

**Minutes of 933rd Meeting of the
Town Planning Board held on 3.4.2009**

Present

Permanent Secretary for Development
(Planning and Lands)
Mrs. Ava S.Y. Ng

Chairperson

Dr. Greg C.Y. Wong

Vice-chairman

Mr. Nelson W.Y. Chan

Mr. David W.M. Chan

Mr. Leslie H.C. Chen

Mr. Tony C.N. Kan

Professor N.K. Leung

Dr. C.N. Ng

Dr. Daniel B.M. To

Mr. Stanley Y.F. Wong

Mr. Alfred Donald Yap

Ms. Sylvia S.F. Yau

Mr. B.W. Chan

Mr. Walter K.L. Chan

Ms. Maggie M.K. Chan

Mr. Raymond Y.M. Chan

Mr. Y.K. Cheng

Mr. Felix W. Fong

Ms. Anna S.Y. Kwong

Dr. James C.W. Lau

Hon. Starry W.K. Lee

Mr. K.Y. Leung

Professor Edwin H.W. Chan

Mr. Rock C.N. Chen

Mr. Maurice W.M. Lee

Mr. Timothy K.W. Ma

Dr. Winnie S.M. Tang

Assistant Director (2), Home Affairs Department
Mr. Andrew Tsang

Director of Lands
Miss Annie K.L. Tam

Deputy Director of Environmental Protection
Mr Benny Y.K. Wong

Director of Planning
Mr. Jimmy C.F. Leung

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

Secretary

Absent with Apologies

Professor David Dudgeon

Mr. Edmund K.H. Leung

Professor Bernard V.W.F. Lim

Professor Paul K.S. Lam

Dr. Ellen Y.Y. Lau

Principal Assistant Secretary (Transport)
Transport and Housing Bureau
Mr. Tony C.T. Lam

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.)

Senior Town Planner/Town Planning Board
Mr. J.J. Austin (a.m.)
Mr. Ivan M.K. Chung (p.m.)

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 932nd Meeting held on 20.3.2009

[The meeting was conducted in Cantonese.]

1. The minutes of the 932nd meeting held on 20.3.2009 were confirmed subject to an amendment to that part of the minutes which was under confidential cover.

[Dr. Winnie S.M. Tang arrived to join the meeting at this point.]

Agenda Item 2

[Open Meeting]

Matters Arising

[The meeting was conducted in Cantonese.]

2. The Secretary reported that there were no matters arising.

[Ms. Sylvia S.F. Yau and Dr. Daniel B.M. To arrived to join the meeting at this point.]

Agenda Item 3

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/K10/199-1

Extension of Time for Commencement of Approved Development – Proposed

Comprehensive Residential Development with Retail Shops in “Comprehensive

Development Area (2)” zone, 5 and 7 Mok Cheong Street and 70-78 Sung Wong Toi Road,

Ma Tau Kok

(TPB Paper No. 8323)

[The hearing was conducted in English and Cantonese.]

Presentation and Question Session

[Mr. David W.M. Chan arrived to join the meeting at this point.]

3. The Secretary reported that the applicant has made several allegations of impropriety against Planning Department and, as the Chairperson was the Director of Planning, it was preferable that she would not chair the meeting in order to be seen to be fair. As Mr. Jimmy C.F. Leung was the current acting Director of Planning, it was preferable that he left the meeting temporarily for the item. The Secretary also declared an interest as she was the Deputy Director of Planning. The following Members also declared their interests as follows:

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|----------------------|---|---|
| Mr. Walter K.L. Chan | - | the church he was associated with had employed T.K Tsui & Associates Ltd. (a consultant for the applicant) on its project |
| Dr. James C.W. Lau | - | he personally knew Mr. T. K. Tsui, one of the consultants for the applicant |
| Mr. David W.M. Chan | - | his company had employed Mr. T.K. Tsui & Associates on a project a few years ago |

4. After some discussion, the meeting agreed that the Chairperson and Mr. Jimmy C.F. Leung should leave the meeting temporarily while the Secretary should be allowed to stay in the meeting as she was not a member of the Board and would not be involved in the deliberation of and decision on the application. The meeting also agreed that the interests of Mr. Walter K.L. Chan, Dr. James C.W Lau and Mr. David W.M. Chan were minor and indirect and they could stay and participate in the discussion. The Chairperson and Mr. Jimmy C.F. Leung left the meeting at this point and the Vice-Chairman chaired the meeting for this item at this point.

[Mr. Nelson W.Y. Chan and Mr. Raymond Y.M. Chan arrived to join the meeting at this point.]

5. The following representatives of the Government and the applicant were invited to the meeting at this point:

Mr. Eric Yue	-	District Planning Officer/Kowloon (DPO/K), Planning Department (PlanD)
Ms. Jessica Chu	-	Senior Town Planner/Kowloon, PlanD
Ms. Grace Chan Lai Yuk	-	Senior Government Counsel, Department of Justice (DoJ)
Ms. Athene Law	-	Legal Trainee, DoJ
Mr. John Bleach, S.C.	-	Outside Counsel for Government
Mr. Philip Dykes, S.C.)	
Mr. Newman Lam)	
Mr. Shum Cheuk Pan)	
Mr. Jeffrey Tam Chun Kit)	
Ms. Janice Lau Hau Mui)	
Mr. Anthony Kwok)	Applicant's representatives
Ms. Irene Tam)	
Mr. Yu Lin Keung)	
Mr. Or Tak Chor)	
Mr. Tsang Kwok Ming)	

6. The Vice-Chairman extended a welcome and explained briefly the procedures of the hearing. He then invited Mr. Eric Yue to brief Members on the background to the application.

[Mr. Y.K. Cheng, Mr. Leslie H.C. Chen and Dr. C.N. Ng arrived to join the meeting at this point.]

