Mr Benson Poon, the applicant's representative, supplemented that when the zoning amendments to the TM OZP were considered by the Board in August 2018, there were thousands of objections to the proposed public housing developments on grounds including too many public housing estates, traffic overloaded, insufficient open space, government, institution or community and supporting facilities, as well as the neglect of objections from TMDC. Due to the similarity in the context of the Site and those representation sites, it was expected that similar concerns would be raised by the local residents on the proposed public housing development at San Hing Road and Hong Po Road.

Mr Grant Yuen, the applicant's representative, remarked that the crux of the issue was not to choose between private or public housing development as both housing types could co-exist at the Site. On the basis of the approved private housing development at the Site, a mixed development of private and public housing could be explored.

Similar Applications

73. In response to a Member's question on the implementation progress of the similar applications to the east of the Site, Mr David Y.M. Ng, DPO/TM&YLW, said that application no. A/TM-LTY Y/282 was approved by the RNTPC on 13.3.2015 and a subsequent application for minor relaxation of building height (No. A/TM-LTY Y/337) was approved by the RNTPC on 23.6.2017. Upon approval of the development proposal, no submission to PlanD for compliance of approval conditions nor submissions to BD and LandsD had been made by the applicant. Mr Grant Yuen supplemented that he was confused why application No. A/TM-LTY Y/337 was approved by the RNTPC on 23.6.2017, right after the EIA process for the proposed public housing development at San Hing Road and Hong Po Road started on 21.6.2017.

74. 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 in the absence of the applicant's representatives. The Chairperson thanked PlanD's representatives and the applicant's representatives for attending the meeting, and they left the meeting at this point.

[The meeting was adjourned for lunch break at 3:10 p.m.]

[Mr Lincoln L.H. Huang, Mr Stephen H.B. Yau, Dr F.C. Chan and Professor John C.Y. Ng left the meeting at this point]

75. The meeting was resumed at 4:00 p.m. on 28.9.2018.
76. The following Members and the Secretary were present at the resumed meeting:

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

Chairperson

Mr Sunny L.K. Ho

Mr Peter K.T. Yuen

Mr Philip S.L. Kan

Mr K.K. Cheung

Dr C.H. Hau

Professor T.S. Liu

Ms Sandy H.Y. Wong

Mr K.W. Leung

Assistant Director (Environmental Assessment)
Environmental Protection Department
Mr. C.F. Wong

Assistant Director (Regional 1)
Lands Department
Mr. Simon S.W. Wang

Agenda Item 4 (Continued)

Review of Application No. A/TM-LTTY/273-1

Proposed Extension of Time for Commencement of the Proposed Residential Development (Flat) for a Period of 4 Years until 17.10.2022 in “Residential (Group E)” Zone, Lots 212 RP, 232, 233, 234, 235, 236 RP, 237, 238, 239, 243, 244, 246 RP, 246 S.A, 246 S.B, 247, 367 and 368 RP in D.D. 130 and Adjoining Government Land, Lam Tei, Tuen Mun (TPB Paper No. 10476)

[Closed meeting (Deliberation Session)]

Deliberation Session

77. The Chairperson said that the subject application was a section 16A application for extension of time (EOT) for commencement of the approved development and the Town Planning Board Guidelines No. 35C on EOT for Commencement of Development (TPB PG-No. 35C) had set out a number of assessment criteria for consideration of the EOT applications. Members noted that the EOT application was disapproved by the Rural and New Town Planning Committee (RNTPC) on grounds of material change in planning circumstances and the lack of a good prospect to commence the proposed development within the extended time limit.

Material Change in Planning Circumstances

78. Some Members considered that there had been a material change in planning circumstances since the original planning permission was granted on the following grounds:

- (a) when application No. A/TM-LTYT/273 was approved in 2014, the Housing Department's (HD) proposed public housing development at San Hing Road was still at a conceptual stage. Since the approval of the application, the Government had a clearer policy and greater commitment for the proposed public housing development in the area, which was demonstrated by the consultations with the Tuen Mun District Council (TMDC) by the Development Bureau and HD, and the reply to the Legislative Council's enquiry by the Transport and Housing Bureau. Besides, in accordance with the Government's latest policy to increase land supply for public housing development to meet the pressing need, the scope of the proposed public housing development was enlarged. The Study Brief for the environmental impact assessment (EIA) of the proposed public housing development had been issued and the feasibility study for the proposed public housing development at San Hing Road and Hong Po Road had also commenced; and

- (b) material change in planning circumstances was not confined to changes in the planning policy/land-use zoning, which were only examples included in TPB PG-No. 35C for reference.

79. A Member, however, doubted if the above-mentioned changes could be considered as material as HD's intention for public housing development at San Hing Road had already been raised when application No. A/TM-LTY Y/273 was approved by the RNTPC in 2014. Besides, the result of the feasibility study was still pending. One might consider that the major change after the granting of the planning permission was the focus on public housing in the Government's housing policy.

