

**Minutes of 923rd Meeting of the
Town Planning Board held on 14.11.2008**

Present

Permanent Secretary for Development
(Planning and Lands)
Mr. Raymond Young

Chairman

Dr. Greg C.Y. Wong

Vice-chairman

Mr. Alfred Donald Yap

Mr. Stanley Y.F. Wong

Mr. Nelson W.Y. Chan

Mr. David W.M. Chan

Mr. Leslie H.C. Chen

Mr. Tony C.N. Kan

Professor Bernard V.W.F. Lim

Dr. C.N. Ng

Dr. Daniel B.M. To

Ms. Sylvia S.F. Yau

Mr. B.W. Chan

Mr. Walter K.L. Chan

Ms. Maggie M.K. Chan

Mr. Y.K. Cheng

Ms. Anna S.Y. Kwong

Dr. James C.W. Lau

Ms. Starry W.K. Lee

Mr. K.Y. Leung

Mr. Rock C.N. Chen

Mr. Timothy K.W. Ma

Deputy Director of Environmental Protection
Mr. Benny Wong

Director of Lands
Miss Annie Tam

Director of Planning
Mrs. Ava Ng

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

Secretary

Absent with Apologies

Professor David Dudgeon

Mr. Edmund K.H. Leung

Professor N.K. Leung

Mr. Raymond Y.M. Chan

Mr. Felix W. Fong

Professor Paul K.S. Lam

Mr. Maurice W.M. Lee

Professor Edwin H.K. Chan

Dr. Ellen Y.Y. Lau

Dr. Winnie S.M. Tang

Principal Assistant Secretary (Transport)
Transport and Housing Bureau

Mr. Tony Lam

Assistant Director (2), Home Affairs Department
Mrs. Ann Ho

In Attendance

Assistant Director of Planning/Board
Mr. Lau Sing

Chief Town Planner/Town Planning Board
Ms. Christine K.C. Tse (a.m.)
Mr. W.S. Lau (p.m.)

Town Planner/Town Planning Board
Mr. Tony Y.C. Wu (a.m.)

Senior Town Planner/Town Planning Board
Miss Vivian M.F. Lai (p.m.)

1. The Vice-chairman extended a welcome to Members and said that the Chairman was out-of-town in the morning and he would chair the meeting until his return.

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 922nd Meeting held on 31.10.2008

[The meeting was conducted in Cantonese.]

2. The minutes of the 922nd meeting held on 31.10.2008 were confirmed without amendments.

[Dr. C.N. Ng and Ms. Starry W.K. Lee arrived to join the meeting at this point.]

Agenda Item 2

[Open Meeting]

Matters Arising

Application for Judicial Review in respect of the Draft Wong Nai Chung Outline Zoning Plan No. S/H7/14

[The meeting was conducted in Cantonese.]

3. The Secretary said that on 11.11.2008, the Court of First Instance granted leave to the Hong Kong Sanatorium and Hospital (HKSH) to apply for judicial review (JR) in respect of the Board's decisions on 8.8.2008 regarding HKSH's representation on the draft Wong Nai Chung Outline Zoning Plan (OZP) No. S/H7/14. The relevant Notice of Application for Leave to Apply for JR, affirmation from a witness of HKSH and Notice on the granting of leave were tabled at the meeting for Members' information.

[Mr. Tony C.N. Kan arrived to join the meeting at this point.]

4. The Secretary said that the JR application was made on the following main grounds:

- (a) the draft Wong Nai Chung OZP was ultra vires in utilizing ‘spot’ zoning, i.e. individual buildings within a zone and site were singled out for specific restrictions;
- (b) the Board had taken into account irrelevant considerations, in particular, that in-situ expansion of HKSH was not the only means to provide additional hospital facilities, it was a function of “Government, Institution or Community” zone to provide visual relief and breathing space, there was insufficient information to demonstrate that the Phase IV redevelopment of HKSH would not have adverse visual impact and there was a need to safeguard the pleasant living environment of the Wong Nai Chung area (the Area);
- (c) the Board failed to take account of relevant considerations, in particular, that there were existing buildings within the Area which exceeded the height limit designated for the Phase IV redevelopment of HKSH, a height restriction on the Phase IV redevelopment would adversely affect the utility of the completed Phase III development, there was an urgent need for expansion of medical facilities, building plans for the Phase IV redevelopment had been submitted to the Building Authority, and the Phase IV redevelopment would bring about planning gains; and
- (d) there were procedural improprieties in the Board’s consideration of the representation.

5. Members noted the JR application and agreed that the Secretary should represent the Board in all matters relating to the JR in the usual manner.

[Professor Bernard V.W.F Lim arrived to join the meeting at this point.]

Agenda Item 3

[Open Meeting (Presentation and Question Session only)]

Consideration of Further Representations in respect of the
Draft Wong Nai Chung Outline Zoning Plan No. S/H7/14
(TPB Paper No. 8232)

[The meeting was conducted in Cantonese and English.]

6. The following Members declared interests in this item:

Professor N.K. Leung)	
Mr. Stanley Y.F. Wong)	
Ms. Sylvia S.F. Yau)	
Mr. Walter K.L. Chan)	Being Members of the Hong Kong Jockey
Mr. Rock C.N. Chen)	Club (HKJC), which made the original
Mr. Felix W. Fong)	representations No. R37 and R43 related
Mr. Tony C.N Kan)	to the Further Representations No. F1, F5
Professor Bernard V.W.F. Lim)	and F6;
Ms Maggie M.K. Chan)	
Dr. James C.W. Lau)	
Mr. B.W. Chan]	
Mr. Alfred Donald Yap]	Being Voting Members of the HKJC; and
Mr. Y.K Cheng	-	Owning a property at Stubbs Road which was near to the Area.

7. The Vice-chairman said that the interest of being an ordinary Member of the HKJC was not direct or substantial, and the Members concerned should be allowed to stay. The interest of Mr. Y.K. Cheng was also not direct or substantial as his property was not related to any further representations, original representations and comments. Members noted that Professor N.K. Leung and Mr. Felix W. Fong had tendered apologies for not attending the meeting, and Messrs. B.W. Chan, Alfred Donald Yap and Y.K. Cheng had not yet arrived.

8. The Secretary also declared an interest as she owned a property at Broadwood Road and Further Representation No. F1 was submitted by the Management Office of her property. The Vice-chairman said that the role of the Secretary at the meeting was mainly to provide information and advise on procedural matters. As she was not a Member of the Board and did not take part in the decision-making, she should be allowed to stay at the meeting. Members agreed.

Validity of the part of Further Representation No. F6 relating to the Hong Kong Sanatorium and Hospital (HKSH) site

Presentation and Question Session

9. The Vice-chairman said that on 8.8.2008, the Board considered the representations and comments in respect of the draft Wong Nai Chung Outline Zoning Plan (OZP) No. S/H7/14 and decided to propose amendments to meet/partially meet some of the representations. The proposed amendments were published on 29.8.2008. During the three-week publication period, a total of six further representations were received. On 17.10.2008, the Board agreed that the six further representations should be considered collectively in one group.

10. The Vice-chairman said that Representation No. F6 was in support of the relaxation of the building height (BH) restrictions under Amendment Items F to H but against the extent of the relaxation applied. The further representer requested for extending the BH restriction of 115mPD or 130mPD under Amendment Items G and H respectively to the part of the HKSH site which was currently subject to a BH restriction of 12 storeys. Taking into account legal advice provided by Department of Justice (DoJ), the Board decided on 17.10.2008 that the part of F6 relating to the HKSH site should be regarded as invalid. On 30.10.2008, Johnson Stokes and Master (JSM), on behalf of the further representer, submitted a letter to the Board objecting to the Board's decision and requesting to make a presentation to the Board on its grounds of objection. The Vice-chairman suggested that the Board should consider this matter first before proceeding to the collective hearing of the further representations.

11. A Member asked whether there would be any procedural problem to consider

the validity issue raised by Further Representer No. F6 first. The Secretary said that as the Board on 17.10.2008 had decided that the six further representations should be considered collectively, it would be more proper to settle the validity issue before proceeding to the hearing. Members agreed.

12. The following representatives of DoJ and the Secretariat, Further Representer No. F6 and his representatives were invited to the meeting at this point:

Mr. Raymond K.Y. Chan - DoJ
Ms. Christine Tse - Secretariat of the Board
Mr. Martin Tam - Further Representer No. F6
Mr. Menachem Hasofer)
Mr. Ian Brownlee) Representatives of Further Representer No. F6
Mr. Raymond Cook)

[Mr. Leslie H.C. Chen arrived to join the meeting at this point.]

13. With a powerpoint presentation, Ms. Christine Tse briefed Members on the background to F6 and made the following points:

- (a) the draft Wong Nai Chung OZP No. S/H7/14 was published on 18.1.2008. A total of 50 representations and 383 comments were received;
- (b) under the draft OZP, a maximum BH of 148mPD and 37 storeys was imposed for the part of HKSH covered by its Phase III redevelopment. The remaining part of the site was subject to a maximum BH of 12 storeys. Two representations were submitted by HKSH and the Incorporated Owners of Evergreen Villa (IOEV) respectively on the BH restrictions for the HKSH site;
- (c) on 8.8.2008, the Board decided to propose amendments to the draft OZP to meet/partially meet some of the representations. However, the two representations on the HKSH site were not upheld. The proposed

amendments were published on 29.8.2008, which did not cover the HKSH site;

- (d) six further representations (F1 to F6) were received in respect of the proposed amendments. F6 was submitted in support of the relaxation of BH restrictions under Amendments Item F (relaxing the maximum BH of some residential sites from 80mPD to 85mPD), Item G (relaxing the maximum BH of some residential sites from 100mPD to 115mPD) and Item H (relaxing the maximum BH of a “Residential (Group C)1” site from 115mPD to 130mPD). Other than that, the further representer requested that the maximum BH of 115mPD or 130mPD under the Amendment Items G and H respectively should be extended to the HKSH site which was currently subject to a maximum BH of 12 storeys; and
- (e) on 17.10.2008, the Board decided that the part of F6 relating to the HKSH site should be regarded as invalid. On 30.10.2008, JSM, on behalf of Further Representer No. F6 wrote to the Board raising objection to the Board’s decision.

14. Mr. Raymond K.Y. Chan then presented DoJ’s views on the matter and made the following points:

- (a) the statutory procedure for handling representations, comments and further representations was set out in sections 6 and 6A to 6H of the Town Planning Ordinance (the Ordinance). The procedure was intended to bring about finality to the handling of representations, comments and further representations. Once the procedure was completed and the Board had made a decision, the representations, comments and further representations should not be re-opened. Otherwise, there could be no end to the statutory procedure;
- (b) the arguments of No. F6 in support of the validity of the part relating to the HKSH site were legally wrong for the following reasons:

- (i) if it were permissible for a person to make a further representation affecting a site which was not the subject matter of a proposed amendment made by the Board, the issues relating to that site which had already been properly dealt with had to be re-opened. This meant that the finality obviously intended by the statutory procedure under the Ordinance could not be achieved, and the situation could be absolutely chaotic. This was particularly so if further representations could be made in relation to all other zones which were not the subject matters of amendments proposed by the Board to meet representations; and
 - (ii) section 6D(1) of the Ordinance had to be properly construed in order to determine whether a further representation or part of it was valid. According to the said section, any further representation had to be in respect of the proposed amendments. Construing the words “proposed amendments” in the proper context of the statutory procedure, they had to mean “proposed amendments in relation to the relevant site”. For F6, the proposed amendments in question were those relating to the sites which were covered by Amendment Items F, G and H. The part of F6 relating to the HKHS site was thus not compliant with the requirement of section 6D(1);
- (c) DoJ did not agree with the arguments set out in JSM’s letter of 30.10.2008 in support of the validity of the part of F6 relating to the HKSH site. In particular, DoJ had the following responses to some of the arguments:
- (i) paragraph 17 – JSM argued that for the purpose of construing the scope of section 6D(1) of the Ordinance, it was necessary to look at the impact of the proposed amendments on the surrounding sites. Such argument was legally wrong. Section 6D(1) simply talked about “the proposed amendments” rather than “impact of the proposed amendments on the surrounding sites”;

- (ii) paragraph 18(c) (page 4 of the letter) – JSM argued that in respect of any proposed amendments to a site, the owners of the surrounding sites should be entitled to make representations about the effects of the proposed amendments. Such argument was founded upon a wrong premise. The proper way to address the effects resulting from the proposed amendments was to apply for a rezoning of the affected sites under section 12A of the Ordinance;
- (iii) paragraph 19 – JSM argued that the whole of F6 should be regarded as valid since the requirements of section 6D(2) had been complied with. However, they failed to demonstrate that the requirements of section 6D(1) had also been complied with;

[Professor Bernard V.W.F Lim left the meeting temporarily at this point.]