7. With the aid of a Powerpoint presentation, Mr. Eric Yue made the following main points as detailed in the Paper:

- (a) application No. A/K10/199 for a comprehensive residential development with retail shops at a building height not exceeding 154.6mPD on the subject site was approved with conditions by the Metro Planning Committee (MPC) on 5.12.2003. According to approval condition (f),

the planning permission would cease to have effect on 5.12.2007 unless prior to the date of expiry either the development permitted was commenced or the permission was renewed;

- (b) on 29.11.2007, i.e. 6 days before the expiry of the planning permission, the applicant submitted a section 16A application for extension of time for commencement of the approved development;
- (c) on 4.1.2008, the MPC considered the application and concluded *inter alia* that it did not have the power to grant an extension of time because the planning permission for the approved scheme had already lapsed on 5.12.2007. The applicant subsequently applied for a review of the MPC's decision and the review was scheduled to be considered by the Board on 25.4.2008;
- (d) however, on 24.4.2008, i.e. one day before the review hearing, the applicant submitted further information in respect of the review application and, on the date of the hearing, tabled another set of supplementary information to the Board. After deliberation, the Board decided to agree to PlanD's request for deferral of the hearing to allow time for PlanD to assess and make responses to the further information that was submitted;
- (e) PlanD's considerations and the legal advice regarding the extension of time application and the further information submitted were as follows:
 - the Board did not have the power to extend time for a planning permission that had ceased to have effect;
 - the Town Planning Ordinance (the Ordinance) contained no power to amend a planning permission that no longer existed at the time of consideration and the 2-month requirement to consider an application given in section 16A(5) of the Ordinance could not be construed as giving the Board such powers;
 - on 4.1.2008, the Board had considered the application as required

under the Ordinance and concluded that it had no power to grant an extension when the original approval had already ceased to have effect;

- it was clear that the Board did not have blind regard to the Town Planning Board Guidelines on Extension of Time for Commencement of Development (TPB PG-No. 35A) which stated that an application submitted less than 6 weeks before the expiry of the specified time limit would not be processed for consideration of the Board. In fact, the Board did consider the application and concluded that there was insufficient time to process the application; and
 - the applicant's allegations of impropriety and collusion between PlanD and Buildings Department (BD) were irrelevant to the review application and without foundation. The extension of time application was processed by PlanD immediately upon receipt and there was no withholding of a decision until the planning permission had lapsed.
- (f) PlanD's views – PlanD maintained its previous view that the MPC had considered the application and, because the Board did not have power to extend time when the planning permission had ceased to have effect, the MPC did not need to consider the underlying merits of the application as to do so would have been pointless.

[Ms. Anna S.Y. Kwong and Hon Starry W.K. Lee arrived to join the meeting at this point.]

8. The Vice-Chairman then invited the applicant's representatives to present their case and Mr. Philip Dykes made the following main points:

- (a) in light of PlanD's response as set out in the TPB Paper No. 8323, the applicant had decided not to pursue the allegation on the probable collusion on the part of PlanD in deliberately delaying the approval of the submitted building plans;
- (b) the applicant would concentrate on the main issue, i.e. whether planning

permission granted under section 16 could be kept alive beyond the date it was set to lapse for the purpose of allowing the Board to consider whether or not to grant an extension of time;

- (c) if the Board's powers to prescribe time were set out in the Ordinance, section 72 of the Interpretation and General Clauses Ordinance (Cap. 1) (an extract was tabled) would have provided a clear guiding principle as it stated that where a time was prescribed for doing any act and power was given to the public body to extend such time, then the power might be exercised by the public body even after the expiration of the time prescribed unless there was a provision to the contrary in the specific Ordinance. This would enable the decision making body to relieve a party from the hardship which could occur due to no fault of his or due to a minor fault which could cause the party to lose the benefit of a legal right. However, section 72 could not be applied to this specific case as the prescribed time limit was not made under the statute but was attached to an approval condition;
- (d) under section 16A(2) of the Ordinance, the Board was given the power to accept "any amendments which are Class B amendments in relation to the permission" granted under section 16, and the Board had specified that an extension of time for commencement of development was a Class B amendment;
- (e) the Ordinance only specified two limitations to the Board's powers related to an application for extension of time as follows:
 - according to the Town Planning Board Guidelines for Class A and Class B Amendments to Approved Development Proposals (TPB PG-No. 36) given on page 190 of the applicant's further information, a limitation was specified for an extension of time application in that the period of extension, or the aggregate of all the periods of extensions, should not exceed the original duration for commencement of development of the approved development

proposal;

- the planning permission must be alive at the date of the application as the construction of section 16A(2) used the specific phrase “where any permission *is* granted”;
- (f) the Ordinance did not include a requirement on when an application for extension of time had to be launched;
- (g) based on the construction of section 16A(3), 16A(4) and 16A(5), which respectively set out the formal requirements of any application for amendments to permission, the power of the Board to refuse to consider an application which did not comply with the requirements, and the need to consider an application within 2 months by accepting or refusing it, the MPC was erred in refusing to consider the application for the reason that it was out of time. Since the planning permission was still alive when the application for extension of time was submitted, and the application submitted fulfilled the formal requirements given in section 16A(3), the MPC was mandated to consider the application;
- (h) as the construction of the Ordinance was such that the Board was required to consider any application that was submitted when the planning permission was alive, the Board should consider an application which was alive on the submission date even though it ceased to be alive on the day when the Board considered it. Taking this interpretation of the Ordinance would enable the following beneficial features of section 16A to be realized:
- it would permit an applicant to apply to the Board for further time to incorporate modifications to the approved scheme to meet new requirements that were beneficial but which might have arisen just before the expiry of the permission;
 - it would permit the applicant to retain the benefits of the planning permission when implementation was held up due to circumstances out of his control;

- it would prevent injustice being done to the applicant in circumstances when the Government failed to consider an application before its expiry date due to administrative failure or catastrophe caused by natural disasters; and
- it would provide administrative certainty as the time allowed to process the application would not be constrained by the expiry date of the permission but would follow the 2-month period specified under section 16A(5).

