

**Minutes of the 1207th Meeting of the
Town Planning Board held on 23.8.2019**

Present

Professor S.C. Wong

Vice-Chairperson

Mr H.W. Cheung

Mr Ivan C.S. Fu

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

Mr Wilson Y.W. Fung

Mr Alex T.H. Lai

Dr Lawrence K.C. Li

Mr Stephen L.H. Liu

Miss Winnie W.M. Ng

Mr Franklin Yu

Mr Daniel K.S. Lau

Ms Lilian S.K. Law

Mr K.W. Leung

Professor John C.Y. Ng

Dr Jeanne C.Y. Ng

Mr Ricky W.Y. Yu

Chief Traffic Engineer/New Territories East,
Transport Department
Mr Ken K.K. Yip

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

Chief Engineer (Works), Home Affairs Department
Mr Paul Y.K. Au

Director of Lands
Ms Karen P.Y. Chan

Director of Planning
Mr Raymond K.W. Lee

Deputy Director of Planning/District
Miss Fiona S.Y. Lung

Secretary

Absent with Apologies

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

Chairperson

Mr Lincoln L.H. Huang

Mr Sunny L.K. Ho

Dr Frankie W.C. Yeung

Dr C.H. Hau

Mr Thomas O.S. Ho

Professor T.S. Liu

Ms Sandy H.Y. Wong

Mr Stanley T.S. Choi

Mr L.T. Kwok

Professor Jonathan W.C. Wong

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

Miss Anissa W.Y. Lai

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 1206th Meeting held on 9.8.2019

[The item was conducted in Cantonese.]

1. The minutes of the 1206th meeting held on 9.8.2019 were confirmed without amendments.

Agenda Item 2

[Open Meeting]

Matters Arising

[The item was conducted in Cantonese.]

Dismissal of an Application for Leave to Appeal for Civil Claim against the Town Planning Board in respect of the Tai Po Outline Zoning Plan No. S/TP/25

2. The Secretary reported that the concerned site was located in Tai Po and the following Members had declared interests on this item :

Mr H.W. Cheung - owning a flat at Po Heung Street, Tai Po Market

Dr Frankie W.C. Yeung - his company owning a flat at Fortune Plaza, Tai Po

Mr Daniel K.S. Lau - co-owning with spouse a flat in Ma Wo Road, Tai Po

3. Members noted that Dr. Frankie W.C. Yeung had tendered apologies for being unable to attend the meeting. Members also noted that the item was to report a court's order and no discussion was required, and agreed that Mr H.W. Cheung and Mr Daniel K.S. Lau should be allowed to stay in the meeting.

4. The Secretary reported that Members were briefed on 14.6.2019 on the application by Mr Wong Yu Cho seeking leave from the Court of Appeal (CA) on 20.5.2019 to appeal against the District Court's dismissal of his civil claim against the Town Planning Board in respect of the rezoning of a site at 4770 Tai Po Road, Kon Hang, Tai Po from "Green Belt" to "Residential (Group C) 8" on the draft Tai Po Outline Zoning Plan No. S/TP/25.
5. The CA filed an order on 7.8.2019 that the leave application had been dismissed as Mr Wong had failed to submit appeal documents in a proper manner by the deadline set by the CA.
6. Members noted that the above leave application was dismissed.

Fanling, Sheung Shui & Yuen Long East District

Agenda Items 3 and 4

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/NE-KTS/461

Proposed House (New Territories Exempted House - Small House) in "Residential (Group D)" and "Village Type Development" Zones, Lot 409 S.AI in D.D. 94, Hang Tau Tai Po, Kwu Tung South

Review of Application No. A/NE-KTS/462

Proposed House (New Territories Exempted House - Small House) in "Residential (Group D)" and "Village Type Development" Zones, Lot 409 S.AJ in D.D. 94, Hang Tau Tai Po, Kwu Tung South

(TPB Paper No. 10572)

[The items were conducted in Cantonese.]

7. Members agreed that since the two applications were for the same use and the application sites were adjoining one another and falling within the same "Residential (Group D)" ("R(D)") and "Village Type Development" ("V") zones, the two applications would be considered together.

