

RESTRICTED

**Minutes of 853rd Meeting of the
Town Planning Board held on 10.2.2006**

Present

Permanent Secretary for Housing, Planning and Lands (Planning and Lands) Mrs. Rita Lau	Chairperson
Hon. Patrick S.S. Lau	Vice-chairman
Dr. Alex S.K. Chan	
Dr. Rebecca L.H. Chiu	
Dr. Peter K.K. Wong	
Mr. Michael K.C. Lai	
Professor K.C. Ho	
Mr. Alex C.W. Lui	
Mr. K.G. McKinnell	
Mr. S.L. Ng	
Dr. Greg C.Y. Wong	
Mr. C.K. Wong	
Ms. Carmen K.M. Chan	
Mr. Erwin A. Hardy	
Professor Nora F.Y. Tam	
Mr. Nelson W.Y. Chan	
Mr. David W.M. Chan	

Mr. Leslie H.C. Chen

Dr. Lily Chiang

Professor David Dudgeon

Professor Peter R. Hills

Mr. Tony C.N. Kan

Mr. Edmund K.H. Leung

Professor N.K. Leung

Professor Bernard V.W.F. Lim

Dr. C.N. Ng

Mr. Daniel B.M. To

Mr. Stanley Y.F. Wong

Mr. Alfred Donald Yap

Ms. Sylvia S.F. Yau

Principal Assistant Secretary (Transport)
Environment, Transport and Works Bureau
Ms. Ava Chiu

Deputy Director of Environmental Protection
Dr. Michael Chiu

Director of Lands
Mr. Patrick L.C. Lau

Director of Planning
Mr. Bosco C.K. Fung

Deputy Director of Planning/District
Miss Ophelia Y.S. Wong

Secretary

Absent with Apologies

Mrs. Angelina P.L. Lee

Mr. Francis Y.T. Lui

Mr. Tony W.C. Tse

Assistant Director (2), Home Affairs Department

Ms. Margaret Hsia

In Attendance

Assistant Director of Planning/Board

Mr. C.T. Ling

Chief Town Planner/Town Planning Board

Ms. Brenda K.Y. Au (a.m.)

Miss Fiona S.Y. Lung (p.m.)

Senior Town Planner/Town Planning Board

Mr. C.M. Li (a.m.)

Town Planner/Town Planning Board

Ms. Irene W.S. Lai (p.m.)

72. The meeting was resumed at 2:15 p.m..
73. The following Members were present in the afternoon session:

Mrs. Rita Lau
Dr. Alex S.K. Chan
Dr. Rebecca L.H. Chiu
Mr. Michael K.C. Lai
Dr. Greg C.Y. Wong
Mr. C.K. Wong
Ms. Carmen K.M. Chan
Mr. Nelson W.Y. Chan
Mr. David W.M. Chan
Dr. Lily Chiang
Mr. Tony C.N. Kan
Mr. Edmund K.H. Leung
Mr. Alfred Donald Yap
Ms. Sylvia S.F. Yau
Ms. Ava Chiu
Dr. Michael Chiu
Mr. Bosco C.K. Fung

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 852nd Meeting held on 20.1.2006

74. The minutes of the 852nd meeting held on 20.1.2006 were confirmed without amendment.

Agenda Item 2

[Open Meeting]

Matters Arising

(i) New Town Planning Appeal Received

Town Planning Appeal No. 2 of 2006

Temporary Container Vehicle and Lorry Park and Ancillary Repairing Activities
for a Period of 3 Years in “Undetermined” Zone

Lots 137(Part), 138-143, 145, 147(Part), 148, 149, 151, 152(Part), 153(Part), 155(Part),
159, 160, 164, 165, 167-171, 172, 175, 176-179, 180RP, 181RP, 182RP, 183RP(Part),
236RP, 237RP, 238RP, 239RP, 240RP, 241RP and 243RP and
Adjoining Government Land in DD122, Ping Shan, Yuen Long
(Application No. A/YL-PS/228)

75. The Secretary reported that an appeal against the decision of the Board to reject on review an application for a temporary container vehicle and lorry park and ancillary repairing activities for a period of three years at a site zoned “Undetermined” on the approved Ping Shan Outline Zoning Plan No. S/YL-PS/11 was received by the Town Planning Appeal Board on 26.1.2006. The application was rejected by the Board on 18.11.2005 mainly on the grounds that the development was not in line with the Board’s Guidelines for Open Storage and Port Back-up Uses as the development was not compatible with the residential structures in the surrounding areas; there was insufficient information to demonstrate that the development would not have adverse traffic and environmental impacts on the surrounding areas; there were adverse departmental comments and local objections on the application; and approval of the application would set an undesirable precedent. The Secretariat would represent the Board on all matters relating to the appeal in the usual manner. The hearing dates of the appeal were yet to be fixed.

(ii) Town Planning Appeal Statistics

76. The Secretary reported that as at 10.2.2006, 27 cases were yet to be heard by the Town Planning Appeal Board. Details of the appeal statistics were as follows:

Allowed	:	15
Dismissed	:	83
Abandoned/Withdrawn/Invalid	:	111
Yet to be Heard	:	27
<u>Decision Outstanding</u>	:	<u>1</u>
Total	:	237

77. As the applicants of the review hearing under Agenda Items 6 and 7 had arrived, the Board decided to discuss these 2 items first.