- (iv) paragraphs 20 and 21 – to counter argue DoJ’s previous advice, JSM said that the original representers were not prohibited from making a further representation. Such counter argument was erroneous, because the law should not be interpreted on the speculation of whether or not a person might or might not make further representation. In any event, the original representers would not know in advance that another further representation had affected them; and
- (v) paragraph 22 – JSM argued that the original representers and commenters whose representations and comments were upheld (the Successful Representers and Commenters) were entitled to attend the hearing of the further representations because they were prohibited from making a further representation. This argument was wrong. The true reason why the Successful Representers and Commenters were entitled to attend was because there was a further representation touching upon their representations and comments and therefore they should be entitled to speak again as a matter of fairness.

[Ms. Starry W.K. Lee left the meeting at this point.]

15. The Vice-chairman then invited Mr. Martin Tam and his representatives to elaborate on his arguments. Mr. Tam made the following points:

- (a) he was a resident in Happy Valley and a long time patient of HKSH. He had previously made a comment in respect of HKSH's representation on the draft Wong Nai Chung OZP but was erroneously not accepted by the Board for being filed out-of-time. He did not wish to be denied the right to make the further representation due to DoJ's advice;
- (b) according to the Ordinance, it was the duty of the Board to uphold the health, safety, convenience and general welfare of the community. Everything else could only take a secondary role; and
- (c) the HKSH, being the second largest institution in Happy Valley, could contribute to the improvement of the traffic situation in the area. The Government should make use of this opportunity to improve the traffic situation in the area rather than running into legal disputes with HKSH.

16. The Vice-chairman reminded Mr. Tam and his representatives that their presentation should be confined to the matter of validity of the part of F6 regarding the HKSH site. The substantive grounds of F6 should be presented in the collective hearing of the further representations to be held later in the meeting, should F6 be ruled valid by the Board. Mr. Martin Tam said that he should not be forbidden to express his views.

17. In response to Mr. Tam's mention of DoJ, Mr. Raymond K.Y. Chan clarified that his presentation was to give DoJ's legal opinions on the issue and did not deny anyone's legal right to make further representation.

[Mr. Tony C.N. Kan left the meeting temporarily at this point.]

18. Mr. Menacham Hasofer then elaborated on JSM's arguments on the matter and

made the following points:

- (a) by allowing Further Representer No. F6 to present the whole of his further representation, the Board would set a desirable precedent to demonstrate that the plan-making process was open, transparent and inclusive of public participation. Otherwise, the Board would send a message to the public that it was acting in conflict with the legislative intent of the Town Planning (Amendment) Ordinance 2004. As reflected in the Second Reading Speech made by the Government on 7.7.2004 at the Legislative Council which was recorded in the Hansard, the concept of section 6F of the Ordinance regarding the consideration of further representations was all about openness, transparency and public participation in the process. There was nothing about the finality in the Speech and nothing in the Ordinance to stop the Board from hearing anyone;

[Mr. Tony C.N. Kan returned to the meeting at this point.]

- (b) F6 was well supported with traffic and planning assessments. Refusal to hear F6 on technical grounds about the relationship between the proposed amendments and the HKSH site was completely in conflict with the legislative intent of the Ordinance and the purposes of the proposed amendments;
- (c) DoJ's idea of categorising the proposed amendments by reference to specific sites was not correct. There was no mention of 'specific sites' in the Ordinance. The draft plan referred to under section 3(1)(a) of the Ordinance should provide for 'the layout of an area'. A plan so prepared was called an 'outline zoning plan' and the reason was that such plan should be about the broad zoning. The shifting of broad zoning to spot zoning in the last 18 to 24 months was the subject of legal challenge;
- (d) the idea that proposed amendments to a site had to be confined only to that particular site and not to the surrounding areas was absurd and was not in line with the fundamental planning principles. Under section 4 of the

Ordinance, a plan could include many things such as streets, land use zones, parks, etc. An amendment to any things provided for on the plan could have all sort of impacts and consequences and therefore all people, not only the residents of Happy Valley, were entitled to make representations/comments. The Board should adopt an inclusive approach to allow people to express views rather than a restrictive approach to limit the discussion of the effects of amendments;

- (e) a representation in respect of the proposed amendments as referred to under section 6D(1) of the Ordinance could relate to an unlimited number of matters relating to the amendments. There was no statutory basis to divide a representation into different parts with only some of them having relation with an amendment. A representation should be heard as a whole for openness;
- (f) one of the original representers regarding the HKSH site, HKSH, was also Commenter No. C1 and had the right to attend the hearing. The other original representer, IOEV, could also get a right to attend the hearing by submitting a further representation. F6 and other further representations had been published and IOEV should have been aware of F6's suggestions regarding the HKHS site. Even though IOEV had failed to submit a further representation, the Board still had a residual discretion, in the interest of fairness, to invite them to the hearing. In this regard, neither section 6F(2) nor any other provisions of the Ordinance prohibited the Board from inviting any persons to attend the hearing. The provision under section 6F(5) for adjournment of hearing could operate to ensure that IOEV could be heard at an adjourned hearing before the Board made a decision regarding the HKHS site. As such, DoJ's concern that the original representers would be unfairly treated if the Board upheld the part of F6 relating to the HKSH site could be resolved;
- (g) section 12A of the Ordinance had nothing to do with the plan-making process, and there were completely different legal tests for considering rezoning applications under section 12A and further representations under

section 6F. The bar for approving rezoning applications was set very high and very much against the applicants; and

- (h) the proper approach to handle F6 was to let it be heard as a whole. If the Board decided not to uphold it, nobody would be prejudiced. If the Board decided to uphold it and propose amendments to the HKSH site, section 6F(5) of the Ordinance could be invoked to adjourn the meeting so that the concerned original representers could be invited to be heard. The decision of the Board at the adjourned hearing would be final and the concern of DoJ on the finality issue did not exist. Alternatively, the Board might consider incorporating F6's proposal by making amendment under section 7 of the Ordinance.

19. In response to Mr. Menachem Hasofer's presentation, Mr. Raymond K.Y. Chan made the following points:

- (a) the Board should follow the Ordinance in deciding the validity of a further representation. To allow more public participation was not an acceptable justification for deviating from the Ordinance;
- (b) an ordinance should be construed on the basis of the provisions in the ordinance itself rather than the reading speeches recorded in the Hansard. Reference to the Hansard should only be made if the requirements set out in the relevant case law were satisfied;
- (c) the reason why there was no mention of 'specific sites' in the Ordinance regarding amendments to the plan was that the law did not need to state the obvious;
- (d) the effects of any designated land use zoning on the surrounding areas should have already been taken into consideration in the plan-making stage. They were not relevant to the consideration of the further representations under section 6 of the Ordinance; and

- (e) the adjournment of the hearing to allow the original representers to be invited was not a proper procedure since the issue of who should be invited to attend the hearing should be determined in accordance with the provisions of the Ordinance.

20. Members had the following questions:

- (a) if the Unsuccessful Representers and Commenters were allowed to make further representations on the proposed amendments under section 6D(1) of the Ordinance, whether the hearing of such further representations would be the final step in the hearing procedure;
- (b) noting JSM's opinion that the Ordinance did not say that the "proposed amendments" mentioned in section 6D(1) should be limited to the "proposed amendments to specific sites" and DoJ's response that the Ordinance did not need to state the obvious, whether the Board had the discretion to determine whether a further representation in respect of a site not covered by the proposed amendments could be seen as 'related' to the proposed amendments; and
- (c) whether the Board, after considering the further representation, had the discretion to make amendments in respect of a site which was not covered by the proposed amendments.

21. In response to Members' questions, Mr. Raymond K.Y. Chan made the following points:

- (a) there was no dispute on the right of Further Representer No. F6, who was not a Successful Representer/Commenter, to make further representations on the proposed amendments. The matter was that the further representation should not cover a site which was not the subject of the proposed amendments according to section 6D(1) of the Ordinance. Otherwise, the issues relating to that site which had already been properly considered by the Board would have to be re-opened, making the finality

intended by the statutory procedure unachievable;

- (b) under section 6D(1) of the Ordinance, further representations should be “in respect of the proposed amendments”. Construing the words “proposed amendments” in the proper context of the statutory provision, they had to mean “proposed amendments in relation to the relevant site”. That was why the part of F6 relating to the HKHS site was not in compliance with the requirement of section 6D(1); and
- (c) whether the Board had the discretion to make amendment to the site not covered by the proposed amendments after consideration of further representation was not the issue under discussion. If the part of F6 relating to the HKSH site did not satisfy the requirements under section 6D(1) of the Ordinance, then this part of F6 could not be considered as valid.

22. As Mr. Martin Tam and his representatives had no further comment to make and Members had no further question to raise, the Vice-chairman informed them that the Board would deliberate on the matter in their absence and inform them of the Board’s decision afterwards. The Vice-chairman thanked the representatives of Government departments, Mr. Martin Tam and his representatives for attending the meeting. They all left the meeting at this point.

Deliberation on the validity of the part of F6 relating to the HKSH site

23. A Member said that the issue for the Board to determine was whether a lenient or a strict approach should be adopted in construing section 6D(1) of the Ordinance. DoJ considered that a strict approach should be adopted and Further Representer No. F6 considered the otherwise. This Member noted that under section 6D(2) of the Ordinance, it was stated that the further representations should be ‘related to’ instead of ‘in respect of’ the proposed amendments. This Member also considered that even if the Unsuccessful Representatives and Commenters were allowed to attend the hearing of further representations, that hearing would still be the final step in the statutory hearing procedure.

24. Another Member said that adopting JSM’s argument would set a precedent for

allowing the Unsuccessful Representers and Commenters to re-open their cases even after the Board had already made a decision on them after duly considering their views at the section 6B hearing. Such argument was obviously a deviation from the statutory hearing procedure laid down in the Ordinance and all along followed by the Board. Regarding JSM's view that the Unsuccessful Representers and Commenters should be allowed the chance to ask the Board to consider if their concerned sites should also be amended as a result of the proposed amendments, the above Member agreed with DoJ's opinion that it should be done in form of a section 12A rezoning application.

25. A Member said that JSM's suggestion to adjourn the hearing in order to invite the Unsuccessful Representers to attend should not be accepted because the views of the Unsuccessful Representers on the draft OZP had already been heard by the Board. Adjourning the hearing would also unduly delay the plan-making process. This Member considered that DoJ's advice should be adopted.

26. The Vice-chairman considered that, in light of DoJ's advice that hearing the part of F6 relating to the HKSH site would be in contravention to section 6D(1) of the Ordinance, the Board seemed to have no discretion but to act in accordance with the law.

27. Several Members considered that the Board should be prudent in exercising discretion in order not to set a bad precedent. They shared the view that the statutory procedures that had been followed by the Board should be adopted and DoJ's advice should be followed.

[Mr. Benny Wong arrived to join the meeting at this point.]

28. The Secretary clarified that the part of F6 in dispute was the further representer's request to extend the BH restrictions of 115mPD or 130mPD as proposed under Amendment Items G and H respectively to the HKHS site. The HKHS site was under a different zoning and was not adjacent to the concerned proposed amendment sites. The Board should consider whether that part of F6 should be heard in light of the statutory provisions under the Ordinance. In this regard, Members might note that allowing that part of F6 be heard would mean opening up the issues which had already been dealt with by the Board. It should not be the intent of the Ordinance. Otherwise, there was no need for the

Ordinance to specify that the further representations should be related to the proposed amendments and the right of being heard was only offered to the Successful Representers and Commenters. Such legal provisions had been in place even before the commencement of the Amendment Ordinance in 2005.

29. After deliberation, the Board agreed that the part of F6 relating to the HKSH site should be regarded as invalid under the Ordinance.

[Professor Bernard V.W.F Lim returned to the meeting, Mr. Tony C.N. Kan left the meeting temporarily and the Secretary left the meeting at this point and Mr. Lau Sing took her place as Secretary.]