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

- (i) the Town Planning Board Guidelines on Extension of Time for Commencement of Development (TPB PG-No. 35A), which stated that an application submitted less than 6 weeks before the expiry of the permission “may not be processed for consideration of the Board” was inconsistent with the requirements set out in section 16A of the Ordinance where it was mandated by statute that the Board had to consider any application that complied with section 16A(3); and
- (j) PlanD’s view that even if the Board could consider the application, the proposed extension of time could not be supported as there had been a change in planning circumstances since the granting of the original permission in December 2003 (paragraph 5.3 at page 126 of the applicant’s further information) was erred as the incorporation of building height restrictions into the Ma Tau Kok OZP No. S/K10/19 was only gazetted 2 weeks after the Board had considered the application for extension of time. The Board should have made reference to the then extant OZP (i.e. Ma Tau Kok OZP No. S/K10/18) which did not have building height restrictions on the application site when it considered the extension of time application on 4.1.2008.

9. The Vice-Chairman then invited the Government’s outside counsel to present his responses to the applicant and Mr. John Bleach made the following main points:

- (a) as the applicant had decided not to pursue any further the allegations against PlanD of collusion, only one issue remained and that was whether the MPC had the power to extend the time for commencement of development when the planning permission had already lapsed;
- (b) on 4.1.2008, when the application was presented to the MPC, there were two matters for MPC to consider, namely, whether the Board had power to grant an extension by way of amendment where the original planning permission had already “ceased to have effect” and, if it did, to consider the merits of the application. If the MPC considered the first matter and concluded that it had no power to grant an extension for a permission that had already lapsed, then it would serve no purpose for the MPC to consider the second matter, i.e. the merits of the application;
- (c) based on the letter of the Secretary of the Town Planning Board dated 18.1.2008 and the extract of the minutes of the MPC meeting held on 4.1.2008, there was no dispute that the MPC did consider whether it had power to extend time, and concluded that it did not have that power and, for that reason, did not go on to consider the merits of the application. The applicant’s contention that the MPC refused to consider the application because it was out of time was therefore unfounded;
- (d) section 16(5) of the Ordinance expressly empowered the Board to attach conditions to the permission granted and there was nothing in section 16A to allow the Board to ignore the original conditions of the permission, including the time limit of the permission. Approval condition (f) of application No. A/K10/199 specified that the permission would “cease to have effect” on 5.12.2007. According to *Harris vs. Harris* (1952) those words meant that the order made had become void and as though it had never been made. It followed that on 5.12.2007, the “permission” became void and as though it had never been made and, as a matter of simple common sense, one could not amend something that no longer existed in the absence of express power to do so;

- (e) section 16A(5) of the Ordinance could not be construed as giving any such powers. It simply required the Board to consider the application within 2 months after it had been made and the Board clearly did. There was nothing in that section of the Ordinance nor any words that would 'keep alive' the permission simply because the application was made prior to the date on which the permission ceased to have effect;
- (f) section 72 of Cap 1 mentioned by the applicant could not be applied to this Ordinance as the Board was not given any express power under the Ordinance to extend time;
- (g) the applicant's argument that the Board's statutory power to approve Class B amendments was not subject to time limits and hence the Board could not administratively limit its own discretion by imposing time limits of its own making had missed the point because section 16(5) of the Ordinance gave the Board unfettered powers to impose conditions "as the Board thinks fit" and this would certainly include imposing a time limit for the permission;
- (h) the applicant's claim that section 39(1) of the Interpretation and General Clauses Ordinance (Cap. 1) had already provided the means for the statutory power granted under section 16A(2) of the Ordinance to be exercised "as and when the occasion requires" was also invalid as section 39(1) only dealt with occasions where the statute did not specify the time as to when a certain power was to be exercised. That section was not applicable to this case as section 16A(5) did specify a time within which the power was to be exercised; and
- (i) though there might be some inconsistencies between the Town Planning Board Guidelines No. 35A and the requirements set out in section 16A of the Ordinance, as alleged by the applicant, this point was irrelevant as the application was considered by the Board though it was received less than 6 weeks before the expiry of the permission. The application for extension of time was disapproved not because it did not follow the

Guidelines but because the Board did not have power to grant an extension of time when the permission had already lapsed.

[Ms. Anna S.Y. Kwong left the meeting temporarily at this point.]

10. After the presentation, the Secretary reported that Hon Starry W.K. Lee had declared an interest as she owned a property in the vicinity of the application site. She had left the meeting during the presentation session. The Secretary also reported that Ms. Anna S.Y. Kwong had declared an interest as Woo, Kwan Lee & Lo, a consultant for the applicant, was currently the legal adviser of the Hong Kong Institute of Architects (HKIA) and she was the President of HKIA. Members noted that her interest was remote and indirect and agreed that she could stay in the meeting and participate in the discussions.

11. On the issue regarding the Board's powers, Mr. Philip Dykes supplemented that if the Ordinance recognized that there was a power for the Board to extend time, it would follow that the Board could amend the conditions to allow the extension of time. It would be 'ultra vires' for the Board to consider by implication that the original condition could not be extended. He considered that the Board should not be constrained by an approval condition which was set by the Board itself, i.e. the approval conditions could not tie the hands of the Board nor bind the decision making ability of the Board. He opined that the MPC should have dealt with the application for extension of time on 4.1.2008 instead of adjourning the consideration of the application until after the proposed amendments to the OZP were gazetted.

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

12. The two counsel then went on to argue on three issues, namely whether it was appropriate for the Board to take into account a new draft OZP which was not yet gazetted when considering an application, whether building plans should be rejected based on the new draft OZP, and whether the Town Planning Board or the Building (Appeals) Tribunal was a more appropriate forum to determine the matter. The Vice-Chairman however considered that the two counsel had drifted away to issues which were irrelevant to the review application and matters concerning the disapproval of building plans and requested them to keep their arguments on the only issue in the review application, i.e., whether the

MPC had the power to extend time when the planning permission had lapsed. He then invited questions from Members.

13. On the point of inconsistency between the Town Planning Board Guidelines No 35A and the Ordinance raised by a Member, Mr. John Bleach explained that there was an inconsistency in that while the Ordinance did not specify a time for submitting an application for extension of time, a requirement of 6 weeks before the expiry of the planning permission was specified in the Guidelines. Nevertheless, he considered that the inconsistency was irrelevant for the subject application as the MPC had not blindly adhered to the Guidelines but went on to consider the application and only decided to reject it because the MPC did not have the power to extend a permission that had lapsed. Mr. Philip Dykes made a supplementary comment that the 6-week deadline specified in the Guidelines was an arbitrary device that could adversely affect good decision-making but agreed that the inconsistency was irrelevant to the subject application.

