

**Minutes of 1192<sup>nd</sup> Meeting of the  
Town Planning Board held on 11.1.2019**

**Present**

Professor S.C. Wong

Vice-chairperson

Mr Lincoln L.H. Huang

Mr Sunny L.K. Ho

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 Wilson Y.W. Fung

Dr C.H. Hau

Mr Thomas O.S. Ho

Mr Alex T.H. Lai

Mr Stephen L.H. Liu

Professor T.S. Liu

Miss Winnie W.M. Ng

Ms Sandy H.Y. Wong

Mr Franklin Yu

Mr L.T. Kwok

Ms Lilian S.K. Law

Professor John C.Y. Ng

Dr Jeanne C.Y. Ng

Mr Ricky W.Y. Yu

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

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

Assistant Director (Environmental Assessment)  
Environmental Protection Department  
Mr Terence S.W. Tsang

Deputy Director (General)  
Lands Department  
Ms Karen P.Y. Chan

Director of Planning  
Mr Raymond K.W. Lee

Deputy Director of Planning/District  
Ms Jacinta K.C. Woo

Secretary

**Absent with Apologies**

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

Chairperson

Mr H.W. Cheung

Mr Ivan C.S. Fu

Mr Stephen H.B. Yau

Dr Frankie W.C. Yeung

Mr K.K. Cheung

Dr Lawrence K.C. Li

Mr Stanley T.S. Choi

Mr Daniel K.S. Lau

Mr K.W. Leung

Professor Jonathan W.C. Wong

**In Attendance**

Assistant Director of Planning/Board

Miss Fiona S.Y. Lung

Chief Town Planner/Town Planning Board

Ms April K.Y. Kun

Senior Town Planner/Town Planning Board

Ms W.H. Ho

**Agenda Item 1**

**Confirmation of Minutes of the 1191<sup>st</sup> Meeting held on 28.12.2018**

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

1. The minutes of the 1191<sup>st</sup> Meeting held on 28.12.2018 were confirmed without amendments.

**Agenda Item 2**

**Matters Arising**

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

- (i) Withdrawal of Judicial Review Application (HCAL 1565/2018) against the Decisions of the Town Planning Board and the Chief Executive in Council in respect of the Draft Kai Tak Outline Zoning Plan No. S/K22/5
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2. The Secretary reported that one of the representation sites in the draft Kai Tak Outline Zoning Plan (OZP) No. S/K22/5 was related to a proposed campus development by the Vocational Training Council (VTC), part of which was currently occupied by the Construction Industry Council (CIC) as a training ground. The following Members had declared interests on the item for having affiliations or business dealings with VTC (R1/C263) and its consultants, Ove Arup Partners HK Limited (Arup), CIC, and Ms Mary Mulvihill (C433):

Mr Ivan C.S. Fu - having current business dealings with VTC and Arup, and being a council member of CIC

Mr Stephen L.H. Liu ] having past teaching work in the member institute

Mr Martin W.C. Kwan ] of VTC

Dr Lawrence W.C. ]

Poon

Mr K.K. Cheung - his firm having current business dealings with Arup and CIC, and hiring Ms Mary Mulvihill on a

contract basis from time to time

- Mr Alex T.H. Lai - his firm having current business dealings with Arup and CIC, and hiring Ms Mary Mulvihill on a contract basis from time to time; and having past teaching work in the member institute of VTC
- Mr Thomas O.S. Ho - having current business dealings with Arup and being the Chairman of the Board of the Construction Innovation and Technology Application Centre of CIC
- Professor S.C. Wong  
(*Vice-chairperson*) - being an adjunct Professor of the Technological and Higher Education Institute which was a member institute of VTC, but the appointment was honorary and courtesy in nature; a council member of CIC and convener of the Objections Board of CIC; and having current business dealings with Arup
- Mr Franklin Yu - being the Director of a firm having current business dealings with VTC, and a member of the Construction Workers Registration Board of CIC; and having past business dealings with Arup
- Mr Wilson Y.W. Fung - being a former member of the Accountancy Training Board of VTC
- Miss Winnie W.M. Ng - an ex-Council member of VTC
- Mr H.W. Cheung - being the Chairman of Zero Carbon Building of CIC and past executive director of CIC

Ms Jacinta K.C. Woo - her spouse being a director of P&T Architects and  
(Secretary) Engineers Ltd., which was consultant of VTC but  
not involved in the project

3. As the item was to report the withdrawal of a Judicial Review (JR) application, Members agreed that the above Members and the Secretary could stay in the meeting.

4. The Secretary reported that as reported on 10.8.2018, a JR application (HCAL 1565/2018) was lodged by Mr Tam Ka Tsun (the Applicant) against the Town Planning Board (the Board)'s decision dated 10.5.2018 to submit the draft Kai Tak OZP under section 8 of the Town Planning Ordinance and the Chief Executive in Council's decision dated 15.5.2018 to approve the Kai Tak OZP. The JR was primarily related to the Board's decision to rezone a site near Laguna City, Cha Kwo Ling for VTC development.

5. On 7.1.2019, the Applicant applied to withdraw the JR application. On 8.1.2019, the Court granted leave for the withdrawal of the JR and made no order as to costs. The JR was thus disposed of.

[Mr Ricky W.Y. Yu arrived to join the meeting at this point.]

### **Hong Kong District**

#### **Agenda Item 3**

Review of Application No. A/H3/438

Proposed Office and Shop and Services/Eating Place in "Residential (Group A)" Zone,  
3-6 Glenealy, Central, Hong Kong

(TPB Paper No. 10510)

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[Open meeting (Presentation and Question Sessions only)]

[The item was conducted in English and Cantonese.]