Collective hearing of F1 to F6

Presentation and Question Session

30. The following representatives of Planning Department (PlanD), further representers, original representers, commenters and/or their representatives were invited to the meeting at this point:

PlanD

Ms. Brenda Au - District Planning Officer/Hong Kong, PlanD
Mr. Tom Yip - Senior Town Planner/Hong Kong, PlanD

Further Representer No. F2

Mr. Alain Choi

Further Representer No. F3

Ms. Edith Shih
Mr. Jerome Wong (also Commenter No. C210)

Further Representer No. F4

Mr. Geoffrey Ng Kei Yan

Further Representer No. F6

Mr. Ian Brownlee (also representing Original Representatives No. R37 and R43
and Commenter No. C1)

Mr. Raymond Cook (also representing Commenter No. C1)

Mr. Menachen Hasofer (also representing Commenter No. C1)

Original Representative No. R29

Ms. Keren Seddon

Mr. Alan Kwong

Mr. Lee Wai Lam

Mr. Christopher E.T. Kho

Original Representative No. R30

Mr. Edmund Lau

Original Representatives No. R37 and R43

Mr. Ian Brownlee (also representing Further Representative No. F6 and
Commenter No. C1)

Ms. Nicole Tang

Original Representative No. R47

Dr. David Taw

Rev. Dr. Hui Hoi Ming

Rev. Siu Ka Cheung (also Commenter No. C272)

Ms. Helen Lung (also Commenter No. C282)

Ms. Wong Ting

Commenter No. C1

Ms. Anna Lee

Mr. Ian Brownlee (also representing Further Representative No. F6 and Original
Representatives No. R37 and R43)

Mr. Raymond Cook (also representing Further Representative No. F6)

Mr. Menachem Hasofer (also representing Further Representative No. F6)

Commenter No. C20

Ms. Anita Ng

Commenter No. C163

Mr. Shih Hay Lai

Commenter No. C282

Ms. Helen Lung (also representing Original Representative No. R47)

Original Representative No. R32

Mr. Kenneth To

Commenter No. C26

Ms. Go Siu Peck

Commenter No. C70

Ms. Helen Shih

Commenter No. C141

Mr. Lai Chung Kong

Commenter No. C194

Mr. Too Tak Hing, Windsor

Commenter No. C210

Mr. Jerome Wong (also representing Further Representer No. F3)

Commenter No. C272

Rev. Siu Ka Cheung (also representing Original Representer No. R47)

31. The Vice-chairman extended a welcome to the above persons. He then informed the representatives of F6 of the Board's decision on the validity of the part of F6 relating to the HKHS site as set out in paragraph 29 above.

32. The Vice-chairman explained briefly the procedures of the hearing and invited Ms. Brenda Au to brief Members on the background to the further representations.

33. With the aid of a powerpoint presentation, Ms. Brenda Au made the following points as detailed in the Paper:

(a) the background of the proposed amendments as set out in paragraph 1 of the Paper;

(b) subjects of the further representations:

— F1 was submitted by the Beverly Hill (Estate Management) Limited against the proposed relaxation of the maximum BHs under Amendment Items D to H;

— F2 to F4 were submitted by Mr. Alain Choi, Licose International

Limited and Mr. Geoffrey Ng respectively requesting for further relaxation of the BH restriction for the Man Lam Christian Church (MLCC) site to 100mPD;

- F5 was submitted by Ms. Jenny Leung against the proposed relaxation of the maximum BHs under Amendment Items F to H;
- F6 was submitted by Mr. Martin Tam in support of the proposed relaxation of BH restrictions under Amendment Items F to H and proposing to extend the BH restriction of 115mPD or 130mPD under Items G and H respectively to cover part of the HKSH site which was currently subject to a BH restriction of 12 storeys. However, the part of the further representation relating to the HKSH site was regarded as invalid by the Board;

(c) grounds of the adverse further representations:

- F1: relaxation of BH restrictions would adversely affect the view of Beverly Hill, result in population increase and aggravate the traffic congestion in the area;
- F2 to F4:
 - (i) the BH restriction had infringed the MLCC's private development rights. Before the imposition of the BH restriction, the MLCC site could be redeveloped to a taller building upon lease modification and payment of premium. The imposition of BH restriction for the site had violated Article 105 of the Basic Law which stated that private property rights should be protected;
 - (ii) in setting the BH restriction for the MLCC site, provision should be made for future redevelopment to meet the

community needs. It was short-sighted and unreasonable to adopt the lease restriction or the existing BH as the benchmark for the restriction. The redevelopment of other churches in Hong Kong, such as the Mongkok Church of the Church of Christ in Church, Yan Fook Church at Cheung Sha Wan and Hong Kong Baptist Church at Caine Road, had demonstrated a better utilization of land resources for provision of community services in addition to church use;

- (iii) privately owned “G/IC” sites should be distinguished from Government sites in considering the imposition of BH restrictions. It was unfair to use the small privately-owned MLCC site to provide visual and spatial relief for the surrounding high-rise and high-density residential and commercial developments with BHs ranging from 85mPD to 115mPD;
- (iv) going through s.16 and s.12A applications for minor relaxation and amendment of the BH restriction respectively would incur financial burden to MLCC and there was no guarantee of approval by the Board;
- (v) a maximum BH of 100mPD for the MLCC site was considered compatible with the surrounding developments and would not create adverse impact on the surrounding environment in view of the small size of the site;
- (vi) there was inconsistency in the BH restrictions for the “G/IC” sites. Some “G/IC” sites, including those occupied by the North Point Government Offices, the ICAC Headquarters Building and the Customs and Excise Department (C&ED) Headquarters Building, enjoyed a maximum BH of 100mPD on the North Point OZP while the maximum BH for the MLCC site was restricted to 5 storeys; and

- (vii) there was no public consultation prior to the exhibition of the amendments to the OZP;
 - F5: the BH restrictions should not be relaxed so as to preserve the urban landscape and facilitate air ventilation;
- (d) responses to the further representations:

F1 and F5

- (i) the revised BH restrictions could achieve the planning objectives of preserving the existing vista to Wong Nai Chung Gap and the special character of the Happy Valley area while providing more flexibility for future developments on sites at higher levels;
- (ii) the proposed amendments did not involve any relaxation of plot ratio restrictions on the OZP and would not result in any increase in the population or adverse impact on the traffic conditions in the area; and
- (iii) according to air ventilation assessment, the revised BH restrictions would not have much impact on the overall ventilation performance in the Area.

F2 to F4

- (i) the proposed maximum BH for the MLCC site on the OZP was broadly the same as the maximum BH permitted under the lease and the existing BH of the church, and had not deprived MLCC of its development rights under the lease;
- (ii) according to legal advice, a ‘de facto deprivation’ would exist if the property affected was left without any meaningful alternative use or

if the restrictions had denied all economical value of the property. The imposition of BH restriction did not amount to a ‘de facto deprivation’ so long as the owners of the concerned building and land could continue the existing use of the building and land, and the restriction would unlikely have the effect of restricting the owners in assigning or transferring their interests in the land;

- (iii) the BH restriction for “G/IC” sites had been formulated after taking into account various factors, including the existing height profile, the local character, urban design considerations, air ventilation, private development rights and the nature of the concerned GIC uses. Land ownership should only be one of the relevant considerations;
- (iv) apart from providing GIC facilities, the “G/IC” sites also served as visual relief and breathing spaces for the dense urban environment. This planning intention should be applicable to all “G/IC” sites;
- (v) there were other privately owned “G/IC” sites on the Wong Nai Chung OZP, such as the HKSH site, as well as on other OZPs. If a distinction between Government and privately owned sites was made, there would be very wide implications and might result in adverse visual, air ventilation and urban design impacts;
- (vi) s.16 application for minor relaxation and s.12A application for amendment to the BH restriction would be assessed on its own merits. Proper assistance and guidance would be provided by PlanD to MLCC in the application process if necessary;
- (vii) the further representers had not submitted any redevelopment scheme nor any planning justifications to support the proposed BH restriction of 100mPD for the MLCC site. Relaxing the BH restriction would set an undesirable precedent resulting in proliferation of high-rise GIC developments and leading to cumulative loss of visual relief and breathing space in the Area;

- (viii) the BH bands for the residential zones were to preserve the existing vista and special character of the area with regard to the planning intentions for the zones. It was inappropriate to apply the BH bands for the residential zones to the “G/IC” sites;
 - (ix) the churches quoted by the further representers as having a better utilization of land resources had complied with the provisions of the relevant OZPs and were different from the MLCC site in terms of site context and the character of the OZP areas. Yan Fook Church was zoned “Other Specified Uses” annotated “Business”, and the Mongkok Church of The Church of Christ in China and the Hong Kong Baptist Church had an absolute BH of only 49m and 55m respectively;
 - (x) the BH restrictions for the “G/IC” sites in the North Point area were formulated having regard to the similar principle adopted for the Wong Nai Chung OZP, i.e. to contain the BHs of the existing/committed developments to provide visual relief and breathing space for the dense urban environment. The North Point Government Offices, the ICAC Headquarters Building and C&ED Headquarters Building formed part and parcel of the office development belt along the eastern part of Java Road, and were either developed or committed before the imposition of BH restrictions; and
 - (xi) to avoid premature release of information which might prompt developers/landowners to accelerate submission of building plans for development/redevelopment on the affected sites, public consultation was held after exhibition of the amendments to the OZP. The publication of the OZP itself was a statutory public consultation process. Moreover, the Wan Chai District Council had been consulted and a public forum had been held.
- (e) PlanD’s views – as the Board had just agreed that the part of F6 relating

to the HKSH site should be regarded as invalid, PlanD noted the support of F6 on Amendment Items F to H. PlanD did not support the other further representations, and considered that the OZP should be amended by the proposed amendments as published on 29.8.2008.

34. The Chairman then invited the further representers to elaborate on the further representations.

[Ms. Anna S.Y. Kwong arrived to join the meeting at this point.]

Further Representers

35. Mr. Alain Choi elaborated on Further Representation No. F2 and made the following points:

- (a) BH restrictions for “G/IC” sites were imposed on the basis of PlanD’s opinion that “G/IC” sites should serve the functions of providing visual relief and breathing space in the urban area. Under the BH restrictions, two requirements were set for development at the “G/IC” sites, namely, the height of the existing building should not be exceeded and planning/rezoning applications should be made if the existing height was to be exceeded. PlanD also made two assumptions, namely, relaxing the BH restriction for the MLCC site would set an undesirable precedent leading to cumulative loss of visual relief and breathing space and proper assistance and guidance would be provided to MLCC in the planning/rezoning application process. The Board should not limit itself to the requirements and assumptions made by PlanD in considering the objections to the BH restriction for the MLCC site;
- (b) it was not reasonable to limit the BH for the MLCC site to the existing level without taking into consideration the specific needs of MLCC and the circumstances of the surrounding developments. Under the proposed BH restriction, the potential of the MLCC site to continue and expand its services to the community would be jeopardized;

- (c) MLCC built its first church in 1953, which was replaced by the existing one in 1983. Having been used for 25 years, the existing church would need to be redeveloped soon. To comply with the current requirements under the Buildings Ordinance, such as the need to provide means of fire escape and access for the disabled, a new building of at least seven storeys in height would be required to maintain the floor space required for the existing services offered by MLCC. Limiting the BH to the existing level would reduce the community services that could be provided at the site in future and violate a fundamental principle of planning;
- (d) planning/rezoning application for relaxing the BH restriction would delay the redevelopment process and increase the redevelopment cost, at the expense of the scarce resources of the MLCC which operated mainly with donations;
- (e) a decision to relax the BH restriction for the MLCC site would not preclude any future amendments to the OZP, and would not set any undesirable precedent. Furthermore, the MLCC site occupied only a small area and was surrounded by high-rise buildings. Even if it was redeveloped into a 12-storey building, the scale of which would likely meet its expansion plan, it would not result in any adverse impacts on the surrounding areas;
- (f) it was unlikely that the Government would offer any genuine assistance to MLCC in the planning/rezoning application process. The MLCC would have to solve its own problems; and
- (g) MLCC purchased the site in 1951, which was not subject to any restriction on the type of land uses until it was zoned "G/IC" in 1969. The current BH restriction would further prejudice the redevelopment potential of the site. It was unfair to require MLCC to relieve the adverse environmental and visual impacts resulted from other private developments.