Agenda Item 6

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/YL-KTN/238

Temporary Open Storage of Vehicles for a Period of 3 Years in “Village Type Development” zone,
Lot 466RP(Part) in DD 109, Kam Tin Road, Kam Tin, Yuen Long
(TPB Paper No. 7513)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

[Mr. David W.M. Chan, Dr. Lily Chiang and Dr. Greg C.Y. Wong arrived to join the meeting during the presentation and question session.]

78. Mr. Wilson W.S. Chan, District Planning Officer/Tuen Mun and Yuen Long (DPO/TMYL) and the following applicant’s representatives were invited to the meeting:

Mr. Lui Kim-ming

Mr. Wong Kwan-ming

79. The Chairperson extended a welcome and explained briefly the procedures of the review hearing. The Chairperson then invited Mr. Wilson W.S. Chan to brief Members on the background to the application.

80. With the aid of plans shown at the meeting, Mr. Wilson W.S. Chan covered the following main aspects as detailed in the Paper:

- (a) the reasons of the Rural and New Town Planning Committee (RNTPC) to reject the application for proposed temporary open storage of vehicles for a period of 3 years at the application site on 14.10.2005;
- (b) the justifications put forth by the applicant in support of the review application were summarised in paragraph 3 of the Paper;
- (c) departmental comments – the Director of Environmental Protection did not support the application as a number of residential units were located in the vicinity of the site. The Assistant Commissioner for Transport/New Territories raised concern on having 5 vehicular accesses over a 100m long road section. The closely spaced run-ins would give rise to road safety implications and were not acceptable from traffic perspective;
- (d) no public comment or local objection was received on the review application; and
- (e) PlanD's view – the development was not in line with the planning intention of the "Village Type Development" ("V") zone. Three Small House applications had been approved and 2 were being processed in the vicinity of the site. The applicant had not demonstrated that genuine effort had been taken to relocate his business despite 2 previous applications (No. A/YL-KTN/174 and 201) were approved to provide time for relocation. Three similar applications (No. A/YL-KTN/236, 237 and 239) for renewal of planning permissions were rejected either by the Board on review or by RNTPC. Residential dwellings were located in close proximity to the site at about 20m to its north and north-east and there were environmental and traffic concerns. For reasons stated in paragraph 6.3 of the Paper, the application was not supported.

81. The Chairperson then invited the applicant's representatives to elaborate on the application.

82. Mr. Lui Kim-ming made the following main points:

- (a) the applicant had rented the site for storing vehicles for 6 to 7 years. The site had all along been kept neat and tidy without causing any pollution;
- (b) the area of the site had been reduced after land was resumed for the Kam Tin Road Improvement project. Unlike a public car park, the site was for the sole use of his company. As some vehicles would be stored at the site for several months, not much traffic would be generated;
- (c) it was difficult to find an alternative site for relocation as vehicle storage yards were not allowed in many parts of the New Territories;
- (d) if the application was rejected, the applicant would be forced to close his business. The site might become a dumping ground, causing environmental degradation; and
- (e) the development would not adversely affect the new house under construction. No complaints had been received from the respective owner.

83. A Member noted from Plan R-3 of the Paper that quite a number of vehicles were stored at the site. He asked the applicant's representative about the number of vehicular trips generated from the site and how the traffic noise nuisance could be resolved after the occupation of the newly built house.

84. Mr. Lui Kim-ming replied that the new house was located to the northeast of the site at a distance farther away from the original house that had been demolished. The vehicles entering and leaving the site would not affect the new house as the ingress/egress point was located at the southern site boundary. Mr. Lui reiterated that many vehicles would be stored at the site for a long period of time.

85. As the applicant's representatives had no further comment to make and Members had no further question to raise, the Chairperson informed them that the hearing procedures for the review had been completed and the Board would further deliberate on the application in their absence and inform them of the Board's decision in due course. The Chairperson thanked the representatives of the applicant and PlanD for attending the meeting. They all left the meeting at this point.

Deliberation Session

86. The Chairperson remarked that the current application did not warrant sympathetic consideration as more than one approval had been granted to the applicant for relocating his business, and Small House developments had already started to take place in the vicinity of the site to realise the planning intention of the "V" zone. Other applications for renewal of planning permissions in the same "V" zone had been rejected. The Board should adopt a consistent approach in dealing with similar applications. Members agreed.

87. After further deliberation, the Board decided to reject the application on review and the reasons were:

- (a) the development did not comply with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses in that residential dwellings which were located to its close proximity would be susceptible to adverse environmental nuisances generated by the development; and
- (b) the continual occupation of the site for temporary open storage use was not in line with the planning intention of the "Village Type Development" zone which was to designate both existing and recognized villages and areas of land considered suitable for village expansion. There was no information in the submission to demonstrate that relocation to alternative sites could not be made.