Presentation and Question Sessions

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

Mr Tom C. K. Yip - District Planning Officer/Fanling, Sheung Shui & Yuen Long East District (DPO/FS&YLE), PlanD

Mr Lee Wong Sun - Applicant (Application No. A/NE-KTS/462)
Lawson David & Sung Surveyors Limited –

Miss Cannis Lee]
Miss Venus Leung] Applicants' Representatives

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 applications.

10. With the aid of a PowerPoint presentation, Mr Tom C. K. Yip, DPO/FS&YLE, PlanD, briefed Members on the background of the review applications including the consideration of the applications by the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board), public comments, planning considerations and assessments for the applications as detailed in TPB Paper No. 10572 (the Paper).

11. The Vice-Chairperson then invited the applicants' representative to elaborate on the review applications.

12. With the aid of a PowerPoint presentation, Miss Cannis Lee, the applicants' representative, made the following main points:

- (a) the sites fell entirely within the village 'environs' ('VE') of Hang Tau and currently formed part of a larger site used as open storage for metal frames. To the east of the sites was Serenity Garden which comprised 13 Small Houses, to the south was the village cluster of Hang Tau Village, and to the further north were mainly open storage uses;

- (b) as recorded in paragraph 62 of the minutes of the RNTPC meeting held on 4.1.2019, the representative of Lands Department (LandsD) said that they would normally not approve the land grant application for non-Small House development on an agricultural lot within the 'VE'. The applicants also understood from a case of an approved application for four houses in Pat Heung, Yuen Long (application No. A/YL-KTS/500), LandsD had advised the applicant that as land in 'VE' was primarily reserved for Small House development, they would not process the land exchange application;
- (c) referring to paragraph 6.3 of the Paper, PlanD estimated that about 4.42 ha of land was available for 176 Small House sites within the "V" zone of Hang Tau Village. However, according to the applicants' estimate, after excluding government land, the remaining area of existing/approved Small House used as garden and/or parking spaces, area occupied by local access and footpath, and land parcel too small for Small House development, the land available for Small House development within the "V" zone was only 2.15 ha for 85 Small House sites. Those figures had not yet taken into account the land owned by Tso/Tong and private developers, sloping terrain, nor access for future development, etc.;
- (d) approval of the applications would not set undesirable precedents for similar applications within the "R(D)" zone. The proposed Small House developments were in line with the Small House Policy and planning intention of the "R(D)" zone, would help meet the keen demand for Small House, were compatible with surrounding village environment, would help phase out the existing non-conforming open storage uses, would reduce heavy goods vehicular traffic, and would not cause adverse traffic impact; and
- (e) the Serenity Garden with 13 Small Houses locating next to the application sites was approved in 1999 with conditions (application No. A/NE-KTS/80). One of the approval conditions was related to the provision of car parking spaces and vehicular access. As such, approving the subject applications

with similar approval condition would address the concern on any adverse cumulative traffic impacts on the surrounding areas.

13. As the presentations from PlanD and the applicants' representatives had been completed, the Vice-Chairperson invited questions from Members.

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

14. Some Members raised the following questions:

- (a) the background for rezoning the sites and their surrounding area from "Recreation" ("REC") to "R(D)", information on the previous applications, and the current uses at the sites;
- (b) the difference in development restrictions between a residential development and a New Territories Exempted House (NTEH) within the "R(D)" zone, and whether a NTEH would result in a higher plot ratio with different traffic generation;
- (c) whether there was any implementation programme for the "R(D)" zone, and whether the Government had strategies to increase the overall housing supply;
- (d) whether a consistent approach had been adopted for considering applications for Small House when there were sufficient land available within the "V" zone to meet the Small House demand, and what the changes in the emphasis in assessing for Small House applications were over the years;
- (e) clarification on the difference in the amount of land available for Small House development as estimated by PlanD and the applicants;
- (f) whether the recent court judgement of Judicial Review (JR) relating to Small House Policy had any implications on the consideration of planning applications for Small House development;

- (g) information on carving out of the private land into small lots in the subject “R(D)” zone falling within ‘VE’, as shown in Plan R-2b of the Paper, including the time of the carving out, the changes in ownership, the time when the application sites were bought by the applicants; and
- (h) the difference between “V” zone and ‘VE’ in respect of Small House grant and whether there were guidelines for Small House grant.