Presentation and Question Sessions

6. The Secretary reported that the following Members had declared interests on the item for having business dealings with the Applicant's legal advisor, Mr Benjamin Yu, and consultants, Kenneth To & Associates Limited (KTA); or acquainted with the Applicant's representative, Mr Robert Lee; or owning properties in the Sheung Wan area:

- |                     |   |   |
|---------------------|---|---|
| Mr Alex T.H. Lai    | - | his firm having current business dealings with Mr Benjamin Yu and he personally knew Mr Robert Lee, one of the ex-directors in his firm years ago |
| Mr K.K. Cheung      | - | their firm having current business dealings with Mr Benjamin Yu   |
| Mr Daniel K.S. Lau  | - | being an ex-employee of the Hong Kong Housing Society which was having current business dealings with KTA   |
| Mr Stephen L.H. Liu | - | being one of the Directors of a company which owned an office unit in Unionway Commercial Centre at Queen's Road Central for his personal use     |
| Mr H.W. Cheung      | - | his spouse owning a property at Queen's Road West   |

7. Members noted that Mr K.K. Cheung, Mr Daniel K.S. Lau and Mr H.W. Cheung had tendered apologies for being unable to attend the meeting. Members agreed that as Mr Alex T.H. Lai had no involvement in the application and the property owned by Mr Stephen L.H. Liu's company had no direct view of the application site, they could stay in the meeting.

8. The following Government representatives and representatives of the Applicant were invited to the meeting:

***Planning Department (PlanD)***

Mr Louis K.H. Kau - District Planning Officer/Hong Kong  
(DPO/HK)

Mr Jerry Austin - Senior Town Planner/Hong Kong 4  
(STP/HK4)

***Applicant***

*Million Base Properties Ltd. and* ]  
*Million Basis Property Ltd. –* ]  
Mr Robert Lee ]  
Mr Eric Kwan ]  
Mr Timothy Tsang ]  
Mr Paul T.T. Wong ]  
Mr Kan Sze Man ]  
Mr James Chan ] Applicant's representatives  
*Applicant's legal advisors –* ]  
Mr Benjamin Yu ]  
Mr Anthony Ismail ]  
Mr Li Tianren ]  
Ms Hou Yung Wah ]  
*Kenneth To & Associates Ltd –* ]  
Mr Kenneth L.K. To ]  
Ms Gladys S.N. Ng ]

9. The Vice-chairperson extended a welcome and explained the procedure of the review hearing. He then invited PlanD's representative to brief Members on the review application.

10. With the aid of a PowerPoint presentation, Mr Jerry Austin, STP/HK4, briefed Members on the background of the review application including the consideration of the application by the Metro Planning Committee (MPC), departmental and public comments,



and planning considerations and assessments as detailed in the Town Planning Board (TPB) Paper No. 10510 (the Paper).

[Mr Stephen L.H. Liu and Miss Winnie W.M. Ng arrived to join the meeting during PlanD's presentation.]

11. The Vice-chairperson then invited the Applicant's representative to elaborate on the review application.

12. With the aid of a PowerPoint presentation, Mr Benjamin Yu, the Applicant's representative, made the following main points:

#### Planning Context

- (a) the application site (the Site) fell within the draft Sai Ying Pun & Sheung Wan Outline Zoning Plan (OZP) No. S/H3/32 (the OZP). According to the Notes, which formed part of the statutory OZP, while 'flat' and 'house' uses were always permitted, 'office' was a Column 2 use which might be permitted with or without conditions on application to the Town Planning Board (the Board). The explanatory statement (ES) of the OZP also stated that planning applications to the Board would be assessed on individual merits. In general, the Board's consideration of the planning applications would take into account all relevant planning considerations which might include the departmental outline development plans/layout plans and guidelines published by the Board;

#### Relevant Legal Principles

- (b) relevant legal principles for the application were set out in the following court cases:
  - (i) *International Trader Ltd v TPAB [2009] HKLRD 339* (International Trader case): when determining an application for planning permission under s.16 of the Town Planning Ordinance (the Ordinance), the Board

did not have the power to have regard to any and all planning considerations which it believed would assist it to reach the right decision in the public interest. The Board's discretion was one that had to be exercised within the parameters of the approved plan in question. Accordingly, if it took into account material considerations which fell outside the ambit of an approved plan, considerations which were therefore not relevant to it, it acted ultra vires. The relevance of the case on the subject application was that the Board should distinguish its "plan-making" and "planning application approval" roles. While the Board could take into consideration all planning considerations in its "plan-making" function, once the plan was made, the Board should consider the planning applications within the parameters of the statutory plan and the relevant TPB Guidelines which were promulgated to provide clear criteria for considering planning applications;

(ii) *R v Secretary of State for the Environment, Transport and the Regions ex p Spath Holme [2001] 2 AC 349*: no minister who sought to exercise a discretion which legislation had conferred on him could claim that the discretion, however widely expressed, was unfettered or unlimited. The relevance of the case on the subject application was that the power of the Board was not unfettered and should be exercised within a reasonable scope;

(iii) *Shiu Wing Steel Ltd v Director of Environmental Protection & Airport Authority (No. 2)(2006) 9 HKCFAR 478* (Shiu Wing case): there might be good reason for departing from a guide in particular circumstances but the repository of a power was not at liberty to ignore, depart from or qualify the content of the provisions without cogent reasons. The relevance of the case on the subject application was that while the Board was not bound to follow the TPB Guidelines it promulgated, the guidelines should not be disregarded unless there were cogent reasons;

(iv) *Wah Yick Enterprises Co Ltd v Building Authority [1999] 1 HKLRD 840* (the Wah Yick case): where there was any reasonable doubt as to whether any approved or draft zoning plan restricted a property owner's rights, such doubt was to be resolved in the property owner's favour. The relevance of the case on the subject application was that the Board should bear in mind the need to respect property right when exercising its power and any doubt should be resolved in the property owner's favour;

[Mr Franklin Yu arrived to join the meeting at this point.]