[Miss Annie K.L. Tam arrived to join the meeting at this point.]

14. In response to a Member's enquiry about the inter-relationship between section 16(5), section 16A(5) and the words "shall cease to have effect" given in approval condition (f) of application No A/K10/199, Mr. Philip Dykes explained that by imposing an approval condition that a development had to commence by a certain date, the Board had set a time limit but had refused to use its statutory power to extend the time limit. He opined that by giving the Board the power to approve an application with conditions under section 16(5), the Ordinance had also given the Board the power to amend the approval condition to extend the time. This Member further enquired and Mr. Philip Dykes responded that the Board was given the power to set conditions of approval but the conditions had to be consistent with the Ordinance. He also agreed that the Board had the power to impose conditions on the time limit.

15. This Member further enquired whether Mr. Philip Dykes could quote any authority to support his argument that the Board had the power to review the approval conditions and Mr. Philip Dykes explained that his opinion was based on application of legal principles. Mr. Philip Dykes said that the Board's power to grant permission with conditions was given under the Ordinance and hence, the Board should also have the power

to amend the conditions it imposed to take into account new circumstances.

[Dr. Daniel B.M. To returned to join the meeting at this point.]

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

Deliberation Session

17. Mr. Raymond Y.M. Chan declared an interest as his company had a property at Tam Kung Road which was in the same district but quite far away from the application site. Members generally considered that his interest was indirect and that he could stay and participate in the discussion.

18. The Vice-Chairman suggested Members to concentrate the discussion on whether the MPC had the power to consider the application when the permission had already lapsed and to leave the issues regarding the disapproval of building plans to the BAT. He also suggested that the Board should adopt a two-tier decision-making process, i.e. first to consider whether the Board had power to grant an extension of time when the permission had already lapsed and, only if it was decided that the Board did have such powers should the Board proceed to consider the second issue concerning the merits of the application. Members agreed with the Vice-Chairman's suggestion.

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

19. A Member agreed with the views put forward by Mr. John Bleach. This Member said that the planning permission had ceased to have effect at the date of the MPC meeting and noted that the applicant's counsel did not dispute on this point. The applicant's main argument was on MPC's discretion to amend approval condition (f) to allow the extension of the time limit of the permission. Since legally speaking, the

planning permission had already lapsed on the date of consideration, he opined that the MPC had acted correctly as it had considered the application and concluded that it did not have power to grant the extension of time. The points raised by the applicant concerning section 72 of the Interpretation and General Clauses Ordinance (Cap.1) and the inconsistency between the Guidelines and the Ordinance were irrelevant.

20. One Member was concerned with the discrepancy between the Town Planning Board Guidelines No 35A and the Ordinance regarding the 6-week requirement for submitting application for extension of time and queried whether the MPC did look into the merit of the application or only rejected it because it was submitted beyond the 6-week period. The Vice-Chairman explained that according to the minutes of the meeting, the MPC decided not to consider the application as the planning permission for the approved scheme had already lapsed at the date of the MPC meeting and it was not because of non-compliance with the 6-week requirement as stated in the Guidelines. He also confirmed that the MPC did not consider the merits of the application.

21. Another Member commented that there was some inconsistency as three different sets of dates were mentioned causing some confusion, including 4 weeks which was mentioned in the Board's approval letter, 6 weeks which was specified in the Town Planning Board Guidelines, and 2 months which was stipulated in section 16A(5) of the Ordinance. This Member asked if the Board could take a lenient approach in handling the timing of submission of an application.

22. One Member supported the decision of the MPC as the approval letter of 2003 had clearly stated that the applicant should apply for renewal of the permission 4 weeks before the expiry of the permission, even though 6 weeks was mentioned in the Guidelines. This Member opined that on the date of the MPC meeting, the permission had already lapsed and the MPC had no authority to extend the permission. This Member said that the inconsistencies between the Guidelines, the Ordinance and the approval letter of the Board should be rectified at a later date.

23. The Secretary clarified that the different timing given in the approval letter and the Guidelines was due to the change in the requirement from 4 weeks to 6 weeks in 2005, after the Town Planning (Amendment) Ordinance came into effect. Moreover, the

Guidelines indicated clearly that application submitted less than 6 weeks before the expiry of the time limit “may not be processed”. Indeed, the Board had processed many applications which were submitted less than 6 weeks before the expiry date. The Vice-Chairman added that for the subject case, the application for extension of time was only submitted 6 days before the expiry of the permission. It was therefore impossible for MPC to consider the application before the permission lapsed. Notwithstanding this, the relevant departments continued to process the application and submitted the application to MPC on 4.1.2008.

24. One Member, however, noted that in another part of the Guidelines, it explicitly stated that the Board “will not consider such application if the permission had lapsed at the time of consideration”. The Secretary said that it was clear that MPC did not follow the Guidelines blindly in dealing with the application.

25. A Member commented that since the approval letter had clearly stated a specific date by which the development should commence or the permission should be renewed 4 weeks before that date, this should over-ride the timing set out in the Guidelines which were a general rule. This Member supported the decision of the MPC that it did not have power to extend time as the permission had lapsed. Another Member agreed with this viewpoint and noted that the applicant’s main argument was not on whether the permission had lapsed but on whether the MPC had the power to review the approval conditions and change the expiry date of the permission.

[Mr. Maurice W.M. Lee arrived to join the meeting at this point.]

26. One Member noted that although the applicant’s argument was on whether the Board had the power to change the approval conditions, the application that was submitted for the consideration of MPC did not specifically ask the MPC to use its discretion to amend the approval condition to extend the time of permission.

27. A Member, however, was concerned that the meeting had only considered the legal arguments regarding the power of the Board. This Member asked if the Board should also consider the merits of the application before making a decision on the application. Another Member shared similar concern and suggested that the Board might consider

holding ad hoc meetings to avoid similar cases happening in the future.

28. In response to the issue raised by these two Members, the Vice-Chairman reminded Members that the Board should consider first whether it had the power to grant an extension of time for a permission which had ceased to have effect. It was only when the Board considered it had such a power that the Board should proceed to consider the merits of the application.