15. In response, Mr Tom C. K. Yip, DPO/FS&YLE, PlanD, made the following points with the aid of some PowerPoint slides:

Zoning history of the area

- (a) an area at Hang Tau Tai Po had been zoned “REC” since 1994, however, no recreational use had been implemented within the zone. On 7.12.2012, when the RNTPC agreed to a s.12A application (No. Y/NE-KTS/5) to rezone the north-eastern portion of the “REC” zone from “Comprehensive Development Area” (“CDA”) to facilitate a low-rise low-density residential development of 30 detached houses, the RNTPC requested PlanD to carry out a land use review for the whole “REC” zone to identify suitable land uses;
- (b) the Serenity Garden, to the east of the sites, which was approved for 13 Small House development in 1999 (application No. A/NE-KTS/80) and was a completed development, was rezoned from “REC” to “R(D)1” on 24.3.2017 with the residential portion restricted to southern portion and an area to the north restricted for a landscaped area with ancillary car parking and utility installations to tally with approved scheme. Together with the amendments to “CDA” and “R(D)1”, the remaining area of the “REC” zone, which was mainly occupied by vacant land, open storage and warehouse uses, was rezoned to “R(D)” to encourage phasing out/upgrading of existing temporary structures into low-rise/low density permanent residential development on 24.3.2017. Broad technical assessments had been conducted under the land use review and the approved s.12A application, which confirmed the feasibility of the

amendments from various aspects including traffic and infrastructure;

Previous Applications involving the application sites

- (c) there were three previous applications (No. A/NE-KTS/31, A/NE-KTS/81 and A/NE-KTS/208) covering the sites and their adjoining larger areas. The applications were considered by the RNTPC when the area was zoned “REC”. Application No. A/NE-KTS/31 for proposed hotel with recreation facilities was rejected in 1995 mainly on grounds of excessive scale and development intensity. Application No. A/NE-KTS/81 for proposed holiday camp with sports training facilities was approved on review in 1999 but the approved development had not been implemented and the planning permission lapsed in 2008. Application No. A/NE-KTS/208 for proposed elderly home was rejected in 2005 mainly for the reason of being not in line with the planning intention of the then “REC” zone;

Planning intention and implementation

- (d) the planning intention of the “R(D)” zone was primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It was also intended for low-rise, low-density residential developments subject to planning permission. Residential development (other than NTEH) should not exceed a maximum plot ratio of 0.4;
- (e) while the maximum plot ratio of the “R(D)” zone was restricted to 0.4, the plot ratio of the proposed Small Houses having a total GFA of 195m² each was about 1.9. The traffic generation was expected to be higher as the population would be increased. Except some rural tracks, the area was only accessible via Hang Tau Road which have limited capacity to cater for further intensified development;
- (f) there was currently no permanent residential development completed within the subject “R(D)” zone. However, since it was rezoned in 2017 only, the

implementation process would be gradual and might stretch over a longer period of time;

- (g) the Government had adopted a multi-pronged approach to increase housing land supply and was pressing ahead with various initiatives to meet the land requirements, including unleashing development potential of brownfield sites and making better use of privately owned land in the New Territories;

Small House Application

- (h) the Board had prepared the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria) setting out the major criteria in considering the Small House applications. According to the Interim Criteria, sympathetic consideration might be given, among others, if there was a general shortage of land in meeting the demand for Small House development in the “V” zone of the concerned village. In recent years, the Board had adopted a more cautious approach in considering applications for Small House developments. In considering whether there was a general shortage of land in meeting Small House demand, more weighting had been put on the number of outstanding Small House applications. For the current applications, land available within the “V” zone was sufficient to meet the outstanding Small House applications, and it was considered more appropriate to concentrate the proposed Small House developments close to the existing village cluster for more orderly development pattern. The considerations adopted by the Board in assessing other similar applications in “R(D)” zones within ‘VE’ on the other OZPs were similar and generally followed the Interim Criteria;
- (i) in estimating land available for Small House development in the “V” zone, PlanD had adopted a consistent approach in assessing the available land within the “V” zones on all OZPs and land not suitable for Small House developments, for example, occupied by existing developments, vehicular access, supporting facilities, and slopes, was excluded from the assessment. According to PlanD’s latest estimate, about 4.42 ha of land, equivalent to

about 176 Small House sites, was available within the “V” zone of Hang Tau Village. Among the 4.42 ha of land, about 83% were private land and only 17% was government land, thus even after discounting the government land, there would still be about 3.7 ha of land available and was sufficient to cater for the outstanding Small House applications;