[Dr. Daniel B.M. To left the meeting at this point.]

36. With the aid of a powerpoint presentation, Ms. Edith Shih and Mr. Jerome Wong elaborated on Further Representation No. F3 and made the following points:

- (a) the OZP and the lease were separate documents. The OZP set out the statutory controls on land use and development from planning point of view. Deviation from the land use control was prohibited unless with the permission of the Board. The lease was a contract between the Government and the owner of a piece of land with restrictions and conditions on various aspects of that piece of land. It could be modified upon mutual agreement between the Government and the owner and the payment of premium. It was inappropriate to use the BH restriction under the lease as a benchmark for the BH restriction under the OZP. In fact, the Court of Appeal had stated in a case, namely, *Fine Tower Associates Limited vs Town Planning Board*, that the Board should not limit itself to the current lease conditions. The restriction under the lease was thus irrelevant to the Board's consideration of the BH restriction on the OZP;
- (b) before the imposition of the BH restriction, PlanD would normally have no statutory objection to building plans in relation to BH of a building. The PlanD's claim that the BH restriction on the OZP had not deprived MLCC's right under the lease was misleading;
- (c) the idea of using "G/IC" sites as visual relief and breathing space in the urban area was inconsistent and contrary to the statutory planning intention of the "G/IC" zone for the provision of GIC facilities to serve public needs. To cater for the growth of population and changes in planning circumstances, GIC facilities in Happy Valley should be increased instead of suppressed. Limiting the BH for the "G/IC" sites would affect the growth of GIC facilities. In particular, MLCC had not redeveloped its site for 25 years and had plans to expand its services;

- (d) in paragraph 6.2.11 of Chapter 11 of the Hong Kong Planning Standards and Guidelines on “Urban Design Guidelines”, it was stated that ‘lower buildings such as community hall, schools, etc should be used as interface and as visual and spatial relief in the urban core’. However, such guideline was for new towns instead of an urban area like Happy Valley. It was also stated in Town Planning Board Guidelines No. 16 for “Application for Development/Redevelopment within “G/IC” zone for Uses Other Than GIC Uses” that ‘some GIC developments, especially the low-rise and low-density ones, also served as breathing spaces within a high-rise and high-density environment’. However, those Guidelines were not applicable to redevelopment of the MLCC site for church use since ‘religious institution’ was a Column 1 use in the “G/IC” zone;
- (e) it was unjustified and fundamentally wrong to require MLCC to submit a s.12A application for amendment to the BH restriction. ‘Religious institution’ was a Column 1 use in the “G/IC” zone and MLCC had an inherent right to redevelop its site for expanding its services to the community;
- (f) the requirement to submit a concrete redevelopment scheme prior to any consideration of the request for relaxing the BH restriction was unjustified and fundamentally wrong. The Board should not delay its consideration of MLCC’s proposal to relax the BH restriction;
- (g) relaxing the BH restriction for the MLCC site would not set an undesirable precedent. MLCC was the only Protestant church in Happy Valley. It was located at a private site and was operated at no cost to the Government and the community. The site was small and was surrounded by tall buildings. As shown in the photomontages in the Paper, the church was not visible amongst the cluster of high-rise development; and
- (h) allowing a BH of 100mPD for the MLCC site would not create an out-of-context building nor prejudice the overall intention of maintaining a stepped height profile and preserving the local character of the area. It

would facilitate redevelopment of the site for the benefit of the community.

37. Mr. Geoffrey Ng elaborated on Further Representation No. F4 and made the following points:

- (a) Hong Kong society had been operating in a fair way, and it should be the goal of Hong Kong people to offer a better environment for the next generation. According to his religious belief, human beings were tasked by the God to properly manage, rather than conquer, the land;
- (b) he had not submitted any original representation or comment in respect of the BH restriction for the MLCC site because he believed that the Board would be able to make a decision properly balancing the interests of all parties. However, after reading the minutes of the hearing held on 8.8.2008, he considered that the Board had not been provided with a fair planning assessment on the matter. He thus decided to submit the further representation;
- (c) in considering the BH restriction for the MLCC site, the Board should note three main points, namely that the MLCC site was a private property, there was inconsistency in Government's policy regarding developments at "G/IC" sites, and there were shortcomings in the planning procedures;
- (d) MLCC was suffering from a grave shortage of space. It was a hope of its members to have more space to continue its existing operation as well as to expand its services to the local residents;
- (e) even if a maximum BH of 100mPD as requested was allowed, it was unlikely that the MLCC site could be redeveloped to such height due to the small size of the site and limited financial resources of MLCC. Given their tight financial situation, MLCC had not yet formulated a concrete redevelopment plan. It was anticipated that the Government would not offer any financial assistance to MLCC; and

- (f) the Board should give sympathetic consideration to the request for relaxing the BH restriction for the MLCC site to facilitate MLCC's redevelopment for expanding its services to the community.

38. The Vice-chairman then invited the representatives of Further Representer No. F6 to present. He said that since the part of F6 regarding the HKSH site was considered as invalid by the Board, the presentation should be confined to the remaining part of the further representation. Mr. Menachem Hasofer said that Further Representer No. F6 expressed profound disappointment on the Board's decision, which had restricted his statutory right to be heard. As a substantial part of the further representation had been cut out, there was no meaningful way to address the Board on it. The Vice-chairman asked Mr. Hasofer whether he decided to forfeit the time allocated for his presentation. Mr. Hasofer replied that he did not forfeit anything on behalf of Further Representer No. F6. As a result of the Board's decision, he had nothing meaningful to say and thus would not address the Board on the further representation any further. However, he reserved all rights of Further Representer No. F6.

39. The Vice-chairman then invited the original representers and commenters to present.

[Mr. Leslie H.C. Chen left the meeting temporarily and Mrs. Ava Ng arrived to join the meeting at this point.]

Original Representers

40. On behalf of Original Representer No. R29, Ms. Keren Seddon made the following points:

- (a) the site of R29, i.e. No. 1-15 Lun Hing Street, was covered by the proposed Amendment Item G, under which the maximum BH for the site would be increased from 100mPD to 115mPD. The amendment was opposed by Further Representations No. F1 and F5 and supported by F6. The grounds of representation submitted by F1 and F5 were not convincing as they had overlooked the Board's rationale for the proposed amendment;

- (b) due to the difference in site level, the net BH that could be achieved at the site of R29 would be less than that at the sites near the Race Course by about 16.3m. In the hearing on 8.8.2008, the Board acknowledged the undue constraints under the original BH restriction of 100mPD to achieve the permissible plot ratio at the site. The Board also acknowledged that imposing a uniform BH restriction of 100mPD for the area stretching from the lower part to the higher part of Sing Woo Road did not have sufficient regard to the natural topography and would create a monotonous height profile instead of a stepped height profile as intended. For these reasons, the Board decided to propose Amendment Item G to increase the concerned BH to 115mPD. Such proposed amendment was important for Original Representer No. R29 to ease the difficulties in achieving the permitted plot ratio. In fact, R29 requested for a greater BH of 120mPD; and

- (c) it was noted from the minutes of the hearing on 8.8.2008 that the Board considered that the practice of allowing flexibility for development through minor relaxation of the BH restrictions should continue. In this regard, Original Representer No. R29 considered that it would not be correct to allow minor relaxation for the sites near the Race Course since it might affect the stepped height profile intended for the area. No. R29 also wished to emphasize that the principle of development certainty and the Basic Law should not be violated.

[Mr. Walter K.L. Chan left the meeting temporarily at this point.]

41. Mr. Edmond Lau, Original Representer No. R30, made the following points:

- (a) the Board should adopt a holistic approach in the planning process. All planning issues in addition to BH should be taken into consideration in one-go;

[Mr. Leslie H.C. Chen returned to the meeting at this point.]

- (b) greening initiatives should be encouraged. For developments with green features proposed, such as sky garden, an additional BH of about 5 to 6 metre should be allowed without the need to go through the planning application process. Seeking relaxation to the BH restrictions through planning applications would be time consuming;
- (c) the residential sites at Kwai Fong Street, which were located at higher levels than other sites, should be designated with a greater BH to encourage redevelopment;

[Professor Bernard V.W.F. Lim left the meeting temporarily at this point.]

- (d) the MLCC site should not be prevented from redevelopment. In setting the maximum BH, the lease should not be adopted as a benchmark since the Lands Department might have different considerations; and
- (e) overall speaking, the planning system in the Mainland China was more advanced. Hong Kong should make improvements accordingly.

42. On behalf of Original Representers No. R37 and R43, Mr. Ian Brownlee said that Amendment Items D and H were proposed by the Board after hearing R43 and R37 respectively on 8.8.2008. Both Original Representers of R43 and R37 supported the proposed amendments and considered that Further Representations No. F1 and F5 against the proposed amendments should not be upheld.

43. On behalf of Original Representer No. R47, Dr. David Taw made the following points:

- (a) in addition to holding religious activities, MLCC had been actively providing social services to the local community. Under the recent global financial crisis, it was planning to expand its counselling services to meet the demand for such services in the society. It would also develop its youth services in view of the importance of such services to the society. There

was an imminent need for the Church to undertake redevelopment to cater for the expansion of services;

[Mr. Walter K.L. Chan and Professor Bernard V.W.F. Lim returned to the meeting at this point.]

- (b) the rationale for imposing the BH restriction was focused mainly on the environmental and legal considerations. Insufficient regard was given to spiritual need of people. The BH restriction would jeopardize the right of MLCC to serve the society;
- (c) the MLCC site was under private ownership. The MLCC had no intention to make profits out of its redevelopment. It had previously turned down proposals from some private developers for joint-venture redevelopment, so as to maintain its use as a religious and social services institution; and

[Mr. Rock C.N. Chan left the meeting at this point.]

- (d) it was a belief of Christians that human beings were tasked by God to protect the Earth. It could be rest assured that the redevelopment of the MLCC site, even at an increased BH, would not adversely affect the environment. The Board should uphold the requests for relaxing the BH restriction for the MLCC site so that MLCC could continue to fulfil its mission to serve the society.

44. Rev. Dr. Hui Hoi Ming carried on to present on behalf of Original Representer No. R47 and made the following points:

- (a) MLCC was tasked by the Church of Christ in China (CCC) to undertake missionary and social services. It was crucial for it to have adequate accommodation to undertake its works;
- (b) the MLCC site was of a triangular shape and a greater BH was required to ensure that sufficient usable space could be provided upon redevelopment.

A BH of 100mPD was necessary to cater for its need. It was different from the Mongkok Church of CCC which was of a rectangular shape and hence was faced with less constraint in achieving more usable space under a lower BH; and

- (c) the purpose of establishing a church was to bring peace, love and justice to the society. MLCC was the only church and a major non-government organisation in Happy Valley serving the religious, social, spiritual and physical needs of people. Its request for relaxing the BH restriction should be supported.

Commenters

45. Ms. Anna Lee, on behalf of Commenter No. C1, made the following points:

- (a) as a matter of principle, the BH restrictions for “G/IC” sites should be removed. Such principle was applicable to the MLCC site because MLCC was working for the community;
- (b) the proposals of F1 and F5 to reduce the maximum BHs should not be supported and the proposal of F6 to increase the maximum BH for the HKHS site should be supported;
- (c) it was not well justified why the BHs for the “G/IC” sites needed to be lower than the general BH band applied to the whole area;
- (d) it was expected that a hospital was an intensive development. A long term need of over 20 years of the hospital had been jeopardized by the BH restriction of 12 storeys on the part of the HKSH site occupied by the old buildings;
- (e) as indicated in paragraph 4.4.23 of the Paper, Transport Department (TD) had no adverse comment on the proposed redevelopment scheme of HKSH. This was the result of HKSH’s efforts in the last six to nine

months working with TD in deriving a feasible solution for traffic improvement in the area. The improvement would not be achievable under the current BH restriction of 12 storeys. HKHS had submitted the General Building Plans for its Phase IV redevelopment incorporating TD's requirements, with no increase in hospital beds; and

- (f) a BH of 12 storeys at the HKSH site was equivalent to only about 56.9mPD, which was significantly lower than the BHs for the nearby residential sites ranging from 85mPD to 130mPD. There was no practical justification for such a restrictive BH. Imposing a BH of 115mPD or 130mPD for the HKSH site would make it compatible with the surrounding sites.