Agenda Item 7

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/YL-KTN/239

Temporary Open Storage of Vehicle Glass (including Parking and Loading/Unloading) for a Period of 3 Years in “Village Type Development” zone, Lot 466RP(Part) in DD 109, Kam Tin Road, Kam Tin, Yuen Long

(TPB Paper No. 7514)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

88. Mr. Wilson W.S. Chan, District Planning Officer/Tuen Mun and Yuen Long of Planning Department (PlanD) and Mr. Shi Chit-yuk, the applicant’s representative, were invited to the meeting.

89. The Chairperson extended a welcome and explained briefly the procedures of the review hearing. The Chairperson then invited Mr. Wilson W.S. Chan to brief Members on the background to the application.

90. With the aid of plans shown at the meeting, Mr. Wilson W.S. Chan covered the following main aspects as detailed in the Paper:

- (a) the reasons for the Rural and New Town Planning Committee (RNTPC) to reject the application for temporary open storage of vehicle glass (including parking and loading/unloading) for a period of 3 years on 28.10.2005;
- (b) no further justifications had been put forth by the applicant in support of the review;
- (c) departmental comments – the Director of Environmental Protection did not support the application as a number of residential units were located in the vicinity of the site with a new village house under construction. The Assistant Commissioner for Transport/New Territories raised strong objection to the

application as the proposed vehicular access was too near the roundabout which was absolutely unacceptable from road safety perspective;

- (d) no public comment or local objection was received on the review application; and
- (e) PlanD's view – the development was not in line with the planning intention of the “Village Type Development” (“V”) zone. Three Small House applications had been approved and 2 were being processed in the vicinity of the site. The applicant had not demonstrated that genuine effort had been taken to relocate his business despite 2 previous applications (No. A/YL-KTN/172 and 202) were approved to provide time for relocation. Three similar applications (No. A/YL-KTN/236, 237 and 238) for renewal of planning permissions were rejected either by the Board on review or by RNTPC. Residential dwellings were located adjacent to the site at about 50-60m to its north-west and there were environmental and traffic concerns. For reasons stated in paragraph 6.3 of the Paper, the application was not supported.

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

92. Mr. Shi Chit-yuk said that his company was not yet fully prepared for relocation of its business. Vehicle glass could be easily broken and required careful handling. He requested the Board to give another year for relocating the business so that better arrangements could be made for the 30 employees working at the site.

93. In response to a Member's question, Mr. Shi Chit-yuk said he was not aware that his company was required to relocate the business within one year from the previous approval (Application No. A/YL-KTN/202). About 30% of the company's business had been relocated. More time would be required to find suitable sites to cater for the special requirements in handling vehicle glass, to lay-off or make alternative arrangements for the employees and to reduce the financial loss.

94. The Chairperson asked whether the Board's decision in granting the previous approval for a year had been conveyed to the applicant. Mr. Wilson W.S. Chan confirmed that the message of allowing a year's time for relocation of his business was conveyed to the applicant in the approval letter of Application No. A/YL-KTN/202.

95. As the applicant's representative had no further comment to make and Members had no further question to raise, the Chairperson informed him that the hearing procedures for the review had been completed and the Board would further deliberate on the application in his absence and inform the applicant of the Board's decision in due course. The Chairperson thanked the representatives of the applicant and PlanD for attending the meeting. They all left the meeting at this point.

Deliberation Session

96. The Chairperson remarked that the intention of the previous approval to allow a year's time for the applicant to relocate his business was clearly conveyed to the applicant in writing. Other applications for renewal of planning permissions in the same "V" zone had been rejected. There was no strong justification to approve the subject application. Members agreed.

97. After further deliberation, the Board decided to reject the application on review and the reasons were:

- (a) the development did not comply with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses in that residential dwellings which were located to its close proximity would be susceptible to adverse environmental nuisances generated by the development and adverse comments had been received from government department on traffic ground; and
- (b) the continual occupation of the site for temporary open storage use was not in line with the planning intention of the "Village Type Development" zone which was to designate both existing and recognized villages and areas of land considered suitable for village expansion. There was no information in the submission to demonstrate that relocation to alternative sites could not be made.

98. As the applicants of review hearing under Agenda Items 8 to 10 had not yet arrived, the Board returned to discuss Agenda Item 5.

Agenda Item 5

99. The minutes of this item were recorded under confidential cover.

Agenda Items 8 to 10

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/K14/481

“Shop and Services” Use in “Other Specified Uses” annotated “Business” zone,
Unit Q, G/F, Everest Industrial Centre, 396 Kwun Tong Road, Kwun Tong
(TPB Paper No. 7515)

Review of Application No. A/K14/482

“Shop and Services (Bank/Retail/Showroom/Supermarket/Fast Food Shop/Photographic Studio)” Use
in “Other Specified Uses” annotated “Business” zone,
Unit M, G/F, Everest Industrial Centre, 396 Kwun Tong Road, Kwun Tong
(TPB Paper No. 7516)

Review of Application No. A/K14/484

“Shop and Services (Bank/Retail/Showroom/Supermarket/Fast Food Shop/Photographic Studio)”
Use in “Other Specified Uses” annotated “Business” zone,
Unit L, G/F, Everest Industrial Centre, 396 Kwun Tong Road, Kwun Tong
(TPB Paper No. 7517)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

100. The following Government representatives were invited to the meeting:

Mr. Raymond K.W. Lee	District Planning Officer/Kowloon (DPO/K), Planning Department (PlanD)
Mr. Ho Nai-hoi	Acting Deputy Chief Fire Officer (Fire Safety Command), Fire Services Department (FSD)
Mr. Cheung Wai-leung	Acting Divisional Officer (New Projects), FSD

101. The following applicants were also invited to the meeting:

Application No. A/K14/482

Ms. Lam Ah-kuk

Application No. A/K14/484

Mr. So Mun-tong

102. The applicant of Application No. A/K14/481 had informed the Secretariat that he would not attend the review hearing. The Board agreed to conduct the hearing of the review in his absence.