Prospect to Commence the Proposed Development

80. A Member said that while planning permission for private housing development at the application site (the Site) had been granted for four years, no general building plan (GBP) approval nor land exchange agreement had been obtained yet.

81. The Chairperson said that there were a number of reasons for the rejection of the GBP submissions and PlanD was only one of the relevant government departments to provide comments. With respect to the land exchange application, it was noted that the reply of the Lands Department (LandsD) that the application had been put on hold was made on 26.7.2018, after the EOT application was disapproved by the RNTPC on 15.6.2018.

82. Some Members queried if the applicant had the real intention to proceed with the approved low-rise private housing scheme amid the proposed public housing site, or merely to register an interest for future development. Another Member opined that if the land exchange application was not approved, there was no prospect for the implementation of the proposed private housing development.

83. A Member, however, considered that efforts had been made by the applicant to commence the development. It was not uncommon to have private and public housing developments located in the vicinity. Although the proposed private housing development amid the public housing site would affect the comprehensiveness of the public housing

scheme, it was noted that areas surrounding the Site were still of considerable size for the development of public housing estates of reasonable scale.

Housing Supply

84. Some Members considered that as compared with the approved private housing scheme, the proposed public housing development would provide more flats to meet the pressing housing need, which was in the public interest.

85. A Member considered that private housing development was also in the public interest if there was an acute demand for such type of housing. It was noted that the applicant was prepared to provide similar number of flats if the development restriction at the Site was relaxed.

Legal Considerations

86. A Member said that while the *International Trader Limited v Town Planning Appeal Board* [2009] 3 HKLRD 339 (International Trader case) had provided general legal principles in considering planning applications, the subject EOT application was distinguished from the International Trader case in that it was a section 16A application rather than a section 16 application. TPB PG-No. 35C had provided a clear set of criteria for the assessment of EOT applications. It was legally proper for the Board to have regard to the Town Planning Board Guidelines in considering an EOT application.

87. In response to a Member's question on whether the applicant's right would be affected if the EOT application was disapproved, the Secretary said that the Site was mainly demised for agricultural use under the lease and the landowner's existing right to use the land would not be affected by the Board's decision. The Chairperson supplemented that while the planning permission was a prerequisite for private housing development at the Site, a land exchange had to be executed before the landowner would have a right under the lease to proceed with the proposed development. Seen from this angle, the landowner's right under the lease would not be affected if the application was disapproved. Besides, after the feasibility study for the proposed public housing was completed and the zoning amendments to the OZP were published, the landowner still had the right to make representations.

88. A Member said that housing development on agricultural land would need to go through lease modification/land exchange process which was subject to payment of premium. There was no guarantee that the proposed development would proceed even if planning permission was obtained. In the subject case, if the Site was finally used for public housing development, the Government would need to resume the land from the landowner with compensation. Members generally considered that the landowner's right would not be adversely affected even if the EOT application was not approved.

89. Members noted that the applicant might finally lodge a judicial review (JR) if the EOT application was disapproved. Some Members considered that while there was provision for the applicant to apply for an EOT for commencement of development if an approved development had not commenced within the specified time limit, each case should be considered based on the facts and circumstances and the applicant should not have a legitimate expectation that the Board was obliged to approve an EOT application. A Member, however, considered that the EOT application should only be disapproved based on strong grounds.

Similar Application

90. In response to a Member question, the Secretary said that a similar application for private housing development to the east of the Site (i.e. No. A/TM-LTY/337) was approved with conditions by the RNTPC on 23.6.2017. While the project profile for application of the EIA Study Brief was submitted to the Environmental Protection Department on 21.6.2017, the Study Brief was issued only on 4.8.2017. In the submission of application No. A/TM-LTY/337 to RNTPC for consideration, it was noted that HD had not raised objection to the application.

91. Members generally agreed that there was a material change in planning circumstances since the original permission was granted. Given there were new planning circumstances governing the application, the Board was under no obligation to approve the EOT application. Regarding the lack of a good prospect to commence the proposed development within the extended time limit, Members considered it difficult to substantiate

the point based on the facts and circumstances. As such, it should not be included as a rejection reason for the review application.

92. After deliberation, the Board decided to reject the application on review for the following reason:

“the application is not in line with Town Planning Board Guidelines No. 35C on Extension of Time for Commencement of Development in that there has been a material change in planning circumstances, as demonstrated by the Government’s commitment to plan for a comprehensive public housing development which covers the application site and the progressive action taken to pursue that development.”

[Mr. Simon S.W. Wang left the meeting at this point.]