29. After some discussion, it was decided that a vote should be taken on whether the MPC's decision that the Board had no power to extend time in respect of the planning permission that had ceased to have effect was supported. The results of the vote were as follows:

	No. of Members	
Support	-	15
Against	-	0
Abstain	-	10

30. After further deliberation, the Board decided to support the MPC's view that the Board did not have power to extend time in respect of the planning permission that had ceased to have effect and that to go on to consider the underlying merits of the application would have been pointless.

[Mr. Maurice W.M. Lee and Dr. Winnie S.M. Tang left the meeting temporarily at this point.]

[Mr. B.W. Chan, Dr. Daniel B.M. To, Mr. K.Y. Leung, and Mr. Raymond Y.M. Chan left the meeting at this point.]

Agenda Item 4

[Open Meeting]

Review of Application No. A/K10/224

Proposed Comprehensive Residential Development with Retail Shops and Minor Relaxation of Building Height Restriction in “Comprehensive Development Area (2)” zone, 7 Mok Cheong Street and 70-78 Sung Wong Toi Road, Ma Tau Kok (KIL Nos. 7628 and 10578)

(TPB Paper No. 8321)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

31. The Secretary reported that as this item involved the same site and the same applicant as the previous item, the Chairperson, Mr. Jimmy C.F. Leung and the Hon Starry W.K. Lee had already declared their interests and had left the meeting. Mr. Walter K.L. Chan, Dr. James C.W. Lau, Mr. David W.M. Chan, Ms. Anna S.Y. Kwong and Mr. Raymond Y.M. Chan had also declared interests and the meeting already agreed that their interests were indirect and that they could stay in the meeting and participate in the discussions. The Secretary herself also declared interest as the Deputy Director of Planning and the meeting agreed that she could stay in the meeting as she was not a member of the Board and she would not be involved in the deliberation of and decision on the application. The Vice-Chairman would continue to chair the meeting for this item.

32. The following representatives from Planning Department (PlanD) were invited to the meeting at this point:

Mr. Eric Yue	-	District Planning Officer/Kowloon, PlanD
Ms. Jessica Chu	-	Senior Town Planner/Kowloon, PlanD

33. The Vice-Chairman extended a welcome and explained briefly the procedures of the hearing. He noted that sufficient notice was given to the applicant but he had declined to attend the meeting and the Board would proceed with the review hearing in the absence of the applicant. He then invited Mr. Eric Yue to brief Members on the

background to the application.

34. With the aid of a Powerpoint presentation, Mr. Eric Yue made the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for three proposed 34-storey residential towers over a 7-storey non-domestic podium comprising retail shops, ancillary car parks, club house and landscape garden at the application site and a minor relaxation of the building height restriction from 100mPD to 154.6mPD. The application site covered about three-quarters of an area which was zoned “Comprehensive Development Area (2)” (“CDA(2)”) on the Ma Tau Kok Outline Zoning Plan;
- (b) the reasons for the Metro Planning Committee (MPC) to reject the application on 5.12.2008 were set out in paragraph 1.2 of the Paper;
- (c) no further written justifications in support of the review was submitted by the applicant;
- (d) departmental comments – the departmental comments were summarized in paragraph 5 of the Paper. The Chief Town Planner/Urban Design and Landscape, PlanD objected to the application from the urban design point of view as the proposed increase in building height by 54.6% was not minor. The proposed building height of 154.6mPD would violate the stepped height profile and was incompatible with the building mass in the wider setting. Moreover, the proposed building height was not in line with the recommendation of the air ventilation assessment (AVA) report to keep the buildings surrounding Mok Cheong Street as low as possible and the applicant had not submitted any visual impact assessment and quantitative AVA study as required under the Notes of the “CDA(2)” zone. The Director of Environmental Protection also did not support the application as the site was subject to potential road traffic and industrial noise impact and the applicant did not submit any assessment or propose any mitigation measures to address the potential environmental problems;

- (e) public comments – 6 public comments were received objecting the application mainly on the grounds that the building height did not conform to the OZP restriction, the development was not compatible with the generally low-rise developments in the area, the development would cause adverse traffic impact, visual impact and air ventilation impact, and the development was piecemeal in nature; and

- (f) PlanD's views – PlanD did not support the application based on the assessment in paragraph 7 of the Paper. The proposed development only covered three-quarters of the "CDA(2)" site and there was no information in the submitted master layout plan on how the proposed development would integrate with the remaining part of the "CDA(2)" site. The piecemeal development within the "CDA" zone would defeat the intention to facilitate appropriate planning control over the development area. The proposed podium structure was excessive in bulk and site coverage which was not compatible with the existing character of the area. The proposed increase in building height by 54.6% could not be considered as a minor relaxation. The proposed building height was not congruous with the building height restriction of 100mPD stipulated on the OZP. There was no information to demonstrate that the development would not cause adverse visual impact. The applicant did not submit a quantitative AVA study to assess the local ventilation requirement. The applicant did not propose any mitigation measures to address the potential noise problem affecting the development. The approval of the application would set an undesirable precedent for other similar applications.

35. As Members had no questions to raise, the Vice-Chairman announced that the hearing procedures for the review application had been completed and the Board would deliberate on the application and inform the applicant of the Board's decision in due course. The Vice-Chairman thanked the representatives of PlanD for attending the meeting. They left the meeting at this point.

Deliberation Session

36. A Member commented that the proposed relaxation of building height restrictions from 100mPD to 154.6mPD could not be considered as minor and was therefore unacceptable. Another Member said that the proposed building height did not follow the stepped height concept and was incompatible with its surroundings.