- (j) regarding the implication of the recent court judgment on the JR in respect of the Small House Policy, it should be noted that the said judgment was related to the Small House Policy implemented by LandsD and did not affect the Board’s functions under the Town Planning Ordinance in considering planning applications. Also, the relevant litigation procedure of the JR was yet to be completed at this juncture. As such, the Board should consider applications for planning permission for Small House development, and decide whether to grant or refuse planning permission taken into account the relevant planning considerations; and
- (k) according to the available information, the piece of land before the carving out was under the same lot and owned by a private company. After the carving out, some of the carved lots were still owned by a private company with some lots being taken up by private individuals.

16. In response, Miss Cannis Lee, the applicants’ representative, made the following main points:

- (a) the applicants bought the sites in 2017 after searching some time for suitable land to develop their Small Houses. The sites were considered very suitable for their families as they were located very close to the village area and other family members. The sites were located at the fringe of an open storage area and approval would help improve the environment of their village;
- (b) the sites were currently used as open storage for metal frames which was an existing use being tolerated under the OZP. The applicants did not have any information on the carving out history nor land ownership for the area in the “R(D)” zone falling within ‘VE’;

- (c) as land in 'VE' was primarily reserved for Small House development, and LandsD would not process the land exchange application for non-Small House development within 'VE', the planning intention of the "R(D)" zone would not be able to be achieved when the application site fell within the 'VE';
- (d) according to their own estimates, the land available for Small House development within the "V" zone of Hang Tau Village was only for 85 Small House sites, it should be less if taking into account the problems of land ownership and sloping terrain; and
- (e) to address the traffic concerns raised, approval conditions relating to the provision of car parking spaces and vehicular access could be imposed to the planning permission.

17. To supplement, Ms Karen P.Y. Chan, Director of Lands, provided the following information on land matters for Small House development:

- (a) 'VE' for a recognised village was not a land use zoning. The 'VE' boundaries were drawn up at 300 feet from the edge of the last Village Type House built before the implementation of the Small House Policy in 1972;
- (b) Small House land grant in respect of private agricultural land was normally issued by way of Building Licence, or in some cases by way of in-situ Land Exchange in which a land owner could surrender an existing lot in exchange for the regrant of a new lot with minor adjustment in the lot boundary and with new conditions reflecting the up-to-date planning and other requirements. According to the prevailing practices, in-situ land exchange would usually be adopted for implementing non-Small House developments on agricultural lots if approval was so given; and
- (c) land in 'VE' was primarily reserved for Small House development and therefore land exchange or lease modification for implementing non-Small

House development within 'VE' would not normally be allowed. Nevertheless, there were cases for such non-Small House development approved in the past based on their own circumstances and merits. To conclude, applications for non-Small House development within 'VE' should be considered on a case-by-case basis with reference to its individual circumstances e.g. the local responses, the planning intention, the prevailing land policy, etc.

18. As Members had no further question, the Vice-Chairperson said that the hearing procedure for the review applications had been completed. The Board would further deliberate on the review applications in the absence of the applicants and the applicants' representatives and inform the applicants of the Board's decision in due course. The Vice-Chairperson thanked the representatives of the applicants and PlanD for attending the meeting. They left the meeting at this point.