103. The Chairperson extended a welcome and explained briefly the procedures of the review hearing. The Chairperson then invited Mr. Raymond K.W. Lee to brief Members on the background to the applications.

104. With the aid of plans shown at the meeting, Mr. Raymond K.W. Lee covered the following main aspects as detailed in the Paper:

- (a) the applications were for various shop and services uses on the G/F of a 14-storey industrial building. The applications were rejected by the Metro Planning Committee (MPC) on 28.10.2005 on fire safety ground;
- (b) as indicated on the floor plan shown at the meeting, except for the shop and services uses at Units A, B and C which were approved by the Board, the other similar applications on the G/F of the building were rejected; and
- (c) relevant departments were further consulted on the review applications. FSD maintained its previous objection to the applications as the inclusion of the application premises for shop and services uses would render the aggregate

commercial floor area exceeding the acceptable limit of 460m² for an industrial building fully protected by sprinkler system. In view of the fire safety concern, the applications were not supported by PlanD.

105. The Chairperson then invited the applicants to elaborate on the applications.
106. Mr. So Mun-tong, applicant of Application No. A/K14/484, made the following main points:
- (a) ten lifts were provided in the subject industrial building. Six of them served the car parking floor (1/F) and the floors above. The remaining 4 (2 passenger lifts and 2 cargo lifts) served all floors including the shopping mall (G/F). All these facilities could meet the 2-hour fire resistance criteria of FSD;
 - (b) many occupants/owners of the building considered that limiting the aggregate commercial floor area to 460m² was too stringent. The corridor within the shopping mall (G/F) had a width of over 15 feet. In case of emergency, it took less than one minute to evacuate all the people from each shop to the street; and
 - (c) over 95% of the occupants/owners on G/F agreed to further improve the facilities of the building to meet FSD's requirements, if so required.
107. In response to the Chairperson's question, Mr. So Mun-tong confirmed that he was a tenant of the application site (Unit L) and his unit was used mainly as a warehouse. He said that the subject building had never had a fire accident. The other units on G/F were mainly showrooms, retail shops, bookstores and small warehouses. There were no restaurants or other uses which had a higher potential of fire risk.
108. Members raised the following questions/comments:
- (a) whether similar applications were approved on a first-come-first-served basis. For the approved applications, whether the fire safety requirements were met;
 - (b) besides Units A, B and C (Application No. A/K14/479), why Application No. A/K14/491 at Unit R for shop and services use was approved;

- (c) referring to the comments of Mr. So Mun-tong in paragraph 107 above, whether planning permission was required for warehouse use in “Other Specified Uses” annotated “Business” zone;
- (d) it appeared that some units on G/F were directly fronting the street. Whether the 460m² floor area criterion could be exempted if fire resistance walls were provided to separate the units fronting street from the inner corridor; and
- (e) whether the 460m² aggregate commercial floor area criterion could be relaxed if a buffer floor could be provided to separate the commercial uses on G/F from the industrial uses on upper floors.

109. In response, Mr. Raymond K.W. Lee made the following points:

- (a) the shop and services use at Units A, B and C (Application No. A/K14/479) and the 3 subject applications under review were considered by MPC at the same meeting. Application No. A/K14/479 was the earliest application received by the Board. In deciding these applications, MPC had given due regard to the aggregate commercial floor area criterion of 460m²;
- (b) Application No. A/K14/491 was for a fast food shop at Unit R. It was approved mainly on the consideration that the 460m² criterion was not applicable to fast food counter;
- (c) as shown in Plans R-4 and R-5 of TPB Paper No. 7517, Unit L (Application No. A/K14/484) was used for storage of goods with sale of auto parts. As stated in the application form, the applicant applied to use the premises for shop and services (bank/retail/showroom/supermarket/fast food shop/photographic studio). If the unit was used solely as a warehouse, no planning permission was required; and

- (d) the building had two exits only, one to Kwun Tong Road and the other to How Ming Street.