46. With the aid of a powerpoint presentation, Mr. Raymond Cook presented the traffic aspects of Commenter No. C1's arguments:

- (a) the traffic implications of the following scenarios of the redevelopment of HKSH had been assessed:
 - existing development: 438 beds and no access improvement;
 - with Phase 3 redevelopment: 700 beds and no access improvement;
 - with Phase 4 redevelopment (BH of 130mPD): 780 beds and major access improvement;
 - with Phase 4 redevelopment (BH of 115mPD): 650 beds and major access improvement; and
 - with Phase 4 redevelopment (BH of 85mPD): 400 beds and major access improvement;
- (b) the current traffic problems associated with the HKSH site included:

- access to the site was difficult since it had to be made via local roads;
 - egress from the site was difficult since it had to be made via Village Road which was a local road;
 - there were insufficient lay-bys and parking spaces within the site;
- (c) the traffic problems could be resolved with the implementation of Phase 4 redevelopment in the following ways:
- with a new ingress/egress point at the northern end of the site near the Hindu Temple, access to the site and much of the egress movements could be made via Wong Nai Chung Road. Without such improvement, the traffic flow at the junction of Shan Kwong Road/Village Road would exceed its design capacity. With the improvement, the performance of the junction would become satisfactory;
 - additional lay-bys could be provided, with some of them located in the new podium. The internal circulation within the site could be improved;
 - additional car parking spaces could be provided at the two new lower ground floors; and
- (d) the TD had agreed in principle to a development scenario with 938 beds with access improvement. What HKSH proposed was not more than 780 beds.

47. Ms. Brenda Au raised the point that the presentation of the representatives of Commenter No. C1 was largely on the details relating to the redevelopment proposal for the HKSH site. Based on the Board's decision that the part of Further Representation No. F6 in relation to the HKSH site should be regarded as invalid, Members might wish to consider whether it was appropriate to allow Commenter No. C1 to continue to present

such details in the hearing.

48. Mr. Ian Brownlee said that Commenter No. C1's presentation was mainly to address on the principles relating to the proposed amendments and the impacts of such amendments on the "G/IC" sites. The Board's decision regarding the validity of F6 was not related to Comment No. C1.

49. Mr. Menachem Hasofer said that Commenter No. C1 was invited to the hearing in accordance with s.6F(3) of the Ordinance which stated that the person who made any representation or comment after consideration of which the proposed amendments in question were made were entitled to attend the hearing and to be heard. That section did not mention that the commenter should only be heard in respect of the proposed amendments. In the Board's consideration on whether the part of F6 relating to the HKSH should be considered as invalid, DoJ had suggested that one could only look into the words of the statute in construing the Ordinance. If the Board adopted DoJ's suggestion, the same approach should also be adopted in handling Comment No. C1. Notwithstanding, the presentation made by Ms. Anna Lee and Mr. Raymond Cook were relevant to the proposed amendments since the traffic was an important issue in considering the BH restrictions and the redevelopment plan of HKSH would make traffic improvements possible.

50. The Vice-chairman said that the traffic issues might be relevant to the Board's consideration of the proposed amendments in general but there was doubt on whether the redevelopment plan of HKSH itself had any relevance. Moreover, it should be noted that the Board's decision that the part of Further Representation No. F6 in relation to the HKSH site was invalid remained unchanged. The Vice-chairman suggested allowing the representatives of Commenter No. C1 to continue their presentation and the Board would only take the relevant issues into consideration. Members agreed.

51. With the aid of a powerpoint presentation, Mr. Ian Brownlee made the following points on behalf of Commenter No. C1:

- (a) as shown in the photomontages prepared by Commenter No. C1 incorporating the proposed amendments to the BH restrictions, allowing a BH of 115mPD or 130mPD at the HKSH site would not cause any adverse

visual impacts in the area;

- (b) relaxing the BH for the HKSH site would not set any precedent since the HKSH was the only hospital in the Area. With a 37-storey building, the site was not providing visual relief and breathing space in the area. The cemetery adjacent to the site could serve the function as visual relief and breathing space. Furthermore, there were significant traffic problems in the area and the only way to resolve the problems was to allow HKSH to develop a taller building. The current BH restriction for the site would jeopardize the redevelopment plan; and
- (c) it was necessary to have a balanced assessment on the BH restrictions taking into account considerations such as traffic, hospital services and visual amenity. The current BH restriction of 12 storeys was unreasonable, in particular under the proposed amendments with increased BHs in various sites. There was opportunity for arriving at a compromised solution for the Phase IV redevelopment of HKSH.

52. Ms. Anita Ng, Commenter No. C20, made the following points:

- (a) the MLCC site occupied only a small area and was surrounded by residential sites which were allowed with a maximum BH of 100mPD. As shown in the photomontages on Plans FH-8A and 8B in the Paper, the MLCC site would not be visible from the Happy Valley Race Course and Sportsground and would not block the view to the ridgeline, even if it was redeveloped to a BH of 100mPD;
- (b) there were not any planning guidelines saying that “G/IC” sites should serve as visual relief and breathing space. Such functions should be served by the “Open Space” and “Green Belt” zones. On the other hand, ‘religious institution’ was a Column 1 use in the “G/IC” zone. The legal right of MLCC to redevelop a church at the site should be respected;
- (c) town planning should be a forward-looking process to cater for the

changing community needs. In many cases, a more intensive development could better serve the community. For instance, the Wong Nai Chung Mutli-purpose complex comprising market, food-stalls, library and sportsgrounds was developed to replace the previous hawker stalls. MLCC should not be deprived of its right to expand its accommodation in order to better serve the community;

- (d) the lack of concrete redevelopment proposal should not be a reason for not upholding MLCC's request for relaxing the BH restriction for the site. There was no requirement under the Town Planning Board Guidelines No. 29A on the Submission and Publication of Representations, Comments on Representations and Further Representation that a representer had to submit a concrete development proposal to the Board as part of his representation;
- (e) the provisions for sections 16 and 12A applications for minor relaxation of the BH restriction and amendment to the OZP respectively were not relevant to the consideration of MLCC's representation which was made under section 6 of the Ordinance;
- (f) PlanD had not adequately addressed MLCC's view that a distinction should be made between the private "G/IC" sites and the Government sites. This contention would have a wide policy implication and should not be ruled out before a comprehensive study was undertaken;
- (g) relaxing the BH restriction for the MLCC site would not set any undesirable planning precedent since each case should be considered on its individual merits; and
- (h) the lease and the OZP were two separate documents. The lease formulated in 1952 should not be adopted as a benchmark in setting the BH restriction for the MLCC site.

53. Mr. Shih Hay Lai, Commenter No. C163, made the following points:

- (a) it was unreasonable to limit the BH for the development at the MLCC site;
- (b) MLCC had no resources to employ consultants to formulate its development proposal and to undertake technical assessments. It would be unfair to turn down MLCC's request for relaxing the BH restriction on the ground that insufficient information of the future redevelopment proposal was provided; and
- (c) there had been many high-rise buildings surrounding the MLCC site and in the nearby area such as Stubbs Road. There were no planning grounds to limit the BH for the MLCC site to a low level whilst allowing high-rise developments in the surrounding areas.

54. Members noted that the representatives of Representer No. R32 and Commenters No. C26, C70, C141, C194, C210, C272 and C282 also attended the meeting but would not make oral presentation to the Board.

55. Members had the following questions:

F2 to F4

- (a) how many members did MLCC have and what type of services was provided by the Church to the community;
- (b) whether there was any information showing the form and layout of a building at the MLCC site with a BH of 100mPD;
- (c) whether there was any restriction on plot ratio in the lease;
- (d) noting that it was not a mandatory requirement to submit concrete development proposal to support a representation, whether MLCC could provide more information to help the Board visualize the impact of the church building with a BH of 100mPD and whether a lower building of,

say 40 - 45 metres in height equivalent to about 7 to 8 storeys, could also meet the needs of the Church; and

R30

- (e) whether PlanD had any response to the comments of R30 on the BH restrictions imposed on the OZP.

56. In response to Members' questions, Ms. Brenda Au made the following points:

F2 to F4

- (a) the MLCC site occupied an area of about 331m². If it was redeveloped to a BH of over 61m, the maximum site coverage (SC) permitted under the Building (Planning) Regulations (B(P)R) would be 65%. Given the small size of the site, the usable space on each floor would be very limited under such proposal. To achieve a reasonable usable area on each floor, the site might not need to be redeveloped to a BH of 100mPD as proposed by the Further Representers. F2 had indicated that a BH of 12 storeys would be sufficient for future use of the church, while F4 had indicated that the church might not be redeveloped to a maximum BH of 100mPD even if it was allowed. In this regard, if more details of the redevelopment plan was available, it would allow the Board to consider an appropriate BH for the MLCC site. It should also be noted that the BH of 100mPD requested by MLCC was in fact greater than the other churches quoted by one of the Further Representers, such as Mongkok Church of The Church of Christ in China (49m) and Hong Kong Baptist Church (55m). Yan Fook Church (86m) in Cheung Sha Wan fell within the "Other Specified Uses" annotated "Business" zone and the planning intention was different;
- (b) there was no restriction on plot ratio in the lease. However, the maximum BH for the site under the lease was only 56 ft (17m) for church use or 35 ft (10.6m) for house use. Commercial development on the site as claimed to be permitted was in fact not allowed. The BH restriction under the OZP was not proposed solely based on the lease restriction, though lease

entitlement had been taken into account in considering whether private property right was affected;

R30

- (c) the proposal of Original Representer R30 to allow an additional BH of 5 to 6 metres for residential developments which provided a sky garden would mean a general increase in BH for all residential sites in the area. It would change the BH profile intended for the area; and
- (d) apart from the stepped height profile, the BHs of the surrounding areas had also been taken into account in setting the BH restriction for the specific “Residential (Group B)” site at Kwai Fong Street. The site was adjacent to the “Residential (Group B)7” zone with a BH of maximum 14 storeys including carports and the “Residential (Group C)2” zone with a BH of maximum six storeys in addition to one storey of carports. The BH restriction of 100mPD for the site was compatible with the surrounding areas.

57. Ms Brenda Au also made the following comments on the presentation of Commenter No. C1:

- (a) Commenter No. C1 indicated that unless a BH of 115mPD or 130mD was allowed for the Phase IV redevelopment of the HKSH site, it would not be possible to incorporate measures to resolve the traffic problems resulting from the Phase III redevelopment of the site, which provided additional hospital beds. As pointed out by the TD in paragraph 4.4.23 of the Paper, this was a deviation from the previous position of the HKSH in that HKSH had confirmed to the TD that there would be no increase in the number of hospital beds upon completion of the Phase III redevelopment; and
- (b) the new ingress/egress point at the northern end of the HKSH site as proposed by HKSH as a traffic improvement measure could also be provided under a redevelopment scheme at a BH of 12 storeys. The traffic improvement measures had no direct relationship with the appropriate BH

of the building.

58. In response to Members' question in paragraph 55(a), Rev. Dr. Hui Hoi Ming made the following points:

- (a) MLCC had over 2,000 members and maintained contact with about 1,000 of them. The accommodation in the existing church was seriously inadequate to cater for its need to provide services. For instance, the church ran a Sunday School with 10 to 12 classes but only six classrooms were available. Most of its staff, except the Reverend, were not provided with a proper office room. There was also a need for the church to provide a counselling room. Furthermore, MLCC had a close working relationship with HKHS by providing pastoral services and holding cell groups. It also held summer classes for children. To help relieve the hardship of those who were affected by the recent global financial crisis, MLCC had assisted to release consoling messages and supporting information; and
- (b) regarding the future plans, MLCC had given consideration to a wide range of services, such as elderly and youth centres, kindergarten, choir and English courses. It was also under active discussion with Mr. Stephen Ng, Wan Chai District Councillor, on the provision of community services. However, the shortage of space in the existing church had posed serious constraints for the implementation of these services.

[Mr. Walter K.L. Chan left the meeting at this point.]