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

- (a) the planning intention of the “Comprehensive Development Area” (“CDA”) zone was for comprehensive redevelopment of the whole area for residential and/or commercial uses with the provision of open space and other supporting facilities. Piecemeal development within the “CDA” zone would defeat the intention of the “CDA” zone to facilitate appropriate planning control over the development area mix, scale, design and layout of development, to require provision of mitigation measures to address various environmental, traffic, infrastructure and other constraints;
- (b) the proposed podium structure was excessive in bulk and site coverage which was not compatible with the existing character of the area;
- (c) there was no information in the submission to demonstrate that potential noise problems arising from nearby industrial and road traffic could be mitigated;
- (d) there was no information in the submission to demonstrate that the proposed development would not result in adverse air ventilation impacts on the surrounding areas;
- (e) there was no information in the submission to demonstrate that the proposed development would be acceptable from an urban design perspective and that the proposed building height of 154.6mPD would

not have any adverse visual impact on its adjoining zones to the inland which was subject to a lower building height restriction of 100mPD; and

- (f) the approval of the application would set an undesirable precedent for other similar applications.

[Professor N.K. Leung and Mr. Felix W. Fong left the meeting at this point.]

[Mrs. Ava S.Y. Ng and Mr. Jimmy C.F. Leung returned to join the meeting at this point.]

Agenda Item 5

[Open Meeting]

Hong Kong Island East Harbour-front Study – Progress Report and Stage 1 Public Engagement Programme

(TPB Papers No. 8316)

[The meeting was conducted in Cantonese.]

38. The Secretary reported that the following Members had declared interests on the item:

- | | | |
|------------------------------|---|--|
| Dr. Greg C.Y. Wong | - | he owned properties in Eastern District |
| Mr. Tony C.N. Kan | - | his company owned property in Eastern District |
| Dr. Daniel B.M. To | - | being a Member of the Eastern District Council |
| Professor Bernard V.W.F. Lim | - | being the consultant for the study |

39. The meeting noted that since the item concerned was on the progress of a consultancy study, the interest of Dr. Greg C.Y. Wong, Mr. Tony C.N. Kan and Dr. Daniel B.M. To were indirect. The meeting agreed that Dr. Wong could stay in the meeting and participate in the discussion. The meeting also noted that Professor Bernard V.W.F. Lim had tendered an apology for not attending the meeting and Mr. Tony C.N. Kan and Dr. Daniel B.M. To had already left the meeting.

[Mr. Maurice W.M. Lee and Dr. Winnie S.M. Tang returned to join the meeting at this point.]

Presentation Session

40. The following representatives of Planning Department were invited to the meeting at this point:

- | | | |
|-----------------|---|--|
| Mr. Raymond Lee | - | Chief Town Planning/Studies and Research, PlanD |
| Ms. Sally Fong | - | Senior Town Planner/Studies and Research, PlanD |
| Mr. Andy Wong | - | Centre of Architectural Research for Education,
Elderly, Environment and Excellence Ltd |

41. The Chairperson extended a welcome and invited the representatives of PlanD to brief Members on the Paper.

42. With the aid of a Powerpoint presentation, Mr. Raymond Lee made the following main points as detailed in the Paper:

- (a) on 13.6.2008, the Board was briefed on the proposed study framework and, based on the comments received, the scope and requirements of the Study had been revised;
- (b) the study area had been extended beyond the Harbour Limit to include the Hong Kong Museum of Coastal Defence, Heng Fa Chuen and Siu Sai Wan (from 115 hectares to 200 hectares);
- (c) the focus of the study would include the following:
 - to examine the possibility of creating a continuous waterfront promenade with provision of cycling facilities;
 - to formulate an improved pedestrian circulation network to enhance harbour-front connectivity;
 - to explore means to enhance accessibility from both landward and seaward sides to the harbour-front;
 - to formulate an urban design framework for key sites e.g. the Hoi Yu Street site; and
 - to recommend a streetscape enhancement and landscape framework for major pedestrian corridors, including temporary enhancement measures and quick-win projects.
- (d) a 3-stage public engagement programme (PEP) would be conducted to provide input to the study; and
- (e) the Centre of Architectural Research for Education, Elderly Environment and Excellence Ltd. (in collaboration with the Community Participation Unit of the Department of Architecture, CUHK) was commissioned as the public engagement specialist for Stage 1 PEP.

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

43. With the aid of a Powerpoint presentation, Mr. Andy Wong presented the details of the Stage 1 PEP as follows:

- (a) the Stage 1 PEP would be held in March/April 2009 with the aim of soliciting initial views from key stakeholders on the major issues and key areas of concern on enhancement of the Hong Kong Island East harbour-front areas as well as their visions, aspirations and suggestions on harbour-front enhancement;
- (b) the public engagement activities would include a brainstorming workshop, a questionnaire survey and a drawing campaign;
- (c) the brainstorming workshop would be held on 5.4.2009 at the Aldrich Bay Community Hall and the target participants would include members of advisory committees such as Harbour-front Enhancement Committee and the District Councils, local residents, and green groups. They would be invited to share their views on the strengths, opportunities, constraints and threats facing the area and their visions and expectations for future development;
- (d) the questionnaire survey would be conducted from late March till mid April 2009 to collect views of local residents and relevant stakeholders on their visions and ideas for enhancement of the harbour-front. The survey would be conducted by means of on-street interview, mailing of questionnaires to relevant parties and uploading the questionnaire onto the study webpage; and
- (e) the drawing campaign would be undertaken to promote public participation and to foster creative ideas on harbour-front enhancement. The target participants would be parents and their children.

[Ms. Anna S.Y. Kwong left the meeting temporarily at this point.]

Discussion Session

44. A Member commented that the activities seemed to be catered mainly for the young and active and that the elderly residents in the area might find it inconvenient and difficult to participate in the public engagement activities. In response, Mr. Raymond Lee explained that they had already issued over 1,000 letters to various groups and organizations including those providing elderly services to solicit their views. PlanD would also be more than willing to visit any elderly centre to listen to their views.

45. Another Member commented that the study should not only examine the connectivity along the waterfront promenade in the east-west direction but also how to bring people from the hinterland to the harbour-front. In view of the relatively short distance between the hillside and the harbour-front, the study should consider providing a convenient pedestrian network linking the country park to the harbour-front. Mr. Raymond Lee said that it was a major focus of the study to examine ways to enhance the connectivity and pedestrian accessibility to the harbour-front in both the east-west and north-south directions.

46. As Members had no further questions and comments, the Chairperson thanked the representatives of PlanD and the study consultants for attending the meeting. They left the meeting at this point.