110. Mr. Ho Nai-hoi explained the following points:

- (a) commercial and industrial uses were subject to different levels of fire risks. Industrial activities normally involved manufacturing processes and storage and use of different kinds of flammable materials like plastics, dangerous goods, etc., while commercial activities might generally attract a large number of people, including children, elderly people and the infirmed;
- (b) it was not the original intention to allow commercial uses in industrial buildings. However, in recognition of the changing business environment, FSD had adopted a flexible approach by tolerating some small-scale commercial uses on the G/F of industrial buildings. In general, an aggregate commercial floor area of 460m² and 230m² would be allowed on G/F of an industrial building with and without sprinkler systems respectively;
- (c) the subject 14-storey building was designed and constructed for industrial use. It was bounded by an industrial building to its south-east and a construction site to its north-west. For units on G/F, the inner corridor with exits to Kwun Tong Road in the north-east and How Ming Street in the south-west was the only fire escape route;
- (d) co-existence of commercial and industrial uses was dangerous and not encouraged from fire safety point of view. In the subject case, there were still industrial activities on G/F. Besides, the common corridor and the cargo lifts on G/F would be used to deliver flammable materials like plastics and other dangerous goods to the industrial undertakings on the upper floors, which would induce fire risk to shoppers on the G/F. Since Units A, B and C (with a total floor area of 475m² as shown on the building plans) had been approved for shop and services use, conversion of other units on G/F for commercial use would not be acceptable from fire safety point of view; and
- (e) wholesale conversion of the lower floors (e.g. G/F to 2/F) of an industrial building

for commercial use might be accepted by FSD if a buffer floor of non-hazardous occupancy (e.g. a carparking floor) could be provided to completely separate such lower floors from the industrial undertakings on the upper floors.

111. The Chairperson enquired about the possibility of converting 1/F to a buffer floor to facilitate conversion of the entire G/F for commercial use.

112. In response, Mr. Raymond K.W. Lee said that with the exception of a workshop of about 200m² in size, the 1/F was for car parking and loading/unloading purposes. Based on a photo shown at the meeting, the workshop was occupied by an engineering company for storing goods with industrial activities.

113. Mr. Ho Nai-hoi pointed out that while the 1/F might serve as a buffer floor if the workshop unit was vacated or converted to other non-hazardous occupancy, other complementary measures would also be required to facilitate wholesale conversion of the G/F for commercial use, e.g. closing the cargo and passenger lifts on G/F and using fire resistance materials to separate the affected lift pits from the 1/F.

114. A Member said it appeared that the workshop on 1/F was a moulding workshop involving mainly the use and storage of stainless steel or other metals, which were of much less fire risk than the fast food shop counter at Unit R on G/F. This Member asked whether this factor had been considered by FSD and whether the fire safety concern could be addressed by enhancing the fire safety measures/facilities of the building.

115. In response, Mr. Ho Nai-hoi said that the workshop unit on 1/F was designed for industrial use in accordance with the lease and the approved use was shown on the approved building plans. As a matter of course, the owner could use the workshop unit for storage of plastic, dangerous goods, or for industrial activities as permitted under the lease at any time. FSD had carried out a risk assessment based on the approved use (i.e. workshop) of the unit.

116. A Member said that Unit M (Application No. A/K14/482) looked more like a coffee shop (Plan R-5 of TPB Paper No. 7516). This Member asked whether it could be considered as a fast food shop and be exempted from the 460m² criterion.

117. Mr. Raymond K.W. Lee explained that Application No. A/K14/482 was for various shop

and service uses including bank, retail, showroom, supermarket, fast food shop and photographic studio. According to the Definitions of Terms adopted by the Board, “Fast Food Shop” referred to any premises used for the selling of quick meals including drinks mainly for consumption off the premises. If seats were provided within the premises for consumption of the food or drinks, it would be regarded as a “Restaurant”.

118. Mr. Ho Nai-hoi explained the considerations of FSD on eating places in industrial buildings as follows:

- (a) factory canteens for workers of the respective industrial building were accepted by FSD because the workers were familiar with the fire escape routes and the design of the building;
- (b) fast food counters, which were sited at street level and licensed as food factories by the Director of Food and Environmental Hygiene, were allowed on the G/F of industrial buildings. For a fast food counter, only takeaway services should be provided and no seating accommodation which encouraged people to stay at the shop was allowed;
- (c) restaurants were not allowed in industrial buildings because they would attract the general public including the elderly people, children and the infirmed to stay for long periods of time; and
- (d) if Unit M was used solely as a fast food counter, the 460m² criterion would not be applicable.

119. Noting that some units had been approved for commercial use, a Member asked whether the types of industrial activities in the other units on G/F would be controlled to reduce the fire risk.

120. In response, Mr. Ho Nai-hoi said that as the subject building was designed for industrial purpose, there was no control on the type of industrial activities that could be allowed for each unit. However, the occupants/owners should comply with the relevant legislation and Government requirements. FSD would primarily focus on the fire safety aspects such as whether there was any obstruction to the fire escape routes and emergency exits, and whether licences had been obtained for storage of dangerous goods.

121. As the applicants had no further comment to make and Members had no further question to raise, the Chairperson informed them that the hearing procedures for the review had been completed and the Board would further deliberate on the applications in their absence and inform them of the Board's decision in due course. The Chairperson thanked the applicants and Government's representatives for attending the meeting. They all left the meeting at this point.

Deliberation Session

122. The Chairperson remarked that matters relating to the 460m² criterion and the physical constraints of the subject building had been clarified. The applicants were also advised of the concerns of FSD and the possibility of converting the whole G/F for commercial use by providing a buffer floor above.

123. Members considered that fire safety should not be compromised and the applications could not be approved given the safety risk involved and the guidelines governing such applications. Meanwhile, PlanD was requested to liaise with the developer of the building to explore the possibility of converting 1/F into a buffer floor.