#### Keen Demand for Grade A Offices

- (c) the 2017 and 2018 Policy Address announced by the Chief Executive (CE) had revealed that there was shortfall in Grade A office in the central business district (CBD). The Government should play the role of “facilitator” and “promotor” and various bureaux and departments had become more proactive in handling economic and livelihood issues;
- (d) due to the decrease in vacancy rate in the Grade A office, the total occupancy costs in Hong Kong were higher than Tokyo by 21%, Singapore by 54%, Shanghai by 79% and Sydney by 145% at the end of 2018, which had affected the competitiveness of Hong Kong in economic development;

#### Distinctive Location for Office Development

- (e) the Site together with its surrounding area along Arbuthnot Road and Glenealy were rezoned from “Commercial/Residential” (“C/R”) to “Residential (Group A)” (“R(A)”) in 2010. According to the minutes of the MPC Meeting on 23.4.2010 (tabled at the meeting by the Applicant), the rezoning of the Site and its surrounding area to “R(A)” zone was mainly due to the fact that majority of the developments were predominantly residential in nature. The planning intention at that time was to maintain the area for residential use rather than meeting any planning need for

residential developments. As 'office' was a Column 2 use in the "R(A)" zone, flexibility had been provided to change the area to 'office' use on application to the Board;

- (f) the Site was located at the entrance to CBD and close to Lan Kwai Fong (LKF). Developments to the north of the Site and within the same street block bounded by Wyndham Street, Glenealy and Arbutnot Road were mainly occupied by commercial developments. The Site was suitable for office development;

#### Compliance with TPB PG-No. 5

- (g) TPB Guidelines for Application for Office Development in Residential (Group A) Zone (TPB PG-No.5) was promulgated in 1990 and there was no change to the guidelines since then. According to its scope and application, the Board's intention was to meet part of the increasing demand of expanding commercial activities through permitting the redevelopment of residential buildings within the "R(A)" zone for office use in districts where there was a demonstrated demand. In considering applications for office development, the primary objective of the Board was to ensure that the buildings were in the right locations and that no land use conflicts, environmental nuisance, traffic congestion or disruption to traffic flow on adjacent roads would be created. In general, the Board would give favourable consideration to planning applications for office developments which produced specific environmental and planning gains;
- (h) the subject application was in compliance with TPB PG-No. 5 in that the Site was sufficiently large to achieve a properly designed office building, the internal transport facilities were provided in accordance with the Hong Kong Planning Standards and Guidelines, the Site was located within a walkable distance from MTR Central Station, the traffic impact assessment (TIA) had demonstrated that the proposed development would not result in adverse traffic impact, the proposed development was purposely designed for office use and compatible with the mixed use character of the locality.

Besides, the Transport Department (TD) welcomed the proposal of building setback of about 2.7m such that the existing footpath (about 2.9m) would be widened to about 5.6m to provide more space for landscaping and/or street furniture to enhance street amenity and the walking environment;

- (i) it was noted that all relevant government departments had no objection to the application except PlanD. As the application complied with TPB PG-No. 5, it should be approved unless there were cogent reasons for not doing so;

[Mr Sunny L.K. Ho arrived to join the meeting at this point.]

#### Rejection Reasons Unsound

- (j) the Applicant disagreed with MPC's rejection reasons on the following grounds:

*Reason (a): not in line with planning intention of "R(A)" zone and resulting in reduction of housing supply*

- (i) the planning intention of the "R(A)" zone also included 'office' use, which was a Column 2 use subject to the grant of planning permission. It was wrong in law to say that 'office' use was not in line with the planning intention. The Board's discretion under s.16 and s.17 applications had to be "exercised within the parameters of the approved plan in question". It was not open to the Board to ignore Column 2 uses in the OZP. If "reduction of housing supply" was a proper rejection reason, the Board's discretion under s.16 and s.17 of the Ordinance to permit commercial use within the "R(A)" zone would be emasculated;
- (ii) the Board had to ask itself the right question as to what the relevant considerations were for granting permission for 'office' use in "R(A)" zone. As the considerations had been set out in TPB PG-No.

5, the Board should follow its own guidelines unless there were cogent reasons. Reason (a) was plainly not a cogent reason for not following TPB PG-No. 5;

- (iii) if uses other than residential use would not be permitted in the “R(A)” zone, or the Board would not approve an application even if TPB PG-No. 5 was complied with, a more proper way was to amend the planning intention of the “R(A)” zone and TPB PG-No. 5 to clearly spell out that intention, or delete ‘office’ use from Column 2;
- (iv) even if the Site was used for residential development, it would be at the high end and thus have minimal impact on housing shortage in HK. Besides, it would be irrational to consider housing shortage but disregard shortage of office floor space in Hong Kong;

*Reason (b): failed to demonstrate that the Site was not conducive to residential development*

- (v) there was no requirement in TPB PG-No. 5 to demonstrate that a site was not conducive to residential development. The relevant considerations were whether granting permission would create land use conflicts and environmental nuisances, and whether there were planning gains. For the subject application, the proposed office development would not create land use conflicts nor environmental nuisances. There was also planning gain by providing a setback of about 2.7m for footpath widening. As such, requiring the Applicant to demonstrate that the Site was not conducive to residential development before granting permission was moving the goalpost and would be unlawful in public law;

*Reason (c): setting an undesirable precedent with cumulative effect of aggravating the shortfall in housing land supply*

- (vi) planning applications were assessed on individual merits. There was

no evidence that other sites within the same “R(A)” zone would be redeveloped into offices as those sites were in multi-ownership (except for a small site) and of relatively small size. In any event, if an application was meritorious and complied with TPB PG-No. 5, it should not be refused for reason of creating a precedent;

### Conclusion

- (k) the Board should follow its own guidelines to approve the subject application as there were no good reasons to depart from TPB PG-No. 5. This would also allow the Board to play the role of “facilitator and promotor” and be “more proactive” as urged by the CE in the 2018 Policy Address;
- (l) the rejection reasons put forward by PlanD were legally unsound, and wrongly focused on shortage of housing, thereby ignoring shortage of good quality offices. In any event, converting the Site for office development would have minimal impact on the housing supply. On the contrary, the Site could provide an additional 10,757m<sup>2</sup> high quality office space in CBD area plus the planning gain of widening the footpath from 2.9m to 5.6m; and
- (m) if there was any doubt as to whether the property owner's rights would be restricted, such doubt should be resolved in the property owner’s favour.