Deliberation Session

19. Members had the following major views:

- (a) the Board's consideration for applications for Small House development should be focused on the Interim Criteria which was prepared by the Board setting out the major criteria in considering the Small House applications. The Board had adopted in the recent years a more cautious approach in considering applications for Small House developments. In considering whether there is a general shortage of land in meeting Small House demand, more weighting had been put on the number of outstanding Small House applications;
- (b) the "V" zone and 'VE' were two separate regimes in respect of Small House development. 'VE' was only a land administration boundary but it was not a land use zone. There was no strong planning justification to approve the subject applications even if they fell entirely within the 'VE'. It was more appropriate to concentrate Small House developments within the "V" zone for more orderly development pattern, and any further expansion of the

village cluster outside the “V” zone was considered not desirable;

- (c) whether there were planning gains for approving the applications should be taken into account. The development intensity of the Small House under the current applications was higher than other residential development in the “R(D)” zone and approval would increase the overall density of the area;
- (d) approval of the applications would set a precedent effect for similar applications in the “R(D)”, in particular it was noted that the private land in the area had already been carved out into small lots with sizes fitting Small House developments, and eventually would turn the “R(D)” zone into a village extension area defeating the planning intention; and
- (e) as regards the problems in land exchange applications for non-Small House development within ‘VE’, LandsD might consider giving sympathetic consideration to those land exchange applications which met the planning intention of the land use zoning under the OZP to reduce the uncertainty for the implementation of approved schemes.

20. For Members’ information, Mr Raymond K.W. Lee, the Director of Planning, supplemented that the Board had recently rejected two review applications for Small House development in “Residential (Group E)” zone in Tuen Mun mainly for the reason that land was still available within the “V” zone.

21. The Vice-Chairperson, in summing up Members’ views on the applications, noted that Members in general considered that a more cautious approach should be adopted for considering applications for Small House developments. Members generally did not support the applications as land was still available within the “V” zone to meet the outstanding Small House applications.

22. Noting that there was no major change in planning circumstances for the sites, Members considered that the reasons for rejection made by the RNTPC, as stated in paragraph 1.3 of the Paper, were still valid.

23. After further deliberation, the Board decided to reject the applications on review. The reasons for rejection were:

- “(a) land is still available within the “Village Type Development” zone of Hang Tau Village which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for more orderly development pattern, efficient use of land and provision of infrastructures and services; and
- (b) approval of the application would set an undesirable precedent for similar applications within the “Residential (Group D)” zone. The approval of similar applications would result in adverse cumulative traffic impacts on the surrounding areas.”

Sha Tin, Tai Po & North District

Agenda Items 5 and 6

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/NE-SSH/127

Proposed House (New Territories Exempted House - Small House) and Minor Relaxation of Gross Floor Area Restrictions in “Comprehensive Development Area” Zone, Lots 1109 S.A ss.1 and 1124 S.A in D.D. 218, Che Ha Village, Shap Sz Heung, Sai Kung North

Review of Application No. A/NE-SSH/128

Proposed House (New Territories Exempted House - Small House) and Minor Relaxation of Gross Floor Area Restrictions in “Comprehensive Development Area” and “Village Type Development” Zones, Lots 1109 S.A RP and 1124 RP in D.D. 218, Che Ha Village, Shap Sz Heung, Sai Kung North
(TPB Paper No. 10573)

[The items were conducted in Cantonese.]

24. Members agreed that since the two applications were similar in nature and the sites were located in close proximity to one another and within the same “Comprehensive Development Area” (“CDA”) zone, the two applications would be considered together.

[Mr David Y.T. Lui left the meeting at this point.]

Presentation and Question Sessions

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

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|--------------------------|---|---|
| Ms Jessica H.F. Chu | - | District Planning Officer/Shu Tin, Tai Po & North District (DPO/STN), PlanD |
| Mr Hung Shu Ping |] | |
| Mr Lee Wan Hoi Aloysious |] | Applicants’ representatives |
| Mr Martin Lee |] | |

26. The Vice-Chairperson extended a welcome and briefly explained the procedure of the hearing. He then invited PlanD’s representative to brief Members on the review applications.

27. With the aid of a PowerPoint presentation, Ms Jessica H.F. Chu, DPO/STN, PlanD, briefed Members on the background of the review applications including the consideration of the applications by the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board), public comments, planning considerations and assessments for the applications as detailed in TPB Paper No. 10573 (the Paper).

[Mr Alex T.H. Lai left the meeting during the presentation.]