Procedural Matters

Agenda Item 5

Application to the Chief Executive under Section 8(2) of the Town Planning Ordinance for Extension of Time Limit for Submission of the Draft Kam Tin South Outline Zoning Plan No. S/YL-KTS/14 to the Chief Executive in Council for Approval
(TPB Paper No. 10477)

[Open meeting] [The item was conducted in Cantonese.]

93. The Secretary reported that the following Members had declared interests on the item for being associated/having business dealings with the Housing Department (HD), which was the executive arm of the Hong Kong Housing Authority (HKHA), AECOM Asia Company Limited (AECOM) (i.e. the consultant commissioned by the Civil Engineering and Development Department (CEDD) under the Agreement for “Site Formation and Infrastructural Works for the Initial Sites at Kam Tin South, Yuen Long – Investigation, Design and Construction” in preparing technical assessments supporting the proposed public housing sites in Kam Tin South), Masterplan Limited (Masterplan) (R3/C3), Albert So Surveyors Ltd. (ASL) (i.e. Noble Phoenix Investments Limited (R2)’s representative), Woo

Kwan Lee & Lo (i.e. Hover Joy International Limited (R1)'s representative), Mass Transit Railway Corporation Limited (MTRCL) (R318), World Wide Fund for Nature Hong Kong (WWF-HK) (R319) and Ms Mary Mulvihill (R320/C132) :

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| Mr Raymond K.W. Lee
<i>(as Director of Planning)</i> | - | being a member of the Strategic Planning Committee (SPC) and Building Committee of HKHA |
| Mr Martin W.C. Kwan
<i>(as Chief Engineer (Works),
Home Affairs Department)</i> | - | being a representative of the Director of Home Affairs who was a member of SPC and the Subsidised Housing Committee of HKHA |
| Professor S.C. Wong
<i>(Vice-chairperson)</i> | - | having current business dealings with AECOM, being the traffic consultant /engineering consultant of AECOM and a member of the Advisory Committee for Accredited Programme of MTR Academy |
| Dr C.H. Hau | - | having current business dealings with AECOM, the institute he served having current business dealings with HKHA and being a former member of the Conservation Advisory Committee of WWF-HK |
| Mr Thomas O.S. Ho | - | having current business dealings with HKHA and MTRCL and past business dealings with AECOM and ASL |
| Mr K.K. Cheung
Mr Alex T.H. Lai |]] | their firm having current business dealings with HKHA and MTRCL, and hiring Mary Mulvihill on a contract basis from time to time |

- Mr Peter K.T. Yuen - being a member of the Board of Governors of the Arts Centre, which had collaborated with the MTRCL on a number of arts projects

- Dr Lawrence W.C. Poon - his spouse being an employee of HD but not involved in planning work

- Mr Ivan C.S. Fu - having current business dealings with AECOM, Masterplan and MTRCL and past business dealings with HKHA

- Mr Stephen L.H. Liu - having past business dealings with HKHA and MTRCL

- Mr Franklin Yu - having past business dealings with HKHA, AECOM and MTRCL

- Mr Daniel K.S. Lau - being Director (Development and Marketing) of Hong Kong Housing Society (HKHS) which was currently in discussion with HD on housing development issues and having current business dealings with Woo Kwan Lee & Lo

94. As the item was procedural in nature and no discussion was required, the above Members should be allowed to stay in the meeting. Members noted that Mr Ivan C.S. Fu, and Mr Thomas O.S. Ho had tendered apologies for being unable to attend the meeting, and Dr Lawrence W.C. Poon, Mr Raymond K.W. Lee, Mr Martin W.C. Kwan, Professor S.C. Wong, Mr Alex T.H. Lai, Mr Stephen L.H. Liu, Mr Franklin Yu and Mr Daniel K.S. Lau had left the meeting.

95. The Secretary briefly introduced the TPB Paper No. 10477. On 3.11.2018, the draft Kam Tin South Outline Zoning Plan No. S/YL-KTS/14 (the draft OZP) was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). During the exhibition period, a total of 320 representations and 133 comments on representations were received. On 25.7.2018, the Town Planning Board (the Board) conducted hearing of the representations and comments and decided not to propose any amendment to the draft OZP to meet the representations.

96. According to the statutory time limit, the draft OZP should be submitted to the Chief Executive in Council (CE in C) for approval on or before 3.10.2018. There was a need to apply to the CE for an extension of the statutory time limit for six months (i.e. to 3.4.2019) to allow more time to prepare the submission to the CE in C for approval.

97. After deliberation, the Board agreed that the CE's agreement should be sought under section 8(2) of the Ordinance to extend the time limit for submission of the draft OZP to the CE in C for a period of six months from 3.10.2018 to 3.4.2019.

Agenda Item 6

Any Other Business

[Open Meeting] [The item was conducted in Cantonese.]

98. There being no other business, the meeting closed at 5:00 p.m.