[Mr Martin W.C. Kwan left the meeting at this point.]

13. As the presentations from the representatives of PlanD and the Applicant had been completed, the Chairperson invited questions from Members.

### *Planning Intention*

14. In response to a Member’s question, Mr Louis K.H. Kau, DPO/HK, said that according to the Notes of the OZP, “R(A)” zone was intended primarily for high-density

residential developments. Commercial uses on the lowest three floors of a building or in the purpose-designed non-residential portion of an existing building were always permitted. Commercial uses on any upper floor above the lowest three floors or the purpose-designed non-residential portion would require planning permission from the Board.

15. A Member asked why ‘office’, which was a Column 2 use within the ‘R(A)’ zone, was in line with the planning intention of the zone. In response, Mr Benjamin Yu, the Applicant’s representative, said that while the planning intention of the “R(A)” zone as stated in the Notes of the OZP was intended primarily for high-density residential developments, there was also provision of Column 2 uses to provide flexibility for non-residential uses which might be permitted on application to the Board. The use of the word “primarily” in the planning intention of the “R(A)” zone meant that it was not “exclusively” for high-density residential developments. The provision of ‘office’ use in Column 2 meant that the Board could approve such use depending on planning circumstances and the criteria laid down in TPB PG-No. 5. As such, Column 2 uses formed part of the statutory plan which was the document that the Board was bound to have regard to. If TPB PG-No. 5 was complied with but the application for office use was disapproved without good reason, the Board was ignoring the Column 2 uses and not discharging its duty under the provision of the statutory plan. As such, it was incorrect to say that the proposed office development was not in line with the planning intention of the “R(A)” zone.

#### *TPB Guidelines*

16. Some Members raised the following questions:
- (a) what the relevant considerations of planning applications were;
  - (n) whether an application had to be approved if all criteria in TPB PG-No. 5 were complied with and whether the Board had discretion on the weighting of each criterion;
  - (o) noting that there was an “Important Note” in TPB PG-No. 5 stating that the guidelines were intended for general reference only and the decision to approve or reject an application rested entirely with the Board and would be



based on individual merits and other specific considerations of each case, whether the “Important Note” formed part of TPB PG-No. 5 and should be considered by the Board;

- (p) given TPB PG-No. 5 was not a statutory document and was for general reference only, whether the Board was bound by the guidelines to approve planning applications or it could consider other relevant factors outside the guidelines; and
- (q) whether the issue on the compliance with TPB PG-No. 5 had been addressed in the s.16 stage.

17. In response, Mr Louis K.H. Kau, DPO/HK, made the following main points with the aid of the visualizer:

- (a) permission from the Board was required for any proposed use or development which fell under Column 2 of a specific zone in the Notes of the OZP. The Board might grant/refuse to grant permission to the planning applications. According to previous court rulings, the Board in considering planning applications should take into account the OZP and its Notes, the ES as well as relevant TPB Guidelines. In the subject application, MPC had duly taken into account all relevant factors including the planning intention as stated on the OZP, the ES and such other material considerations including the site context, the TPB guidelines, latest planning circumstance as well as departmental comments and public comments before making a decision;
- (r) while there were six main planning criteria in TPB PG-No. 5, the Board could determine the weighting for each criterion in accordance with the specific circumstances of individual cases;
- (s) the “Important Note” formed part of TPB PG-No. 5; and
- (t) in discharging its duty in scrutinizing the planning application, the MPC

had taken into consideration all relevant factors, including TPB PG-No. 5 in the s.16 stage.

18. In response, Mr Benjamin Yu, the Applicant's representative, made the following main points with the aid of the visualizer:

- (a) in exercising its "planning application approval" role, the Board should make a decision within the provision of the statutory plan as well as relevant guidelines. The "Important Note" in TPB PG-No. 5 mainly stipulated that each application would be considered based on individual merits and other specific considerations of each case, which was in line with the principles of public law;
- (u) it was not saying that the Board was bound by TPB PG-No. 5 to approve planning applications. The relevant legal principle set out in the Shiu Wing case was that a public body under the public law should follow the guidelines it promulgated unless there were cogent reasons not to do so. In the subject application, "reduction of housing supply" was not included in TPB PG-No. 5 and not a cogent reason for rejecting application for 'office' use. If it was a cogent reason, all of the land within the "R(A)" zone should be used for housing development and all of the Column 2 uses should be deleted. In that regard, the Board's discretion to permit Column 2 uses under the planning application system would be emasculated by an improper reason (i.e. "reduction of housing supply"); and
- (v) while TPB PG-No. 5 was not a statutory document, it had been made clear in the public law that a public decision maker should follow its guidelines unless with cogent reasons not to do so. It was noted that since the promulgation of TPB PG-No. 5 in 1990, it had not been amended and so it was still applicable to the subject application. The point was that even if the Board had discretion to make a decision, the discretion was not unfettered. If an application complied with TPB PG-No. 5, it should be approved in the absence of good reasons for rejection.