124. After further deliberation, the Board decided to reject Applications No. A/K14/481, 482 and 484 on review and the reason was that the applications were not acceptable from fire safety point of view.

[Mr. Michael K.C. Lai, Dr. Rebecca Chiu and Mr. Nelson W.Y. Chan left the meeting at this point.]

Agenda Item 11

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/ST/628

Proposed Redevelopment of an Existing House (other than New Territories Exempted House) in “Village Type Development” zone, Lot 581 in DD 175, Ha Wo Che, Sha Tin

(TPB Paper No. 7518)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

125. Mr. Michael C.F. Chan, District Planning Officer/Sai Kung and Sha Tin of Planning Department (PlanD) was invited to the meeting.

126. The following applicant’s representatives were also invited to the meeting:

Mr. Andrew Chan

Ms. Helen Lee

Ms. Octavia Yip

127. The Chairperson extended a welcome and explained briefly the procedures of the review hearing. The Chairperson then invited Mr. Michael C.F. Chan to brief Members on the background to the application.

128. With the aid of plans shown at the meeting, Mr. Michael C.F. Chan covered the following main aspects as detailed in the Paper:

- (a) the applicant sought planning permission to redevelop an existing single-storey house in a “Village Type Development” (“V”) zone on the Sha Tin Outline Zoning Plan (OZP). The existing house had a gross floor area (GFA) of 83m² and site coverage of about 32.5%. The proposed redevelopment comprised 3 flats with a total GFA of 309m² and site coverage of 40.4%. The application was rejected by the Rural and New Town Planning Committee (RNTPC) on 23.9.2005;

- (b) the subject “V” zone was primarily intended for development of Small House by the indigenous villagers of Pai Tau Village, Tin Liu Village, Sheung Wo Che Village and Ha Wo Che Village. As the application was for redevelopment of an existing house, it would not affect the land supply for Small House developments of the recognised villages;
- (c) PlanD maintained its previous view of not supporting the application as the proposed redevelopment would result in a significant increase in development intensity. When comparing with the existing single-residence house, the proposed redevelopment would result in 2 additional flats (+200%) and an increase in GFA of 226m² (+272%). Under the lease, development on the site was restricted to one European type residence of not more than 2 storeys and not more than 50% of the total built-over area. The proposed development intensity (GFA of 309m²) had exceeded the permissible GFA of 225m² under the lease by 37%. Approval of the application would set an undesirable precedent; and
- (d) in assessing similar applications for redevelopment of non-NTEHs in “V” zones for recognised villages, RNTPC had adopted the practice of approving only those redevelopment proposals with building right under the lease and development intensity not exceeding that of the lease entitlements.

129. The Chairperson then invited the applicant’s representatives to elaborate on the application.

130. Mr. Andrew Chan made the following main points:

- (a) except PlanD, there were no adverse comments or objections from other relevant Government departments;
- (b) it was misleading to assess the application based on the percentage of increase in development intensity. If development took place on a piece of vacant land, the percentage would be infinity. If the site was very large, the resultant increase in GFA would vary significantly even for a small increase in percentage. For a small house, an addition of 1 or 2 storeys would mean a substantial increase in the

development intensity. The Board should focus on the exact amount of GFA increase, rather than the increase in percentage;

- (c) according to the Explanatory Notes of the revised Master Schedule of Notes to Statutory Plans (MSN), uses listed under Column 2 would achieve the planning intention of the zone, but there might be planning implications, such as traffic, environmental or infrastructure impacts on the area. Assessment of the subject application for redevelopment of a non-NTEH, which was a Column 2 use of the “V” zone, should therefore be focused on its traffic, environmental or infrastructure impacts. There were no adverse departmental comments on or objections to the subject application in these aspects;
- (d) lease matters were outside the jurisdiction of the Board and should not be taken as a material consideration by the Board in assessing planning applications. The lease was a contractual agreement between the landlord and the tenant that the Board should not interfere with. In relation to a planning application in Tsuen Wan, the former Attorney General’s Chambers had previously advised that it would be ultra vires for Board to impose planning condition requiring the applicant to seek lease modifications;
- (e) to meet the changing aspirations of villagers, village houses in the New Territories had evolved over time from one-storey to 3-storey. Nowadays, in terms of land policy, it was acceptable to redevelop one or 2-storey houses into 3-storey ones. As the District Lands Officer/Shu Tin (DLO/ST) had no objection to the proposed redevelopment, it was inappropriate for the Board to reject the application based on lease consideration;
- (f) based on a site area of 225m^2 and the 50% built-over area restricted under the lease, the buildable area of the site was 127.5m^2 . It could accommodate 2 NTEHs (each of 63.75m^2 in size) with 6 units and a total GFA of 382.5m^2 . The development intensity of the proposed house with 3 units and a total GFA of 309m^2 was much lower than that of 2 NTEHs permitted as of right within the “V” zone;
- (g) it was unreasonable to require the applicant to provide strong justifications for

increasing the development intensity as there was no departmental objection to the application. If strong justifications were necessary, it should be clearly stated in the Notes or Explanatory Statement of the OZP, or promulgated in the form of Town Planning Board Guidelines; and

- (h) on the point of precedent effect, only developments with similar scale should be compared. As shown in the information tabled at the meeting, a total of 18 similar cases were considered by the Board since 1995. Of which, 13 cases were approved and 5 cases were rejected. Except the subject application, the other 4 cases were rejected mainly on technical grounds. There was no technical problem in the subject case. Approving it was in line with the past practice of the Board and would not set an undesirable precedent.