59. In response to Members' questions in paragraphs 55(b) to (d) above and Ms. Brenda Au's responses in paragraphs 56(a) and (b), Mr. Jerome Wong made the following points:

- (a) the MLCC site was not subject to plot ratio restriction under the lease. Under the B(P)R, the site was a 'Class B' site and a maximum plot ratio of 15 was permitted. The plot ratio of the existing building was less than 4, and there was much scope for expansion at the site under the B(P)R;

- (b) the constraint of small usable space at each floor could be resolved by flexible building design. For instance, the church hall could be accommodated within the lowest 15m of the building, which allowed a maximum SC of 100% under the B(P)R. The remaining facilities such as classrooms did not require a large floor area and could likely be accommodated within a SC of 65% at the upper levels; and
- (c) the street level of the MLCC site was about 17.9mPD. If a BH of 100mPD was allowed, the net height of the building would only be about 82m. MLCC had previously reviewed its accommodation needs and anticipated that a building of at least 12 storeys with a height of 63m (i.e. about 80mPD) would be required. The total gross floor area of the 12-storey building would be about 2,900m². Taking account of the ancillary facilities such as lifts, stairs and disable access, the efficiency ratio of the building would only be about 60% and the usable floor area would be about 1,800m², which was barely sufficient for a church with 1,000 active members to continue its existing activities and expand its services to the community. To give MLCC sufficient flexibility for building design, a BH of 100mPD should be allowed for the site, even though the future developments might not reach the maximum permissible height.

60. In response to Ms. Brenda Au's comments in paragraph 56(b) above, Mr. Alain Choi said that there was no restriction on the type of uses at the MLCC site under the lease. The only user restriction was imposed by the "G/IC" zoning on the OZP in 1969. He said that a building of at least 7 storeys was required to cater for the existing needs of MLCC, and agreed with Mr. Jerome Wong's estimation that a building of at least 12 storeys would be required in the future.

61. In response to Members' question in paragraph 55(e) above and Ms. Brenda Au's reply in paragraphs 56(c) and (d), Mr. Edmond Lau made the following points:

- (a) the BH restrictions would seriously limit the flexibility in building design. 'Match-box' buildings would be resulted and worsen the air ventilation in

the area. The problem could be solved by suitably relaxing the BH restrictions for the developments which provided a sky garden. The relaxation should be granted as of right without the need to apply for planning permission; and

- (b) the maximum BH for the site at Kwai Fong Street should be increased to 130mPD.

62. In response to Ms. Brenda Au's comments in paragraph 57, Mr. Ian Brownlee said that the Phase IV redevelopment scheme offered by HKSH to the TD had incorporated three storeys of internal transport facilities. These facilities were to resolve the deficiency of parking spaces in the hospital after the completion of Phase III redevelopment which had increased the number of beds from 438 to 700. The Phase IV redevelopment would offer the opportunity to resolve the problem. However, with the current BH restriction of 12 storeys, there would be no incentive for the Phase IV redevelopment since it was uneconomical to do so.

63. As the further representers, original representers and commenters and their representatives had no further points to make and Members had no further question to raise, the Vice-chairman informed them that the hearing procedures for the further representations had been completed. The Board would deliberate and decide on the further representations in their absence and inform them of the Board's decision in due course. The Vice-chairman thanked the representatives of PlanD, the further representers, original representers and commenters and their representatives for attending the meeting. They all left the meeting at this point.

Deliberation Session

Further Representations No. F1 and F5

64. Members generally agreed with PlanD's assessment on F1 and F5 and considered that both further representations should not be upheld.

Further Representations No. F2 to F4

65. Members were generally sympathetic to MLCC's request for relaxing the current BH restriction for its site to meet the existing and future needs. However, some Members considered that the further representers had not indicated clearly the future expansion plan and the requirements of the Church to allow the Board to determine the appropriate BH for the site, though these Members agreed that detailed technical submissions were not necessary. Furthermore, MLCC had not yet obtained policy support from the relevant Government bureaux for its expansion plan. In the absence of sufficient information, it was not appropriate to relax the BH restriction for the MLCC to 100mPD at this stage.

66. Members also agreed that should there be a need for a substantial relaxation of the BH restriction for MLCC to implement its redevelopment plan, there were provisions under the Ordinance to submit an application for the consideration of the Board. Mrs. Ava Ng said that PlanD would provide the necessary assistance and guidance to MLCC in the application process. Regarding MLCC's concern on the financial burden that might be incurred in making an application, Mrs. Ng said that the requirement for technical assessments depended on the scale of the development and its impacts on the surrounding area. PlanD would render its assistance to the applicant in making the application, should a concrete redevelopment plan come up in future.

Further Representation No. F6

67. Members noted the support of Further Representer No. F6 on the Proposed Amendment Items F to H.

Original Representations and Comments

68. Members noted the views of the representatives of Original Representers No. R29, R37, R43 and R47 and Commenters No. C1, C20 and C163 in respect of the relevant further representations expressed in their presentations.

Further Representation No. F1

69. After deliberation, the Board decided not to uphold the further representation for the following reasons:

- (a) the BH restrictions for the Wong Nai Chung Area had been formulated after taking into account various factors, including the existing height profile, the local character, urban design considerations, air ventilation as well as striking a balance between public aspirations for a better living environment and private development rights. The revised BH restrictions had followed the stepped BH concept and relevant urban design principles, and would not have any adverse impacts on the visual quality, traffic and air ventilation in the Area; and
- (b) the revised BH restrictions for the “G/IC” zone covering the MLCC site and the “Other Specified Uses” annotated “Stables, Private Sports/Recreation Club and Public Open Space” zone covering the HKJC Clubhouse and Central Store were to reflect the predominant BHs of the existing buildings at the sites. They would not have adverse impacts on the surrounding areas.

Further Representations No. F2 to F4

70. After deliberation, the Board decided not to uphold the further representations for the following reasons:

- (a) apart from providing GIC facilities to serve the community, the “G/IC” sites in the built-up urban area also served as visual relief and breathing space. In the absence of details of any concrete redevelopment scheme, further relaxation of the BH restriction for the MLCC site would set an undesirable precedent, which could result in proliferation of high-rise GIC developments, leading to cumulative loss of visual relief and breathing space for the Wong Nai Chung Area. The revised BH restriction for the site reflected the existing BH of the church and was broadly equivalent to the maximum BH stipulated under the lease. The BH restriction had not deprived MLCC of its development rights under

the lease; and

- (b) to cater for site-specific circumstances and scheme with planning and design merits, minor relaxation of the BH restriction under the OZP might be considered by the Board through the planning permission system. Should there be any specific scheme for redevelopment of the church which involved a major increase in BH due to functional or operational needs, a section 12A application for amending the BH restriction could be submitted for the Board's consideration.

Further Representation No. F5

71. After deliberation, the Board decided not to uphold the further representation for the following reason:

the BH restrictions for the Wong Nai Chung Area had been formulated after taking into account various factors, including the existing height profile, the local character, urban design considerations, air ventilation as well as striking a balance between public aspirations for a better living environment and private development rights. The revised BH restrictions had followed the stepped BH concept and relevant urban design principles, and would not have any adverse impacts on the visual quality, traffic and air ventilation in the Area.

Further Representation No. F6

72. The Board noted the support of the further representer on the proposed Amendment Items F to H.

73. The Board decided to amend the draft Wong Nai Chung OZP No. S/H7/14 by the proposed amendments as published under section 6C(2) of the Ordinance on 29.8.2008. These amendments should form part of the said OZP.

74. The meeting adjourned for a lunch break at 1:45 p.m.

[Messrs. Raymond Young, Alfred Donald Yap, B.W. Chan, Y.K. Cheng and K.Y. Leung and Miss Annie Tam arrived to join the meeting at this point.]

75. The meeting was resumed at 2:40 p.m..

76. The following Members and the Secretary were present in the afternoon session:

Mr. Raymond Young
Dr. Greg C.Y. Wong
Mr. Nelson W.Y. Chan
Mr. Tony C.N. Kan
Professor Bernard V.W.F. Lim
Mr. Alfred Donald Yap
Ms. Sylvia S.F. Yau
Mr. B.W. Chan
Mr. Y.K. Cheng
Ms. Anna S.Y. Kwong
Dr. James C.W. Lau
Mr. K.Y. Leung
Mr. Benny Wong
Miss Annie Tam
Mrs. Ava Ng

77. Mr. S. Lau continued to take up the Secretaryship of the afternoon session of the meeting.

78. The Chairman said that the morning session of the meeting was overrun. In order not to keep the applicants waiting, Agenda Item 4 would be considered after the hearings of Agenda Items 5 and 6.

Agenda Item 5

[Open Meeting (Presentation and Question Session only)]

79. Review of 16A Application No. A/H25/6-4

Extension of Time for Compliance with Condition (c) for the Approved Temporary Exhibition Hall for Motor Vehicles for a Period of Three Years under Application No. A/H25/6 for a Further 6 Months in “Open Space” zone, Basement Level B1 of the Car Park Complex, Hong Kong Convention and Exhibition Centre, 1 Harbour Road, Wan Chai, Hong Kong

(TPB Papers No. 8229)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

80. Ms. Brenda Au, District Planning Officer/Hong Kong (DPO/HK) and Ms. Donna Tam, Senior Town Planner/Hong Kong (STP/HK) of the Planning Department (PlanD) and the following applicant’s representatives were invited to the meeting at this point:

Mr. Kenneth To

Ms. Kitty Wong

Mr. Henry Au

Mr. Jovi Wong

Mr. S.T. Wong

Mr. Kelvin Leung

Dr. Longde Zhao

Mr. Alan W.L. Pun

81. The Chairman extended a welcome and explained briefly the procedures of the review hearing. The Chairman then invited Ms. Brenda Au to brief Members on the background to the application.

82. With the aid of a Powerpoint presentation, Ms. Brenda Au presented the application and covered the following main points as detailed in the Paper :

- (a) the applicant sought planning permission for extension of time (EOT) for compliance with approval condition (c) under Application No. A/H25/6 for a further six months up to 3.2.2009;
- (b) background – the validity of the planning approval of application No. A/H25/6 was up to 3.11.2009. The compliance period of approval condition (c) had been extended three times for a total of 21 months until 3.8.2008 under applications No. A/H25/6-1, A/H25/6-2 and A/H25/6-3;
- (c) the reasons for the Metro Planning Committee (MPC) to reject the EOT application on 1.8.2008 were set out in paragraph 1.2 of the Paper. The planning application No. A/H25/6 was revoked on 3.8.2008 due to failure to comply with the approval condition;
- (d) no written submission in support of the review was submitted by the applicant;
- (e) departmental comments - no objection from relevant departments was received. The Buildings Department (BD) advised that building plans for the alteration and addition (A&A) works for the provision of fire service installations were approved on 25.8.2008. A temporary building permit and consent to commencement of works were issued on 26.9.2008. The Fire Services Department (FSD) advised that fire service requirements were formulated in general building plans. However, relevant documentary evidence had not yet been received to demonstrate that the proposed fire safety measures had been implemented. Therefore, FSD was unable to confirm whether the approval condition had been complied with;
- (f) no local comment/objection was received by the District Officer (Wan Chai) on the review application; and

- (g) PlanD's view - PlanD maintained its previous view of not supporting the review application for EOT for the reasons stated in paragraph 6.1 of the Paper. There was no change in planning circumstances since rejection of the EOT application No. A/H25/6-4. The applicant failed to demonstrate that reasonable actions had been taken to comply with the approval condition despite the temporary exhibition hall had been in operation for over 5 years, and there was insufficient justification to demonstrate why the approval condition could not be complied with in the prescribed time limit. Site visit by PlanD on 13.11.2008 revealed that works for the provision of fire service installations had not yet been completed.

83. The Chairman then invited the applicant's representatives to elaborate on the application.

84. With the aid of a Powerpoint presentation, Mr. Kenneth To made the following main points :

- (a) there were already existing fire service installations in the carpark building which included sprinkler heads, alarm and lighted signs;
- (b) the applicant had made an enquiry to FSD in October 2007 on the fire service provision. FSD advised that the applicant had to implement the related A&A works with the provision of fire service installations at the application premises prior to obtaining self-certification to demonstrate that the fire safety measures had been satisfactorily implemented. The A&A works involved the provision of means of escape (MOE) to serve the temporary exhibition hall;

[Mr. Y. K. Cheng arrived at the meeting at this point.]

- (c) the existing four staircases in the carpark catered for a MOE for 500 persons. The change of use from carpark to a temporary exhibition hall, however, triggered new MOE requirement for a 'theoretical'

capacity of 2116 persons;

[Professor Bernard V.W.F. Lim left the meeting at this point.]