28. The Vice-Chairperson then invited the applicants’ representatives to elaborate on the review applications.

29. Mr Hung Shu Ping, the applicants' representative, made the following main points:

- (a) the application sites were the subject of two previous planning applications (No. A/NE-SSH/96 and 97) which were approved on 10.4.2015. On 23.1.2019, before the expiry date for commencement, the applicants submitted s.16A applications for extending the time for commencement of the planning permissions which however, were not accepted as they were not submitted by the original applicants. The applicants were advised to submit fresh applications. It was only shortly before the expiry date of the previous approvals the applicants were informed that the applications for extending the time for commencement of development could be submitted under s.16A with authorization by the original applicants. Due to the shortage of time, the applicants were unable to obtain the authorizations before expiry of the previous approvals; and
- (b) the public comments objecting the applications submitted under the name of Che Ha Village Office were fake and not really raised by the Village Office. The concerns raised by some local villagers on possible blockage to their houses could be resolved by construction of a new access road.

30. Mr Lee Wan Hoi Aloysious, the applicants' representative, made the following main points:

- (a) he was the father of the two applicants, the Indigenous Inhabitant Representative (IIR) of Ping Chau Chau Mei Village, and a member of the Sai Kung North Rural Committee;
- (b) all applications for Small House in Ping Chau were rejected as there was no supporting infrastructure, no electricity and no water supplies. Ping Chau Island was included in the Country Park, fell within the Geopark and surrounded by the Marine Park;
- (c) as it was difficult to build a Small House in Ping Chau and knowing there

were two pieces of land available within Che Ha Village of Shap Sz Heung which had already obtained planning approvals for Small House development, the applicants, being indigenous villagers of Ping Chau Chau Mei Village, bought the sites with a view to building Small Houses. The applicants considered that it was only a simple land matter for the change in land ownership, and submitted fresh applications to the Lands Department (LandsD) for Small House grant on the sites;

- (d) other than the change of land ownership, there was no change in the site condition and planning circumstances, the Board should understand their situation and grant the planning approvals to the current applicants;
- (e) the Che Ha Village Office had already submitted a letter to clarify that the objection raised under the name of Che Ha Village Office was made by someone else and not genuine; and
- (f) the applicants had not been well informed the requirement on extension of the time for commencement of the approved developments, otherwise the two planning permissions should still be valid.

31. Mr Martin Lee, the applicants' representative, made the following main points:

- (a) he was the IIR of Che Ha Village. The applicants bought the land from the former landowners who were granted planning permission for Small House development at the sites. The previous applicants had withdrawn their applications for the Small House grants due to unable to fulfil the requirements for submitting the applications;
- (b) as the IIR, he had been fighting for the construction of a proper access road and emergency vehicular access for Che Ha Village though the improvements might not have known to some villagers; and
- (c) there was also a similar application in the vicinity of the sites which was approved by the RNTPC.

32. Mr Hung Shu Ping, the applicants' representative, supplemented that one of the applicants of the previous planning approval had withdrawn the Small House grant application as he was unwilling to give up the existing tenancy of a public rental unit before his application for Small House grant could be processed.

[Dr Lawrence W.C. Poon, Dr Lawrence K.C. Li and Dr Jeanne C.Y. Ng left the meeting at this point.]

33. As the presentations from PlanD's and the applicants' representatives had been completed, the Vice-Chairperson invited questions from Members.

34. Members raised the following questions:

- (a) whether the previous applications at the sites were approved after the adoption of a more cautious approach in considering applications for Small House development;
- (b) whether there were restrictions on the eligibility of an applicant in submitting planning application for extension of time for commencement of approved development; and
- (c) whether sympathetic consideration for Small House application would be given to the original applicant upon lapsing of a planning permission.