*Right Location for Office Development*

19. Some Members raised the following questions:
- (a) background of rezoning the Site and its surrounding area from “C/R” to “R(A)” zone and the characteristics of the area;
  - (w) how to interpret the “right location” under TPB PG-No. 5 and whether the Site was located at a “right location”;
  - (x) how to define the boundary for considering whether the Site was located in a “predominantly residential area”, and whether the concerned area should be confined within the subject “R(A)” zone; and
  - (y) how the Applicant could demonstrate that office use would bring more benefit to the society as compared with residential use, in particular in an area with a planning intention for residential use.
20. Mr Louis K.H. Kau, DPO/HK, made the following additional points with the aid of the visualizer and some PowerPoint slides:
- (a) according to the recommendation of the Stage II Study on Review of Metroplan completed in 2003, the “C/R” zoning would be reviewed for more effective infrastructure planning and better land use management. On the Sai Ying Pun & Sheung Wan OZP, the north-eastern part of the “C/R” zone which was an extension to the business area in Central and characterized by office and commercial developments was rezoned to “C”. For the remaining “C/R” sites, as a majority of the developments were predominantly residential in nature with lower floors used for retail/commercial activities, they were rezoned to “R(A)” to maintain the area for residential use. Currently, the subject “R(A)” zone was mainly occupied by residential buildings except two buildings located at the north-eastern and the north-western corners of the area. Those buildings were completed in 1975 and 1995 respectively, before the rezoning of the

area from “C/R” to “R(A)” zone;

- (z) it was stated in the main planning criteria (e) of TPB PG-No. 5 that the proposed office building should be compatible with the existing and planned land uses of the locality and it should not be located in a predominantly residential area. As the immediate neighbourhood of the Site was predominantly residential developments, the Site might not be the right location for office development; and
  
- (aa) in general, physical features such as roads provided references in defining a neighbourhood. In the subject application, it would be sensible to define the immediate neighbourhood of the Site as the area bounded by Wyndham Street, Glenealy, Arbuthnot Road and the ladder street between Wyndham Street and Arbuthnot Road (the Neighbourhood Area). While reference could be made to the zoning boundary, the delineation of the neighbourhood area might not necessarily be bounded by the zoning boundary.

21. In response, Mr Benjamin Yu and Mr Kenneth L.K. To, the Applicant’s representatives, made the following main points with the aid of the visualizer and some PowerPoint slides:

- (a) it was stated in paragraph 1.1 of TPB PG-No. 5 that because of the expanding commercial activities in recent years, there had been an increasing demand for office units outside CBD. The Board's intention was to meet part of the increasing demand through permitting the redevelopment of residential buildings within the “R(A)” zone for office use in districts where there was a demonstrated demand. As such, it had been made clear in TPB PG-No. 5 that the provision of application for office development in the “R(A)” zone was a positive measure to address office shortage outside CBD, rather than tolerating office development within a residential area. The proposed office development was located in a right location and complied with relevant planning criteria;

- (b) among the six main planning criteria in TPB PG No. 5, it was noted that the only concern was whether criterion (e) could be complied with, which stated that “the proposed office building should be compatible with the existing and planned land uses of the locality and it should not be located in a predominantly residential area”. It was noted that the words “locality” and “area” had been used. DPO/HK’s definition of the Neighbourhood Area based on street block could be easily related to “locality”. Given that the Site was located at the entrance to CBD with a number of commercial developments located to its immediate north, it was stated in the Paper that the proposed development was considered not incompatible with the surrounding developments. As such, the first requirement of criterion (e) regarding “compatible with the existing and planned land uses of the locality” was fulfilled. With respect to the second requirement of “not be located in a predominantly residential area”, the word “area” should refer to a larger extent than “locality”. The Site, which was sandwiched between the proper CBD below Wyndham Street and the predominantly residential area at Caine Road, was located in a mixed commercial/residential area rather than a predominantly residential area;
- (c) the Neighbourhood Area was divided into two parts and rezoned from “C/R” to “C” and “R(A)” respectively in 2010 to reflect the existing uses at that time. Given the unique background and mixed-use nature in the proximity of the Site, if the Site could not meet the criteria of “not be located in a predominantly residential area”, it was doubtful what location would be able to meet that criterion and how paragraph 1.1 of TPB PG-No. 5 could be interpreted;
- (d) even if the Site was developed for residential use, it would be at the high end and have minimal contribution to housing supply. The future residents might not consider the Site could provide a decent living environment due to its close proximity to LKF and office cluster. However, as the Site was located right next to CBD, its contribution to office supply and relationship with commercial activities would be more obvious. If there was insufficient office spaces in CBD and the subject

application could meet the criteria in TPB PG-No. 5, there was no good reason to reject the application;

- (e) from legal point of view, there was a clear court ruling that in the interpretation of guidelines, there should be a single correct legal meaning which should be interpreted according to the intent of the guidelines. The criterion of “not be located in a predominantly residential area” was aimed to prevent an out-of-context office development amid a predominantly residential area, and the area of concern should be defined in a reasonable context to determine whether there were no land use conflicts. For the subject case, the fact was that the Site was located in the “R(A)” zone. If the number of residential buildings within the “R(A)” zone was used to determine whether the Site was located in a “predominantly residential area”, it would result in a paradox. Besides, no government department had advised that the proposed office development would result in land use conflict, which meant that it was compatible with the surrounding developments. However, PlanD raised objection to the application for reason that the Site was located in a “predominantly residential area”, which was self-contradictory. Given the Site was located in a mixed commercial/residential area, it complied with the criterion; and
  
- (f) as TPB PG-No. 5 was promulgated to provide guidance for office development within “R(A)” zone, the fact that the Site was located within an “R(A)” zone did not necessarily mean that it was not a right location for office development. While “compatible”, “easily accessible” and “not in a predominantly residential area” were some of the main planning criteria in TPB PG-No. 5 for office development within “R(A)” zone, it was noted that they did not form part of the rejection reasons for the subject application as the Site was located in a mixed commercial and residential area.