- (d) their survey revealed that, from January 2007 to September 2008, the maximum number of persons in the exhibition hall, including visitors and workers, were less than 200 persons at any period time. The average length of stay of visitors was about 30 minutes;
- (e) the applicant had repeatedly submitted building plans to comply with the MOE requirement. In August 2006, the proposal of providing one additional staircase was rejected by the Buildings Department (BD). The submitted proposal for an additional of seven staircases was also rejected in March 2007 due to objection from the Transport Department (TD) because of the reduction of number of parking spaces and the adverse impact on carpark operation on the other floors;
- (f) the slow progress for fulfilling fire service requirement was therefore due to the complexity of the MOE requirement. It was noted that FSD had no objection to the EOT application; and
- (g) although the applicant considered that the current MOE standard exceeded the actual requirement, he continued to put in efforts to fulfil the approval condition. A new consultant team was therefore engaged to redesign the MOE. In mid 2008 the general building plans with three additional staircases, one lift and a toilet were approved by the BD and consent for commencement of works were obtained in September 2008. Notice of commencement of building works was submitted to the BD on 6.11.2008.

85. Mr. Henry Au then made the following main points :

- (a) the temporary exhibition hall provided a reliable platform for sale of second hand vehicles. Because of good management and practice, more

than 10,000 transactions were recorded since its establishment;

- (b) due to complexity of the works and the time required for submissions of documentary evidence, despite applicant's continual efforts since 2006, the condition on fire service installations could not be complied within the specified time limit;
- (c) there was no real fire risk at the temporary exhibition venue as there were existing fire service installations and the MOE could cater for 500 persons. The venue was different from a shopping arcade; and
- (d) although the remaining validity period for the current application was about one year and there was uncertainty for their renewal of the planning permission in November 2009, the applicant still endeavoured to comply with the conditions; and
- (e) sympathetic consideration should be given to the application. The venue accommodated 43 motor vehicle companies employing more than 200 workers, and with spin-off effects on other servicing trades like car insurance and cleaning services. All these small to medium enterprises would be adversely affected should the application be rejected.

86. A few Members asked about the timing for implementation of the works to comply with the approval conditions. Mr. S.T. Wong said that the works would take 7 months to complete including installation of firemen's lift. Setting aside the installation of firemen's lift which had yet to be ordered, it would take about 4 to 5 months to complete the works. They endeavoured to carry out the works by phases without affecting the existing operation of the area.

87. Another Member enquired if there was any requirement in the tenancy to re-instate the premises affected by the proposed staircases and firemen's lift upon expiry of the temporary permission. Mr. Henry Au replied that there was no tenancy agreement between the applicant and the landlord. Ms. Brenda Au, DPO/HK, pointed out that the

waiver issued to the applicant by Lands Department contained such a re-instatement clause. Mr. Henry Au added that the applicant had no problem to comply with the requirement.

88. In response to a Member's query on the impact of the subject use to the parking needs of the HKCEC and its further extension, Ms. Brenda Au, DPO/HK, said that TD had advised in the subsequent application (No. A/H25/9) for the same use on the application premises considered by MPC on 24.10.2008 that any further continuation of the temporary permission beyond November 2009 might not be acceptable, and a car parking demand and supply study would be required to justify any future application.

89. A Member questioned about the works progress of fire service installations from 2003 to 2006 during the approval period of the previous application No. A/H25/2. Mr. Kenneth To replied that the consultant team was newly formed, and admitted there was little progress on compliance with the approval condition before 2006 but, as confirmed by Ms. Brenda Au, DPO/HK, there was no time limit set for compliance with the concerned condition in the previous planning application.

90. In response to a Member's query on FSD's stance on the EOT application, Ms. Brenda Au, DPO/HK, replied that FSD had adopted a flexible approach and did not object to the EOT.

91. As the applicant's representatives had no further comment to make and Members had no further question to raise, the Chairman 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 the applicant of the Board's decision in due course. The Chairman thanked the applicant's representatives and PlanD's representatives for attending the meeting. They all left the meeting at this point.

Deliberation Session

92. A few Members were sympathetic to the application in view of the difficulties encountered in the provision of fire service installations within the compliance period. As one of the MPC members, a Member said that despite MPC's rejection of the application on 1.8.2008, the applicant still carried on to apply for building plans approval,

temporary building permit and consent to commencement of works. An approval for EOT for compliance could be granted, and it should be the last chance for the applicant to comply with the approval condition.

93. Some Members had reservation on whether the applicant would put in vast investment to complete the approved works for the MOE and the firemen's lift given the uncertainty to continue the temporary use after November 2009. A Member wondered whether the applicant was paying lip-service to extend the validity period of the application as the works could be done faster. Another Member said that in six months' time, the applicant's promise could be verified and the application should be revoked if fire service installations had not been satisfactorily completed. Ms. Annie Tam advised that if the planning approval was revoked, the waiver for the subject use could also be cancelled.

94. A Member raised concerned on the fire risks of the temporary use in the interim period. The Chairman opined that TPB had to refer to FSD on the level of risks in the premises in the extended period. As FSD had indicated no objection to the application, it meant a relatively low risk status of the temporary use and such risk could be tolerated.

95. It was also noted that notwithstanding the observation in the Paper that the applicant failed to demonstrate reasonable actions had been taken to comply with the approval condition, works for the fire service installations had been commenced at the application premises. After discussion, Members generally considered that sympathetic consideration could be given to the application and no further EOT should be granted. The application should be revoked if condition (c) could not be complied with by the specified date.

96. After further deliberation, the Board agreed to extend the time limit for compliance with the approval condition (c) and decided to grant planning permission to the subject use on a temporary basis until 3.11.2009. The permission was subject to the following conditions:

- (a) no motor shows or car fairs or any related events should be undertaken

at the premises;

- (b) the provision of means of escape to the satisfaction of the Director of Buildings or the Town Planning Board;
- (c) the provision of the accepted proposal for fire service installations and submission of documentary proof to indicate that the fire safety requirements were fulfilled to the satisfaction of the Director of Fire Services or of the Town Planning Board by 14.5.2009; and
- (d) if the planning condition (c) above was not complied with by the specified date, the approval hereby given should cease to have effect and should on the same date be revoked without further notice.

97. The TPB also agreed to advise the applicant that :

- (a) operators should switch on vehicle engines only when necessary and switch off the engines immediately after use to minimise air pollutants in the proposed exhibition hall;
- (b) reference should be made to the Practice Note on “Control of Air Pollution in Car Park” (ProPECC No. 2/96), which was available at EPD’s website. The Practice Note provided information on the air quality standards in car parks; and
- (c) the applicant should comply with planning condition (c) within the specified period by 14.5.2009. No further extension of time would be granted.

[Mr. K.Y. Leung left the meeting temporary at this point.]

Agenda Item 6

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/YL-TYST/395

Temporary Open Storage of Construction Materials for a Period of 3 Years in “Village Type Development” zone, Lot 289 in D.D. 119, Shan Ha Tsuen, Yuen Long, New Territories

(TPB Paper No. 8231)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

98. Mr. Wilson So, District Planning Officer/Tuen Mun and Yuen Long (DPO/TMYL) of the Planning Department (PlanD) was invited to the meeting at this point.

99. The Secretary reported that sufficient notice had been given to the applicant to attend the hearing but the applicant did not attend. Members agreed to proceed with the hearing in the absence of the applicant.

100. The Chairman invited Mr. Wilson So to brief Members on the background to the application.

101. With the aid of some plans, Mr. Wilson So presented the application and covered the following main points as detailed in the Paper :

- (a) the applicant sought planning permission for temporary open storage of construction materials for a period of 3 years in an area zoned “Village Type Development” (“V”);
- (b) the reasons for the Rural and New Town Planning Committee (RNTPC) to reject the application on 18.7.2008 were set out in paragraph 1.2 of the Paper;
- (c) no written submission in support of the review was submitted by the

applicant;

- (d) departmental comments –the Director of Environmental Protection did not support the application in view of the expected environmental nuisance to the sensitive receivers nearby and along the access track leading to the application site;
- (e) public comments - during the statutory publication period, no public comment was received; and
- (f) PlanD’s view – PlanD maintained its view of not supporting the review application for the reasons stated in paragraph 7.1 of the Paper. The development was not in line with the planning intention of “V” zone. It did not comply with the TPB Guidelines No. 13E in that it was not compatible with the nearby village houses and agricultural land and there were adverse departmental comments. There was insufficient information in the submission to demonstrate that the development would not generate adverse environmental, drainage and landscape impacts. Approval of the application would set an undesirable precedent as there was no similar application approved on sites falling entirely within the same “V” zone.

102. As Members had no question to raise, the Chairman thanked Mr. Wilson So for attending the meeting. Mr. So left the meeting at this point.

Deliberation Session

103. Members considered that the application did not comply with the planning intention of “V” zone and the TPB Guidelines No. 13E. There was no change in planning circumstance since the rejection of the application by RNTPC on 18.7.2008.

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

- (a) the development was not in line with the planning intention of the “Village Type Development” (“V”) zone which was to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone was primarily intended for development of Small Houses by indigenous villagers. No strong justification had been given in the submission to justify a departure from the planning intention, even on a temporary basis;
- (b) the development did not comply with the Town Planning Board Guidelines No. 13E in that the development was not compatible with the nearby village houses and agricultural land, there were no exceptional circumstances to merit approval of the application, and there were adverse departmental comments on the application;
- (c) there was insufficient information in the submission to demonstrate that the development would not generate adverse environmental, drainage and landscape impacts on the surrounding areas; and
- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “V” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

Agenda Item 4

[Open Meeting (Presentation and Question Session only)]

North East New Territories New Development Area Planning and Development
Study – Stage One Public Engagement
(TPB Papers No. 8228)

[The meeting was conducted in Cantonese.]

Presentation and Question Session

105. The following representatives of Government departments and Study consultants were invited to the meeting at this point :

Mr. Raymond Lee	Assistant Director/Territorial, Planning Department (PlanD)
Ms. April Kun	Senior Town Planner/New Development Areas, PlanD
Mr. M.T. Law	Chief Engineer/Projects 2, Civil Engineering and Development Department (CEDD)
Mr. Davis Lee) Over Arup & Partners Limited
Mr. Kenneth To)
Mr. Joe Ma	Townland Consultants Limited

106. The Chairman extended a welcome and invited the representatives to brief Members on the Paper.

107. Mr. Raymond Lee introduced that in February 2008, the Board was briefed on the study framework of the North East New Territories New Development Areas Planning and Engineering Study (NENT NDAs Study). Subsequently, PlanD and CEDD jointly commissioned the NENT NDAs Study in June 2008. The presentation would start by a video show followed by consultant's presentations on the four major topics in the stage one public engagement.

[Mr. B.W Chan left the meeting and Mr. K.Y. Leung returned to join the meeting at this point.]

108. The video set out the background to the NENT NDAs Study and the existing context of the NENT NDAs as detailed in the Stage One Public Engagement Digest :

Background

(a) the Chief Executive announced in his 2007-2008 Policy Address the

planning for NENT NDAs as one of the ten major infrastructure projects for economic growth. The NENT NDAs comprised areas in Kwu Tung North, Fanling North and Ping Che/Ta Kwu Ling (i.e. the Three-in-One Scheme);

- (b) NENT NDAs were first identified in the Planning and Development Study on North East New Territories (hereafter called the previous study) undertaken in the late 1999/early 2000. The objective of the NDA development was primarily to provide housing to meet the then pressing demands. The previous study was temporarily shelved in 2003 as the population growth and the demand for housing became steady;
- (c) the Hong Kong 2030 Planning Vision and Strategy (HK2030 Study), completed in 2007, proposed to reactivate the NDAs, and prioritize the NENT NDAs to meet the long-term housing, social, economic and environmental needs;

Existing Context

- (d) the NENT NDAs were situated to the south of the Closed Area. It was now characterized by a mixed of villages, rural industries, wetland, farmland, and abandoned farmland for open storage and port back-up uses. In view of the growing economic ties with the Mainland, developments were anticipated around NENT NDAs which included the opening up of a large part of the Closed Area, future development in Lok Ma Chau Loop, boundary-crossing control point (BCP) at Liantang/Heung Yuen Wai, and future development in Shenzhen;
- (e) the NENT NDAs were well connected to regional and strategic links such as Sheung Shui station of the East Rail and future Kwu Tung station of the Lok Ma Chau Spur Line, Ping Che Road and Sha Tau Kok Road, Castle Peak Road and Fanling Highway;
- (f) the existing infrastructures in the area included Shek Wu Hui Sewerage

Treatment Works and Sheung Shui Water Treatment Works. The NENT NDA Study should take account of interface with the Dongjiang major water mains network, and the 400kV overhead power supply line and pylons;

- (g) the NENT NDAs were rich in ecological, landscape, cultural and heritage resources. In particular, Long Valley and Ho Sheung Heung were priority area for nature conservation; and
- (h) of the 1000 hectares of land in the NENT NDAs, about 77% of land was developable, among which about 57% was privately owned.