131. Noting that the site could accommodate 2 NTEHs with a GFA of 382.5m², a Member asked whether it was the planning intention to allow the site to be developed up to the development intensity of 2 NTEHs.

132. In response, Mr. Michael C.F. Chan said that the planning intention of the “V” zone was for development of Small Houses by indigenous villagers. Two Small Houses would accommodate the households of 2 indigenous villagers of a recognised village. The subject application was for a house, not Small House by indigenous villagers. While PlanD had no objection to the redevelopment of the application site into a 3-storey house, the substantial increase in GFA exceeding the lease entitlements upon redevelopment and the setting of precedent were the main areas of concern.

133. The same Member wondered whether the increase in the number of households from 2 to 3 would have significant planning implications bearing in mind that the GFA of the proposed development was 73.5m² less than that of 2 NTEHs. The population of Ha Wo Che Village would only increase by several persons and relevant departments had no objection to the application.

134. Mr. Michael C.F. Chan said that the proposed development intensity had substantially exceeded the lease entitlements. Other departments might have focused on the technical aspects of this individual application and thus had no objection to the proposed redevelopment on the subject site. The precedent effect on similar applications for redevelopment and the cumulative impact were concerns that should also be duly considered.

135. A Member asked whether planning permission was required for the applicant to build 2 NTEHs on the site. Mr. Michael C.F. Chan replied that indigenous villagers could directly apply to the District Lands Office for developing 2 NTEHs (Small Houses) as NTEH was an always permitted use within the “V” zone. However, the applicant was not an indigenous villager.

136. In response, Mr. Andrew Chan pointed out that NTEH was a built-form specified under the Buildings Ordinance (Application to the New Territories) Ordinance. Unlike Small House, development of NTEH was not confined to indigenous villagers.

137. As the applicant’s representatives had no further comment to make and Members had no further question to raise, the Chairperson informed them that the hearing procedures for the review had been completed and the Board would further deliberate on the applications in their absence and inform the applicant of the Board’s decision in due course. The Chairperson thanked the representatives of the applicant and PlanD for attending the meeting. They all left the meeting at this point.

Deliberation Session

[Dr. Michael Chiu left the meeting during the deliberation session.]

138. Some Members supported that the application. They considered that the proposed redevelopment for a European type house would help improve the general environment of the area around the application site which was mainly occupied by wooden huts without vehicular access. It was not incompatible with the uses in the vicinity of the site. Relevant Government departments including DLO/ST had no objection to application.

139. A Member doubted whether there was a substantial increase in development intensity noting that the GFA of 2 NTEHs was greater than that of the proposed house. Although the number of households would increase from 2 to 3, the impact could be offset by the environmental improvement brought about by the redevelopment. The concern on precedent effect might be overstated, as there should not be many similar cases with building right under the lease in a “V” zone.

140. Mr. Bosco C.K. Fung made the following points:

- (a) in considering the subject application on 23.9.2005, RNTPC had concern on granting permission to non-indigenous villagers for non-NTEH type residential developments in a “V” zone of a recognised village, the planning intention of which was primarily for Small House development by indigenous villagers. Whilst RNTPC had no objection to allow redevelopment on the site, the density of the proposed development should be within an acceptable level that could be justified;
- (b) while the Board should not impose planning conditions to require lease modification for an approved development, it did not mean that the Board should not take lease entitlements as a relevant consideration in considering planning applications as alleged by the applicant’s representative; and
- (c) to respect the development right of non-indigenous villagers with building lots in a “V” zone, the past practice was to approve applications with proposed development intensity not exceeding the lease entitlements. Although the increase in GFA was not very significant in the subject case, approving the application might set an undesirable precedent for other redevelopment proposals with GFA exceeding the lease entitlements.

141. A Member queried why DLO/ST had not raised any objection even though the proposed development intensity had exceeded the existing lease entitlements. Another Member asked whether it was possible for the applicant to build 2 NTEHs on the site.

142. In response, the Chairperson said that it would be for the Board to decide whether to approve an application. Should the application be approved, the applicant would apply for lease modification to be processed by DLO/ST. Although it was possible for the applicant to sell the site to indigenous villagers for developing 2 NTEHs (Small Houses) which would be permitted under the “V” zone, the Board should focus on the subject application which was for a non-NTEH.