22. In response to a Member’s question, the Secretary clarified that the concern regarding the setting of undesirable precedent was related to consideration of similar application within the same “R(A)” zone. As the proposed development was considered not

incompatible with the surrounding developments, land use compatibility was not a rejection reason for the subject application.

### *Traffic Impact*

23. A Member asked whether there would be a vehicular ingress/egress in the proposed development. In response, Mr Louis K.H. Kau, DPO/HK, with the aid of the visualizer said that a vehicular ingress/egress at Glenealy was proposed for the office development. Mr Kenneth L.K. To, the Applicant's representative, supplemented that there was an existing vehicular ingress/egress at Glenealy at the southern part of the Site. While the proposed ingress/egress was moved to the north in response to TD's advice, there would be only one ingress/egress at Glenealy.

24. Some Members raised the following questions:

- (a) noting that there was an existing kindergarten at Glenealy and there was public concern on traffic impact, whether the proposed office development would create adverse traffic impact on the surrounding area;
- (b) the baseline situation included in assessing the "without" proposed office development scenario; and
- (c) the comparison of the junction performance among the existing situation, "without" and "with" the proposed office development scenarios.

25. In response, Mr Louis K.H. Kau, DPO/HK, made the following main points with the aid of the visualizer:

- (a) the Applicant had submitted a TIA and supplementary information on the TIA for the proposed office development. The TIA had assessed the trips generated/attracted by the proposed office development and whether the nearby junctions had sufficient capacity under the "without" and "with" the proposed office development scenarios. The results were shown at Table 4.6 of the TIA at Appendix Ia of Annex A of the Paper. TD was satisfied

with the TIA conclusion that the existing major junctions near the proposed development could still accommodate the expected traffic growth and the additional trips generated/attracted by the proposed development in year 2025; and

- (bb) according to paragraph 4.11 of the TIA, the “without” proposed office development scenario had taken into account the estimated total traffic growth from 2021 to 2025 to cater for the background traffic growth within the period.

26. In response, Mr Kenneth L.K. To, the Applicant’s representative, made the following main points with the aid of the visualizer:

- (a) the junction performance between the existing situation and the “with” and “without” proposed office development scenarios could be assessed by comparing Table 2.1 and Table 4.6 of the TIA. In the tables, RC referred to the reserve capacity, which was an indicator of the operational performance at a traffic signalised junction. A RC greater than 0% indicated a junction was operating with sufficient capacity, while a number less than 0% indicated that it was overloaded. RFC referred to a ratio of flow to capacity, which was an indicator of the operational performance at a priority junction. A RFC ratio less than 1.0 indicated that the priority junction was operating with sufficient capacity, while a ratio greater than 1.0 indicated that it was overloaded; and
- (b) the TIA for proposed office development was mainly conducted to assess the junction capacity during peak hours. As the peak hours for office users were different from that of the kindergarten, the interface problem between office and kindergarten users should not be a concern. As for the background traffic growth from 2021 to 2025, it had been included in both the “without” and “with” proposed office development scenarios. In the subject application, it was demonstrated by both the RC and RFC that there was spare capacity in the nearby junctions to accommodate the additional traffic generated/attracted by the proposed office development.



*Planning Gain*

27. Some Members raised the following questions:
- (a) how to determine whether a planning gain was relevant;
  - (b) the planning gain proposed by the Applicant and whether it met the criterion of planning gains as set out in paragraph 3 of TPB PG-No. 5; and
  - (c) whether there was planning gain by forfeiting a residential site within the “R(A)” zone for commercial development.
28. In response, Mr Louis K.H. Kau, DPO/HK, made the following main points with the aid of the visualizer:
- (a) according to paragraph 3 of TPB PG-No. 5, the Board would give favourable consideration to planning applications for office developments which produced specific environmental and planning gains. Examples included mitigating air and noise pollutions, and provision of public open space and community facilities required in the planning district. Whether a proposal would be considered as a planning gain would generally be assessed on whether it was required in the planning district and whether it was beneficial to the community. Each case should be considered based on its individual merit; and
  - (b) in the subject application, the proposed setback of about 2.7m for footpath widening was welcome by TD. The Board could consider whether the setback proposal was a planning gain as claimed by the Applicant, which warranted a favourable consideration for the proposed office development at the Site.
29. In response, Mr Benjamin Yu, the Applicant’s representative, made the following main points with the aid of the visualizer:

- (a) the proposed setback of about 2.7m from the site boundary fronting Glenealy for a wider footpath (from about 2.9 m to about 5.6m) was a planning gain as it could enhance the street amenity and improve the walking environment; and
- (b) it was stated in paragraph 1.1 of TPB PG-No. 5 that in order to meet the increasing demand for office units outside CBD, redevelopment of residential buildings within the “R(A)” zone for office use would be permitted in districts where there was a demonstrated demand. As the Site was located right next to CBD and the use of the Site for office development could help increase Grade A office supply and alleviate the pressure of increasing office rental price, it was also considered as a planning gain under TPB PG-No. 5.

### *Property Right*

30. Some Members asked whether the Applicant was the current land owner of the Site and whether representations with respect to the rezoning of the Site from “C/R” to “R(A)” was received in 2010. In response, Mr Louis K.H. Kau, DPO/HK, said that the Applicant was one of the current land owners of the Site, which was acquired in 2016. No representation with respect to the rezoning of the Site from “C/R” to “R(A)” was received in 2010.

31. In response to a Member’s question on whether the Applicant was aware that the Site was zoned “R(A)” when the land was acquired, Mr Benjamin Yu, the Applicant’s representative, said that while the Applicant was aware that the Site was zoned “R(A)” when the land was acquired, it was also a fact that ‘office’ was a Column 2 use which might be permitted on application to the Board and the Board would consider the application in accordance with the criteria set out under TPB PG-No. 5. The minutes of the MPC Meeting on 23.4.2010 showed that the reason for the rezoning of the Site and its surrounding area to “R(A)” was not due to a planning considerations to change the area to residential use, but to maintain the existing residential nature of the area at that time.