35. In response, Ms Jessica H.F. Chu, DPO/STN, PlanD, made the following points with the aid of some PowerPoint slides:

- (a) the previous applications at the sites were approved by the Board on review on 10.4.2015 which was prior to the adoption of the more cautious approach in considering applications for Small House developments by the Board. The original applicants had withdrawn their Small House grant applications to LandsD in 2016. The current applicants acquired the sites in April 2017 and submitted the applications for Small House grants to LandsD in May 2017;

- (b) according to the Town Planning Board Guidelines for Class A and Class B Amendments to Approved Development Proposals (TPB PG-No.36B), application for extension of time for commencement of development required an application under s. 16A(2) of the Town Planning Ordinance (the Ordinance). As stipulated in the Ordinance, a s.16A application could only be submitted by the person to whom the permission was granted and this requirement was included in the Guidance Notes for s.16A application promulgated by the Board. It was clearly stated in TPB PG-No.36B that in case there was a change in land ownership, the original applicant might appoint the subsequent owner of the site as his/her authorized representative to submit a s.16A application. The TPB PG-No.36B was a public document and available on the Board's website for public inspection. Besides, the date when the previous planning permissions would lapse had been specified in the approval letters;
- (c) according to the Ordinance, any person could submit a s.16 planning application. Sympathetic consideration for the proposed Small Houses, if submitted by the original applicants after lapsing of the approvals, might be given provided there were sufficient justifications such as the implementation process was subject to serious constraints outside the control of the applicant; and
- (d) according to the Interim Criteria, application with previous planning permission lapsed would be considered on its own merits. In general, proposed development which was not in line with the Interim Criteria would normally not be allowed. Sympathetic consideration might be given if there were special circumstances. For the current applications, no special circumstance was applicable.

36. In response, Mr Hung Shu Ping, the applicants' representative, said that the applicants had no knowledge that an application for the extension of time for commencement of the approved development could only be submitted by the person to whom the permission was granted. In addition, they were not informed that if there was a change in land

ownership, the original applicant might appoint the subsequent owner of the site as his/her authorized representative to submit the s.16A application. Most important of all, as there was no change in the conditions and planning circumstances of the sites, the current applications should be approved.

37. As Members had no further question, the Vice-Chairperson said that the hearing procedure for the review applications had been completed. The Board would further deliberate on the review applications in the absence of the applicants' representatives and inform the applicants of the Board's decision in due course. The Vice-Chairperson thanked the representatives of the applicants and PlanD for attending the meeting. They left the meeting at this point.

Deliberation Session

38. In response to some Members' questions, the Secretary provided the following information :

- (a) submission of s.16 and s.16A applications were under different provisions of the Ordinance. While s.16 application sought permission for uses on the land under application, a s.16A application was to make amendments to an approved development proposal and thus could only be submitted by the person to whom the permission was granted or by his authorized representative;
- (b) according to PlanD's estimate, the land available for Small House development in the "V" zone of Che Ha was sufficient to meet not only the number of outstanding Small House applications but also the 10-year demand forecast at the time when the two previous applications were considered and approved by the Board. For the current applications, the situation was more or less the same, i.e. there was no general shortage of land in meeting the Small House demand; and
- (c) the two previous applications were approved by the Board on review mainly

on sympathetic considerations that the proposed Small House developments, involving only a relatively small area at the fringe of the “CDA” zone, were not incompatible with the approved comprehensive development and would not have significant impact on the overall implementation of the development, as set out in paragraph 4.14 of the Paper.

39. Some Members were sympathetic to the applications and had the following views:

- (a) there was no change in the applied use as compared with the previous approvals, and the chance of setting undesirable precedents for similar applications within the subject “CDA” zone was slim; and
- (b) comparing to other Small House applications in conservation and agriculture zones, the current applications were in a development zone which could be considered more favourably and approval of the applications could increase the supply of residential dwellings.

40. Some Members did not support the applications and had the following views :

- (a) the “V” zone was planned for Small House developments by indigenous villagers, and the Board had adopted a more cautious approach in considering Small House developments outside the “V” zone. The Board should remain consistent in adopting the criteria of consideration;
- (b) there was no general shortage of land within the “V” zone in meeting the Small House demand. It was more appropriate to concentrate Small House developments within the “V” zone for more orderly development pattern as long as there was still land available for Small House development within the “V” zone;
- (c) the Guidance Notes for s.16A application and TPB PG-No.36B had clearly stated the requirements that a s.16A application could only be submitted by the original applicant or his authorized representative. Both documents

issued by the Board were public documents and available for public inspection; and

- (d) there was no special circumstances for sympathetic consideration applicable to the current applications. Absence of knowledge in the application procedures could not be used as an excuse to warrant sympathetic consideration. Besides, authorization could be obtained within a short period of time.