143. In response to a Member’s query about the approved cases quoted by the applicant’s representative, the Secretary explained the past practices of the Board in considering similar applications as follows:

- (a) there were two types of “V” zones on statutory plans, one covering recognised villages and the other covering non-recognised villages. The former type of “V”

zones was primarily intended for Small House development by indigenous villagers under the Small House Policy, while the latter type was intended primarily for the provision of land for retention and expansion of existing villages. In the review of MSN, the planning intention of these 2 types of “V” zones had been incorporated in the Notes and Explanatory Statements of the statutory plans;

- (b) in “V” zones covering recognised villages, applications for development of house (other than NTEH) would normally not be allowed if the land involved no building right under the lease. For land with building status under lease, the Board had only approved those cases having proposed development intensity not exceeding the lease entitlements. This was to respect the development right of non-indigenous villagers with building lots within a “V” zone while ensuring the “V” zone was primarily to reserve land to meet the Small House demand. As a case in point, RNTPC had rejected an application (No. A/YL-KTN/168) for developing 74 houses on a large site within a “V” zone for recognised villages in Kam Tin; and
- (c) for similar applications in “V” zones covering non-recognised villages, each case would be considered on individual merits, taking into account the lease entitlements, the additional land involved, the development intensity and other planning considerations.

144. A Member was of the view that the proposed development was under Column 2 of the “V” zone. In assessing an application for a Column 2 use, the main issue was whether the proposed development would bring about any adverse planning implications. In this regard, relevant departments had no adverse comments on traffic, environment, drainage and other technical aspects. The site was not an agricultural lot. The development right of the applicant should be respected. Approving the subject application would not affect Small House developments by indigenous villagers as they would normally apply to the District Lands Offices for building Small Houses on their agricultural lots. Redeveloping the existing house into a larger and more comfortable one was supported.

145. Another Member pointed out that unlike Application No. A/YL-KTN/168 for developing 74 houses on a large site with only a very small portion having building right, the subject site was a building lot. The proposed height (3 storeys) was not incompatible with the surrounding environment. The additional GFA arising from the redevelopment would also be subject to payment

of land premium.

146. A Member opined that in assessing the subject planning application, the Board should first consider whether the development rights of non-indigenous villagers should be respected. If so, the Board should then consider the acceptable level of development intensity. While RNTPC had rejected the application because of the substantial increase in development intensity when compared with the lease entitlements, the development intensity generally allowed in the “V” zone was also a relevant consideration. In the subject application, the GFA and number of units of the proposed house would not deviate too much from 2 NTEHs, which were always permitted in the “V” zone.

147. Mr. Bosco C.K. Fung pointed out the following:

- (a) revenue from land premium was not a relevant factor for consideration of the Board in deciding whether to approve an application;
- (b) the application was submitted by a non-indigenous villager for non-NTEH development and should be assessed on the terms as submitted; and
- (c) limiting the redevelopment of the site up to the lease entitlements would not deprive the development right of the applicant. It would be difficult to come up with a yardstick in determining the amount of GFA that a proposed redevelopment could go beyond the lease entitlements. Thus, approving the application would set a new precedent which could open up a floodgate for similar applications requesting for higher development intensity.

148. The Secretary said that if a non-indigenous villager was allowed to sub-divide his lots and build as many NTEHs as the lots could accommodate with no regard to his lease entitlements, then the resultant increase in development intensity within the “V” zone would be so substantial that the planning intention of the “V” zone, which was to reserve land for Small House development by indigenous villagers, could be largely compromised.

149. Some Members considered that the planning intention for Small House development and the past practice of the Board should be upheld. The applicant had not provided strong justifications for increasing the development intensity of the site to beyond the lease entitlements. The application should not be approved.

150. The Chairperson made the following points:

- (a) the principle of reserving land for Small House development and limiting the intensity of non-NTEH development on land with building right under the lease within the “V” zone for recognised villages had not been clearly spelt out in the reasons for rejection of the s.16 application; and
- (b) the Board should consider whether the past practice of the Board should be adhered to; or whether the applicant should be allowed to increase the development intensity of the proposed house to beyond the lease entitlements, noting that the proposed development had no adverse traffic, environmental and drainage impacts.

151. A Member asked whether it was proper for the Board to reject the s.17 application on a ground different from that of the RNTPC. The Chairperson confirmed in the affirmative by pointing out that the Board should consider the review application afresh, taking account of any new grounds raised at the s.17 review stage.

152. Whilst agreeing to allow development of non-NTEHs in “V” zone, a Member considered it necessary to uphold the planning intention for Small House development in “V” zone for recognised villages by not approving non-NTEH development with development intensity exceeding the lease entitlements. This was to ensure that land within “V” zone for recognised villages should primarily be used for Small House development by indigenous villagers.

153. After lengthy discussion, Members decided to vote on whether the past practice of the Board, i.e. only approving development proposals having proposed development intensity not exceeding the lease entitlements, should be adhered to. The voting result was 7 Members supported, 3 against and 1 abstained.

154. Members considered that the past practice of the Board should be promulgated in the form of guidelines to facilitate the consideration of similar cases in future.

155. After further deliberation, the Board decided to reject the application on review and the reason was that the proposed redevelopment was not in line with the planning intention of the

“Village Type Development” zone which was primarily intended for development of Small House by indigenous villagers. Application for the development of house other than NTEH with development intensity exceeding the lease entitlements would normally not be allowed. No strong justifications had been provided in the submission for a departure from the planning intention.

Agenda Item 12

[Open Meeting]

Any Other Business

156. There being no other business, the meeting was closed at 5:30 p.m..

(CHAIRPERSON)
TOWN PLANNING BOARD