32. A Member asked under the rule of law, whether the reason of rezoning the Site and its surrounding area from “C/R” to “R(A)” was a relevant consideration for the Applicant at the time of acquiring the Site. In response, Mr Benjamin Yu said that according to public law’s consideration, the Applicant had sufficient degree of certainty when acquiring the Site as there was law protecting property right in Hong Kong and the public body would make a decision in accordance with the law and the relevant guidelines. The fact that the Site was zoned “R(A)” was just part of the nature of the Site as ‘office’ was a Column 2 use which might be permitted by the Board in accordance with the criteria set out in TPB PG-No. 5.

33. Noting that the planning control under the OZP had not restricted the land owner to continue the existing use or redevelop the Site in accordance with the provision under the OZP, some Members asked how the property right of the land owner was affected and what the relevance of the Wah Yick case was. Mr Benjamin Yu, with the aid of the PowerPoint, said that property right in Hong Kong was protected by Articles 5 and 105 of the Basic Law and should not be restricted unless for common good and public interest. It was well accepted that planning law and the development control such as land use zoning and development restrictions were serving public interest even if land owner’s development right might be restricted. However, if there was a reasonable doubt on whether the public interest was justified by restricting a land owner’s right, the doubt should be resolved in the land owner’s favour. In the subject application, the Site was under an unrestricted lease and was zoned “C/R” before 2010 under which commercial uses were always permitted. However, the Site and its surrounding area were rezoned to “R(A)” merely to reflect the existing uses at that time without any other specific planning consideration. While commercial uses were always permitted on the lowest three floor of the building within the “R(A)” zone, development right of the Site had already been restricted by the rezoning. Given the fact that the Site was located in close proximity to the commercial area in CBD and LKF and there were a number of commercial developments in the vicinity, the Board should consider why office use at the Site was not appropriate taking into account the holistic development need in Hong Kong. MPC’s rejection reason that approval of the application would result in a reduction of housing supply was unsound as the flat production at the Site was minimal to address the housing shortfall problem. If there was any grey area in deciding the appropriate land use for the Site, favourable consideration should be given to approving office development at the Site as the criteria set out under TPB PG-No. 5 had been complied with.

34. As a follow-up question, given that the lease was in place well before any planning regulation, a Member asked if the Applicant's right under the lease could not be affected, how the planning intention or regulation could be achieved. In response, Mr Benjamin Yu said that it was totally agreeable that planning control was necessary to protect public interest and all land owners should be aware of that. However, if there was a Column 2 use on the OZP and guidelines had been promulgated to set out the criteria in considering whether the Column 2 use was acceptable, both the Board and the applicants should follow the guidelines, otherwise it was a deviation from the rule of law.

*Precedent Effect*

35. A Member said that approval of the subject application might have a precedent effect and encourage similar applications within the same "R(A)" zone, which might result in a total change in the characteristics of the subject "R(A)" zone. The Member asked the Applicant's representative if that could be considered as a good reason for refusing the application. In response, Mr Benjamin Yu, the Applicant's representative, said that when the area was rezoned from "C/R" to "R(A)" in 2010, it was not due to a planning need but simply to reflect the factual situation that the area had been used for residential purpose. If the area was predominantly used for commercial uses at that time, it would have already been rezoned to "C". As such, there was no reason for the area to be limited to residential uses. If more office space was required in this area due to economic development in Hong Kong and the proposed office development could fulfil TPB PG-No. 5, it would not be a good reason to reject the application due to the worry that the area would eventually be turned from residential to commercial uses.

36. In response to a Member's question on whether the Board would face pressure to approve similar applications, particularly smaller scale developments, within the same "R(A)" zone if the subject application was approved, Mr Benjamin Yu said that all applications would need to be considered based on its individual merit and assessed according to the criteria set out in TPB PG-No. 5. For smaller scale developments, they might not be able to comply with criteria (a) and (b) of TPB PG-No. 5. However, if TPB PG-No. 5 was complied with and there was no good reason to reject, the applications should also be approved. The precedent effect was only relevant if there was evidence that there

were similar applications in the pipeline and approval of the applications would result in cumulative impacts. However, it was noted that the opportunity for the adjacent sites to be converted to office use was slim due to multi-ownership. Besides, if more office spaces were needed in this area, the conversion of the buildings to office development was not bad to Hong Kong. As such, the precedent effect should not be a factor to worry.

*Others*

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

- (a) what new information the Applicant had submitted in the s. 17 application stage; and
- (b) whether there was no other government departments raising objection to the application.

38. In response, Mr Louis K.H. Kau, DPO/HK, made the following main points:

- (a) the Applicant had not revised the scheme nor submitted new proposal in the s. 17 application. The major information submitted was the legal points and the research report on Hong Kong office land supply; and
- (b) the Applicant had provided technical assessments to demonstrate the technical feasibility of the proposed development. As the technical assessments were acceptable to relevant government departments, they did not raise objection to the application.

39. As Members had no further questions to raise, the Vice-chairperson said that the hearing procedure for the review application had been completed. The Board would further deliberate on the review application and inform the Applicant of the Board's decision in due course. The Vice-chairperson thanked the representatives of PlanD and the Applicant for attending the meeting. They all left the meeting at this point.

[Mr Lincoln L.H. Huang, Professor T.S. Liu, Mr Sunny L.K. Ho and Mr Stephen L.H. Liu left the meeting during the question and answer session.]

### Deliberation Session

40. The Meeting noted that in the consideration of planning applications, the Board should take into account the planning intention of the Site stated in the OZP and the Notes attached thereto, which were statutory documents that the Board was bound to have regard to, while the ES and the relevant TPB Guidelines were also material consideration. Members generally agreed that while TPB Guidelines were not a statutory document, it was a relevant document for the consideration of planning applications. In the subject application, the relevant TPB Guidelines were TPB PG-No. 5 which set out the criteria for the consideration of applications for office development in the “R(A)” zone.