41. Mr Raymond K.W. Lee, the Director of Planning, summed up the application history of the sites as follows :

- (a) the previous applications (No. A/NE-SSH/96 and 97) covering the two sites were approved by the Board on review on 10.4.2015 mainly on sympathetic considerations;
- (b) since August 2015, the Board had adopted a more cautious approach in assessing applications for Small House development;
- (c) the original applicants of the previous approved planning applications withdrew their Small House grant applications and the current applicants bought the land from them in 2017;
- (d) the current applicants submitted fresh applications in 2019 as they claimed of having insufficient time to obtain authorization from the applicants of the previous approved applications to submit applications for extending the commencement time of development before the expiry of the previous permissions; and
- (e) there had been changing circumstances since the granting of the previous planning permissions in that the more cautious approach had not been adopted, and the applications were submitted by different applicants.

42. The Vice-Chairperson concluded that more Members had held the view that

Small House development should be concentrated within the “V” zone and the applications should not be supported since land was still available within the “V” zone of Che Ha to meet not only the outstanding Small House applications but also the 10-year demand forecast. Members generally considered that the reasons for rejection as stated in paragraph 1.2 of the Paper were still valid.

[Mr Ivan C.S. Fu left the meeting during the discussion.]

43. After further deliberation, the Board decided to reject the applications on review. The reasons for rejection were:

- “(a) the proposed Small House development does not comply with the Interim Criteria for assessing planning application for New Territories Exempted House/Small House development in the New Territories in that there is no general shortage of land in meeting the demand for Small House development in the “Village Type Development” (“V”) zone of Che Ha; and
- (b) land is still available within the “V” zone of Che Ha which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.”

Agenda Item 7

[Open Meeting]

Request for Deferment of Review of Application No. A/TP/662

Proposed House (New Territories Exempted House - Small House) in “Green Belt” Zone,

Lots 83 S.C RP and 470 S.D in D.D. 21, San Uk Ka Village, Tai Po

(TPB Paper No. 10574)

[The item was conducted in Cantonese.]

44. The Secretary reported that the application site was located in Tai Po and the following Members had declared interests on this item.

Mr H.W. Cheung - owning a flat at Po Heung Street, Tai Po Market

Dr Frankie W.C. Yeung - his company owning a flat at Fortune Plaza, Tai Po

Mr Daniel K.S. Lau - co-owning with spouse a flat in Ma Wo Road, Tai Po

45. Members noted that Dr. Frankie W.C. Yeung had tendered apologies for being unable to attend the meeting. Members also noted that the properties of Mr H.W. Cheung and Mr Daniel K.S. Lau had no direct view to the site, and agreed that they should be allowed to stay at the meeting.

46. Members noted that the applicant's representative requested on 29.7.2019 deferment of the consideration of the review application for two months so as to allow time for preparation of further information in support of the review application. This was the first time that the applicant requested deferment of the review application.

47. Members noted that the justification for deferment met the criteria for deferment as set out in the Town Planning Board Guidelines on Deferment of Decision on Representations, Comments, Further Representations and Applications made under the Town Planning Ordinance (TPB PG-No. 33) in that the applicant needed more time to prepare further information in response to departmental comments, the deferment period was not indefinite, and that the deferment would not affect the interests of other parties.

48. After deliberation, the Board agreed to defer a decision on the review application, as requested by the applicant, pending the submission of further information (FI) by the applicant. The Board also agreed that the review application would be submitted to the Board for consideration within three months upon receipt of FI from the applicants. If the FI submitted by the applicant was not substantial and could be processed within a shorter time, the review application could be submitted to an earlier meeting for the Board's consideration. The Board also agreed to advise the applicant that the Board had allowed two months for

preparation of submission of FI, and no further deferment would be granted unless under very special circumstances.

Agenda Item 8

[Open Meeting]

Any Other Business

49. There being no other business, the meeting was closed at 11:40 a.m.