109. With the aid of a Powerpoint presentation, Mr. Joe Ma introduced key issues for public engagement as detailed in the Paper and the Stage One Public Engagement Digest :

- (a) the 30-month NENT NDAs Study was scheduled for completion in early 2010. It included a three-stage public engagement exercise. Stage One was to engage the public at an early stage to generate discussions on the key issues relating to the development of the NDAs. Stages Two and Three would engage the public on the Preliminary and Recommended Outline Development Plans (ODP) respectively. The Stage One Public Engagement was to be held from mid November to end December 2008;
- (b) there were four planning principles for the NENT NDAs, namely promote people-oriented development, sustainable development, public engagement and economic and employment opportunities. To facilitate more focused discussion, the relevant key issues were consolidated into four topics in the stage one public engagement :
 - i. Strategic Roles of NDAs – in the Hong Kong 2030 Study, the NDAs, being in close proximity to the cross boundary facilities, were considered as having potential for meeting strategic land use

requirements in addition to providing housing land. In view of the rapid changes in planning circumstances in Hong Kong in recent years, the Study would seek the public's views afresh on the development theme for the NDAs;

- ii. People-Oriented Communities – the public had raised aspiration for the building up of people-oriented communities. The Study would keep abreast with the aspirations on such aspects as the development of a socially integrated and well-supported community with good physical design;
- iii. Sustainable Living Environment – the public would be engaged to discuss on how to reduce undue pressures on the natural environment and through what kinds of environmentally friendly design and provision of installations to achieve a sustainable living environment. In particular, public views on the building of a “green city” would be sought; and
- iv. Implementation Mechanism – given over 50% of the developable land in the NENT NDAs were under private ownership, early engagement with the public on a suitable implementation mechanism was required. Apart from conventional new town approach, there were request from landowners' to participate in the NDAs implementation. Examples of private sector participation approaches were included in the public engagement materials and community views on these approaches were sought. The basic principles for implementation should be fair and equitable, in the public interest, and in line with the legislative framework and the planning concept.

110. Mr. Raymond Lee supplemented that the stage one public engagement activities, which included briefing sessions to the Development Panel of the Legislative Council, North District Council and relevant Rural Committees would be held in the coming two months. Briefing sessions would also be arranged for professional bodies and

other interested groups upon request, and a community workshop would be held on 20 December 2008 in Fanling.

111. Members had the following observation / questions :

- (a) given the large size of the NENT NDAs, it might be of interest to a wider public. Therefore, a more extensive consultative approach should be employed to outreach the public, such as enlarging the consultation basis from organisations to interested public and organising more community workshops in other parts of the territory like Hong Kong Island and Kowloon. In addition, relevant background information such as existing and future population characteristics could be provided to facilitate discussion;
- (b) whether there was any coordinated approach for the planning studies of the Lok Ma Chau Loop, the Closed Area and the NENT NDAs;
- (c) of the privately owned land, whether there was information on the percentage owned by developers versus that by individual owners. Mechanism similar to the previous Letter A/Letter B land exchange entitlement might be worthy of consideration as it would encourage small owners to release their land and minimize resistance to land resumption; and
- (d) what was the planning of the linkages to the new Liantang/Heung Yuen Wai BCP and the associated connecting roads and what were the target types of vehicles using the new linkages.

112. Mr. Raymond Lee made the following responses :

- (a) apart from the target groups, PlanD was prepared to organise briefings to other interested parties to seek their views. The background information including population data of the NDAs had been provided in the consultation digest and was also available in the website;

[Mr. Nelson W.Y. Chan left the meeting at this point.]

- (b) the surrounding developments including the Lok Ma Chau Loop and the Closed Area were subject to various studies and relevant findings would serve as input to the NENT NDA Study. It was announced on 13.11.2008 that the Lok Ma Chau Loop area would be planned for high education and high-tech industries and its planning study would be launched next year;
- (c) since the previous NENT study in late 1999/early 2000, there had been rising public aspiration to participate in implementation of NDAs. As summarised in Topical Note 4, different stakeholders had different aspirations in the private sector participation approach. Having considered the local and foreign experience, a number of private sector participation approaches were highlighted in the Topical Note to start off the public discussion; and
- (d) the linkage of the Liantang/Heung Yuen Wai BCP and its associated connecting roads would be subject to the Investigation and Preliminary Design Study for the proposed Liantang/Heung Yuen Wai BCP by the CEDD.

113. In response to a Member's query, Mr. M.T. Law outlined the implementation programme of NENT NDAs. Upon completion of the Study in 2010, detailed design would proceed in 2011, and construction works including site formation was expected to commence in 2014 after land resumption. The first population intake to these NDAs was around 2019. The project team would review and monitor the programme closely.

[Mr. Tony C.N. Kan left the meeting at this point.]

114. A Member acknowledged that seeking public views in the first stage of the study was essential, and suggested a longer consultation period noting that the net consultation period, excluding the Christmas holidays, was about one month only. In this

respect, Mr. Raymond Lee replied that public engagement was a continual process, and views would be taken account of even after the first stage consultation. All stakeholders, both direct or indirect ones, would be welcome to submit their views to PlanD on the Study.

115. In response to the Chairman's enquiry, Mr. Raymond Lee said that the Board would be briefed again before the commencement of the stage two public engagement on the preliminary ODP in the third quarter of 2009.

116. A Member expressed interest to be briefed on the result of the stage one engagement exercise. Mrs. Ava S.Y. Ng said that arrangement could be made for the Study team to report on the result of the public engagement exercise.

117. As Members had no further questions to raise, the Chairman thanked the Government representatives and the Study consultants for attending the meeting. They left the meeting at this point.

Agenda Item 7

[Open Meeting]

Submission of the Draft Tai Po Outline Zoning Plan No. S/TP/20A to the Chief Executive in Council for Approval under Section 8 of the Town Planning Ordinance (TPB Paper No. 8233)

[The meeting was conducted in Cantonese]

118. The Secretary reported that Messrs. Stanley Y.F. Wong and Tony C.N. Kan had declared interest on the item as they owned a property at Deerhill Bay and Grand Palisades respectively. Members noted that Mr. Wong had tendered apologies for not able to attend the meeting while Mr. Kan had already left the meeting.

119. The Secretary briefly introduced the paper.

120. After deliberation, the Board:

- (a) agreed that the draft Tai Po Outline Zoning Plan (OZP) No. S/TP/20A and its Notes at Annexes I and II of the Paper respectively were suitable for submission under section 8 of the Ordinance to the Chief Executive in Council (CE in C) for approval;
- (b) endorsed the updated Explanatory Statement (ES) for the draft Tai Po OZP No. S/TP/20A at Annex III of the Paper as an expression of the planning intention and objectives of the Board for the various land-use zonings on the draft OZP and issued under the name of the Board; and
- (c) agreed that the updated ES was suitable for submission to the CE in C together with the draft OZP.

Agenda Item 8

Any Other Business

[Open Meeting (Presentation and Question Session only)]

(i) Application No. A/DPA/SK-CWBN/12-1

Extension of Time for Commencement of the Approved Comprehensive Residential

Development under Application No. A/DPA/SK-CWBN/12 for 3 years

(TPB Paper No. A/DPA/SK-CWBN/12-1)

[The meeting was conducted in Cantonese.]

121. The Secretary said that the application could not be processed under the delegated authority to the Director of Planning as there was local objection to the application. It was submitted to the Town Planning Board for consideration as the next RNTPC meeting would be held on 21.11.2008 which was beyond the validity date of the approval.

Presentation and Question Sessions

122. The Secretary then briefly introduced the Paper as follows:
- (a) the applicant sought planning permission for extension of time (EOT) for commencement and for compliance with approval conditions of the approved comprehensive residential development under Application No. A/DPA/SK-CWBN/12 for 3 years until 19.11.2011;
 - (b) background to the EOT application – the application No. A/DPA/SK-CWBN/12 was approved by RNTPC on 19.11.2004 subject to conditions. The validity period of the planning approval was up to 19.11.2008;
 - (c) no objection from relevant departments was received;
 - (d) the District Officer (Sai Kung) received an objection from villagers of Tai Po Tsai Village mainly on the proposed 8-storey building height, illegal tree felling and site formation, lack of local consultation and fung shui aspect arising from grave removal. The same objection letter was received by the PlanD; and
 - (e) PlanD had no objection to the EOT application based on the assessments given in paragraph 7 of the Paper in that the EOT application complied with TPB Guidelines No. 35A, there was no change in planning circumstances since the approval of the previous application No.A/DPA/SK-CWBN/12, and no adverse planning implication were expected. Similar local objections were received against the previous application. The same previous conditions and advisory clauses would be imposed to address the local concerns.
123. Members had no question on the application.

Deliberation Session

124. After deliberation, the Board decided to approve the application, on the terms of the application as submitted to the Town Planning Board (TPB). The permission should be valid until 19.11.2011, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced. The permission was subject to the following conditions :

- (a) the submission and implementation of a revised Master Layout Plan to take into account the approval conditions (b) to (e) below to the satisfaction of the Director of Planning or of the TPB;
- (b) the submission and implementation of a landscape master plan to the satisfaction of the Director of Planning or of the TPB;
- (c) the submission and implementation of environmental mitigation proposals (including traffic noise and odour impact assessments) within the site to the satisfaction of the Director of Environmental Protection or of the TPB;
- (d) the provision of a drainage reserve and drainage facilities and the submission and implementation of drainage impact assessment to the satisfaction of the Director of Drainage Services or of the TPB;
- (e) the design and provision of an emergency vehicular access for the Tai Po Tsai villagers, as proposed by the applicant, to the satisfaction of the Director of Fire Services or of the TPB;
- (f) the submission of sewage impact assessment and the provision of sewerage facilities to the satisfaction of the Director of Environmental Protection or of the TPB;
- (g) the design and implementation of junction improvement works of the

Clear Water Bay Road and University Road to the satisfaction of the Commissioner for Transport or of the TPB;

- (h) the design and formation of the proposed Agreed Village Compensation Area for Small House developments, as proposed by applicant, to the satisfaction of the Director of Civil Engineering or of the TPB;
- (i) the submission and implementation of proposed measures to minimize the visual impact on the surrounding area to the satisfaction of the Director of Planning or of the TPB; and
- (j) the submission of an implementation programme to the satisfaction of the Director of Planning or of the TPB.

125. The Board also agreed to advise the applicant of the following :

- (a) any further extension of the validity of this permission would be outside the scope of Class B amendments as specified by the TPB. If the applicant wished to seek any further extension of time for commencement of the development, the applicant might submit a fresh application under section 16 of the Town Planning Ordinance. Please refer to the Town Planning Board Guidelines No. 35A and 36 for details;
- (b) the approved Master Layout Plan, together with the set of approval conditions, would be certified by the Chairman of the TPB and deposited in the Land Registry in accordance with section 4A(3) of the Town Planning Ordinance;
- (c) efforts should be made to incorporate the relevant approval conditions into a revised Master Layout Plan for deposition in the Land Registry as soon as possible;

- (d) efforts should be made to adjust the boundary of the application to match with the project of Clear Water Bay Road Widening Phase I – section adjacent to Tai Po Tsai;
- (e) efforts should be made to inform the Regional Highway Engineer/New Territories, Highways Department on details of the construction programme so as to ensure no conflict between the works relating to the application and the project of Clear Water Bay Road Widening Phase I – section adjacent to Tai Po Tsai; and
- (f) efforts should be made to liaise with the Tai Po Tsai villagers to minimize disturbance to the surrounding areas during the construction stage.

Any Other Business (ii)

- 126. The item was reported under separate confidential cover.
- 127. There being no other business, the meeting was closed at 4:45 p.m..