### *Planning Intention*

41. Some Members said that the planning intention of the “R(A)” zone was primarily for high-density residential development, while some commercial uses were always permitted on the lowest three floors of a building. Column 2 uses such as ‘office’ on the upper levels of buildings might be permitted subject to the demonstration of sufficient justifications for a deviation from the planning intention of the “R(A)” zone. In this regard, some Members raised the following points:

- (a) for sites falling within “R(A)” zone, it was reasonable to take housing supply as a primary consideration. It was also of primary relevance to consider whether the proposed conversion of residential buildings to office development would affect housing supply;
- (b) while there was shortage in Grade A office supply, there was also acute shortage in housing supply. If converting the Site for office development would have minimal impact on housing supply as argued by the Applicant, the same logic also applied for its contribution to office supply, which would similarly not be significant; and

- (c) providing more residential units near CBD might not be unfavorable as claimed by the Applicant as mixed-use development could help balance job distribution and reduce daily commuting trips to/from CBD, thus reducing traffic congestion.

42. A Member said that in considering the subject application, the macro issues such as overall housing and office supply should not be the main focus as such issues should be dealt with in the plan-making process. While there was provision under Column 2 of the “R(A)” zone for office development subject to permission by the Board, the assessment for the application should focus on whether the Site would be suitable for office development. Given the location of the Site at the fringe of the CBD and the proposed office development would not generate significant adverse impact on the surrounding environment, it was considered that TPB PG-No. 5 was generally complied with and the application could be supported.

43. A Member said that while there was acute shortage in housing land, the issue was being addressed by relevant authorities/organizations through different measures. It should not be the key consideration of the Board in processing this application. Another Member said that if there was insufficient housing land, land use review would be conducted and suitable areas would be identified or rezoned for residential uses. Some Members shared the views and agreed that the overall housing and office supply should better be dealt with in the plan-making process. It was not the major concern in the subject application. Nevertheless, they considered that when the Site and its surrounding area were rezoned from “C/R” to “R(A)” in 2010 according to a land use review, the planning intention was to maintain high-density residential development at the Site and should not be deviated unless with strong justifications. If there was a need to provide more office space to meet Grade A office demand, a more appropriate way was to review the OZP and rezone suitable areas to “C”.

#### *TPB Guidelines*

44. While the proposed office development had complied with most of the main planning criteria in TPB PG-No. 5, some Members had concern on whether or not the Site was “located in a predominantly residential area” and their views were:

- (a) referring to the Neighbourhood Area identified by DPO/HK, it was noted that only two buildings at the two corners of the “R(A)” zone had been developed for commercial use before the area was rezoned to “R(A)”, and other buildings within the zone were for residential use. As such, the Site was considered locating in a predominantly residential area; and
- (b) even if a larger area was taken into account, the Site was more akin to the residential area along Caine Road rather than the commercial area to its north-east in the LKF area. On the whole, the Site was considered locating in a predominantly residential area and should be retained for residential use.

45. Regarding the Applicant’s proposal for a setback of about 2.7m for footpath widening, some Members cast doubt on whether it could be a planning gain which warranted a favourable consideration of the application. Some Members considered that the planning gain brought by the proposed development was not obvious. The ingress/egress point had occupied about one-third of the street frontage at Glenealy and the additional trips attracted/generated by the proposed office development might offset the benefit of footpath widening. Besides, some Members had concern on the traffic impact of the proposed development although it was noted that the TIA submitted by the Applicant was accepted by TD.

#### *Precedent Effect*

46. A Member said that although there was currently no similar applications in the same “R(A)” zone, it did not mean that approval of the subject application would have no implication on the future applications. Some Members also considered that as the Site was occupying a relatively large portion of the subject “R(A)” zone, the character and ambience of the “R(A)” zone would be affected if the Site was converted to office use. Some Members noted that while each application would be considered by the Board based on its individual merits, reference should be made to similar applications approved in the same zone to ensure consistency in decision making. The cumulative impact, not only in terms of housing supply, but also on other aspects including traffic impact, would also be a matter of



concern.

*Property Right*

47. A Member said that refusing the application for office development at the Site would not affect the land owner's property right as his right to continue the existing use or redevelop the Site in accordance with the provision under the OZP had not been affected.

48. Members generally agreed that the subject application should not be approved. Members then went through the reasons adopted by the MPC to reject the application and considered that the rejection reasons should be suitably revised. For rejection reason (a), Members agreed that as planning intention of the "R(A)" zone rather than reduction of housing supply was the major consideration of the application, the reason should be revised to state that the Applicant had not demonstrated that there were sufficient justifications to deviate from the planning intention of the "R(A)" zone. For rejection reason (b), Members agreed that it should be deleted. For rejection reason (c), Members agreed that it was still appropriate and should be retained.

49. After deliberation, the Board decided to reject the application on review for the following reasons:

"(a) the planning intention of the "Residential (Group A)" ("R(A)") zone is for high-density residential developments. The Applicant has not demonstrated that there are sufficient justifications to deviate from the planning intention of the "R(A)" zone; and

(b) approval of the application will set an undesirable precedent for similar applications in the same "R(A)" zone. The cumulative effect of approving such applications will aggravate the shortfall in the supply of housing land."

[Mr L.T. Kwok, Dr Jeanne C.Y. Ng, Dr F.C. Chan, Mr Thomas O.S. Ho and Mr Ricky W.Y. Yu left the meeting during the deliberation session.]

**Agenda Item 4**

[Open Meeting]

Any Other Business

[The item was conducted in Cantonese.]

50.           There being no other business, the meeting was closed at 2:05 p.m.