47. As the agenda items for the morning session were completed ahead of schedule, Members agreed to proceed with the consideration of Agenda Item 13.

Agenda Item 13

[Closed Meeting]

48. This item was recorded under confidential cover.

49. The meeting was adjourned for lunch at 12:15 p.m.

50. The meeting was resumed at 2:10 p.m..

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

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

Mrs. Ava S.Y. Ng

Mr. Nelson W.Y. Chan

Mr. Tony C.N. Kan

Dr. C.N. Ng

Mr. Alfred Donald Yap

Ms. Sylvia S.F. Yau

Ms. Anna S.Y. Kwong

Mr. K.Y. Leung

Professor Edwin H.W. Chan

Mr. Timothy K.W. Ma

Mr. Benny Wong

Mr. Jimmy C.F. Leung

Agenda Item 6

[Open Meeting (Presentation and Question Sessions only)]

Submission of the Draft Development Scheme Plan for the Urban Renewal Authority
Shanghai Street/Argyle Street Development Scheme (MK/01)
(TPB Paper No. 8314)

[The meeting was conducted in Cantonese.]

52. The Secretary said that as the Development Scheme Plan (DSP) was submitted by the Urban Renewal Authority (URA), the following Members had declared interests on this item:

Mr. Jimmy C.F. Leung as Acting Director of Planning]]]
Miss Annie Tam as Director of Lands] being non-executive directors] of URA]
Mr. Walter K.L. Chan]]]
Mr. Andrew Tsang as Assistant Director of Home Affairs who was an alternative member of Director of Home Affairs]]]]]]]
Mr. Maurice W.M. Lee	Former non-executive director of URA up to 30.11.2008
Mr. B.W. Chan	Chairman of the Appeal Board Panel under the URA Ordinance
Dr. James C.W. Lau	Member of the Appeal Board Panel under the URA Ordinance
Dr. Greg C.Y. Wong	having current business dealings with URA and being a co-opt member of the Planning, Development and Conservation Committee of URA
Professor Bernard V.W.F. Lim	having current business dealings with URA

53. Members noted that Miss Annie Tam, Mr. Walter K.L. Chan, Mr. Andrew Tsang,

Mr. Maurice W.M. Lee, Mr. B.W. Chan, Dr. James C.W. Lau and Dr. Greg C.Y. Wong had left the meeting and Professor Bernard V.W.F. Lim had sent his apology for being unable to attend the meeting.

[Mr. Jimmy C.F. Leung left the meeting temporarily at this point.]

Presentation and Question Session

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

Ms. Heidi Chan	District Planning Officer/Tsuen Wan and West Kowloon, PlanD
Mr. C.K. Soh	Senior Town Planner/Yau Tsim Mong, PlanD
Mr. Michael Ma) URA's representatives
)
Mr. David Au)

55. The Chairperson extended a welcome and briefly explained the procedures of the meeting. She then invited Ms. Heidi Chan to brief Members on the background of the draft DSP.

56. With the aid of a Powerpoint presentation, Ms. Heidi Chan covered the following points as detailed in the Paper:

- (a) background – URA on 16.1.2009 submitted the draft URA Shanghai Street/Argyle Street DSP No. S/K3/URA3/A under section 25(5) of the URA Ordinance (URAO) to the Board for consideration;
- (b) the proposal – URA proposed to adopt the DSP approach and rezone Nos. 600-626 Shanghai Street (the Scheme Area) in Mong Kok from “Residential (Group A)” (“R(A)”) and “Road” to “Other Specified Uses”

annotated “Shophouses for Commercial/and or Cultural Uses” (“OU (Shophouses for Commercial and/or Cultural Uses)”) to facilitate in-situ preservation and revitalisation of the existing historic buildings. The proposal covered a total area of about 1,128m² and comprised 14 buildings of 3 to 6 storeys high. Ten of the existing buildings (Nos. 600-606, 612-614 and 620-626 Shanghai Street) were pre-war verandah-type shophouses of 3 to 4 storeys high built in the 1920s and had been listed as Grade I buildings in 2000. The 10 pre-war buildings were separated into three groups by four 6-storey post-war buildings of 1960s (Nos. 608-610 and 616-618 Shanghai Street). The proposed “OU (Shophouses for Commercial and/or Cultural Uses)” zone was intended for the preservation and adaptive re-use of the 10 pre-war shophouses for commercial and/or cultural uses (e.g. eating place, education/visitor centre and school) to serve the needs of the public. For the four post-war buildings, the proposed “OU” zone would enable them to be rehabilitated and/or redeveloped for commercial and/or cultural uses as well as to accommodate the necessary building services to serve the whole shophouse cluster. The maximum building height of the Scheme Area was restricted to 3 storeys or the height of the existing building whichever was the greater. Any new development, except alteration and/or modification to an existing building and new structure(s) for facilities that were ancillary and directly related to the always permitted uses, would require planning permission. Redevelopment of the four post-war buildings would also require planning permission;

- (c) the justifications provided by URA were detailed in paragraph 3 of the Paper;
- (d) public engagement – URA had undertaken several public engagement exercises including a brainstorming session, an owners and tenants survey and an independent public opinion survey from September to December 2008. The findings were detailed in paragraph 4 of the Paper;
- (e) Social Impact Assessment (SIA) - according to section 25(3)(c) of URAO,

an assessment of the likely effect of the implementation of the Development Scheme in relation to the residential accommodation of persons who would be displaced by the Development Scheme should be prepared by the URA. The findings of the SIA Report (Stages 1 and 2) were detailed in paragraph 6 of the Paper;

- (f) Government bureaux/departments' views – relevant Government bureaux/departments had been consulted on the draft DSP. Their comments and URA's responses were summarized in paragraph 10 of the Paper;
- (g) public consultation - the draft DSP and the SIA Report (Stages 1 and 2) were made available for public inspection from 20.1.2009 to 10.2.2009. There was no public comment on the SIA Report. As to the draft DSP, 2 public comments were received. Another 18 public comments were received after the public inspection period. Out of the 20 comments received, one commenter raised objection, 2 commenters expressed support and the other 17 commenters provided comments on the draft DSP. The main points of the public comments were summarised in paragraph 11.2 of the Paper;
- (h) PlanD's view – PlanD had no objection to the draft DSP for the reasons set out in paragraph 13 of the Paper:

Need for Preservation and Revitalisation

- the preservation and revitalisation of the pre-war shophouses was in response to the call of the Chief Executive's 2007/08 Policy Address to extend the scope of historic building protection to preservation and revitalization of pre-war buildings, and would help enhance the local character of the Mong Kok area. The proposal was supported by the Commissioner for Heritage, Antiquities and Monuments Office and Commissioner for Tourism;

DSP Approach

- rehabilitation approach could not guarantee all the owners to participate, nor prevent the owners from carrying out piecemeal redevelopment. Rezoning the site to “OU” for the purpose of preservation could protect the historic buildings from redevelopment but could not provide the timely maintenance services required to upkeep the buildings. Under the Town Planning Ordinance (TPO), there was no provision for compensation for the affected owners and tenants for site zoned “OU” on the Outline Zoning Plan (OZP) alone. Therefore, the DSP prepared under section 25 of URAO was considered as a more effective means to serve the purpose of preservation. The DSP could set out clearly the intention of preservation and how it would be implemented, and provide a more definite programme to improve the condition of the historic buildings. The affected owners and tenants would also be compensated and rehoused according to URA’s policies;

DSP Boundary

- the DSP boundary proposed by URA covered 10 pre-war shophouses as well as four post-war buildings in-between. The inclusion of the post-war buildings was to enable the creation of a more harmonious built form in terms of building design, massing and building height, and prevent high-rise piecemeal redevelopment of the four post-war buildings from breaking up the shophouse cluster. The post-war buildings could provide the necessary solution space for the provision of the necessary building services through alterations and/or redevelopment. The footpath under the verandahs was included to preserve the unique cluster of verandah of the shophouses;

Notes and ES of the Draft DSP

- the uses under Columns 1 and 2 of the Notes had been drawn up to reflect the nature of the Development Scheme and the intention for the preservation and adaptive re-use of the pre-war shophouses. To preserve the pre-war shophouses, any new development would require planning permission from the Board;

- to maintain the existing building height profile of the shophouse cluster, a restriction of maximum building height of 3 storeys or the height of the existing buildings whichever was the greater had been specified in the Notes of the draft DSP;

PlanD's responses to the public comments were as follows:

Approach adopted by URA

- according to section 5(e) of URAO and section 5(g) of the Urban Renewal Strategy, one of the purposes of URA was to preserve buildings, sites and structures of historical, cultural or architectural interest. URA had provided justifications for adopting the DSP approach after examining other possible means. The DSP approach was more effective to meet the objectives of preservation and revitalisation of the shophouse cluster;

Compensation and Rehousing

- the affected owners would be compensated under the prevailing compensation policy based on that approved by LegCo. Tenants of domestic units would be offered rehousing, subject to eligibility compliance, or cash compensation;
- URA had employed a Social Service Team to provide assistance and advice to owners and tenants affected by the DSP;

Consultation

- URA had organised public engagement exercises from September to December 2008 to collect views and comments of the owners and tenants affected by the Development Scheme and carried out SIA to ascertain the possible social impact; and
- upon publication of the draft DSP by the Board, the public would have the opportunity to submit representations on the draft DSP and

comments on the submitted representations. The DSP would only be implemented after going through the relevant statutory planning process and obtaining approval of the Chief Executive in Council (CE in C).

57. With the aid of a Powerpoint presentation and a physical model, Mr. Michael Ma made the following main points:

- (a) the two surveys undertaken by URA and an independent consultant respectively indicated that URA's initiative to preserve the pre-war shophouses had the support of the public; and
- (b) as to some public comments on whether the DSP approach should be adopted for the Scheme Area, URA had explained to the public on different occasions that there was no provision for compensation under TPO should the Scheme Area be rezoned from "R(A)" to "OU (Shophouses for Commercial and/or Cultural Uses)" on the OZP alone. However, the DSP prepared under URAO would enable the affected owners and tenants to have fair and reasonable compensation in accordance with URA's policies.

58. The Chairperson then invited Members to have a look at the physical model on the Shanghai Street/Argyle Street Development Scheme prepared by URA and displayed at the meeting.

59. Members had the following questions:

- (a) whether the four 6-storey post-war buildings now included in the Scheme Area would have to be demolished by URA in the light of the restrictions of the Notes of the draft DSP to limit the building height to 3 storeys;
- (b) what was the total number of pre-war shophouses in Hong Kong; and
- (c) what were the compensation and rehousing arrangements for the owners and tenants affected by the DSP.

60. In response to Members' question in paragraph 59(a) above, Ms. Heidi Chan said that the Notes of the draft DSP restricted the maximum building height of the Scheme Area to 3 storeys or the height of the existing building whichever was the greater. There was flexibility that the four post-war buildings could be preserved and rehabilitated by URA for commercial and/or cultural uses as well as to accommodate the necessary building services to serve the whole shophouse cluster.

61. In response to Members' questions in paragraph 59(b) and (c) above, Mr. Michael Ma made the following main points:

- (a) according to a consultancy study commissioned by URA, there were a total of 56 pre-war shophouses within and around URA's target areas. However, the Shanghai Street/Argyle Development Scheme represented a unique cluster characterized by a row of 10 adjoining pre-war shophouses though bisected by four post-war buildings. Another similar cluster of pre-war shophouses could be found in the Development Scheme at Prince Edward Road West/Yuen Ngai Street which would be discussed at the same meeting; and
- (b) as the DSP was prepared under section 25 of URAO, URA would, after obtaining CE in C's approval of the DSP, acquire the domestic properties within the Scheme Area having regard to the policy of a similar flat of 7 years old. Non-domestic properties would be acquired based on open market value plus ex-gratia allowance.

62. A Member was pleased with URA's initiative to preserve the pre-war shophouse cluster within the Scheme Area. This Member noted that under the Notes of draft DSP, shop was always permitted in Column 1 and flat was a Column 2 use subject to the Board's permission. As such, the existing mixed uses within the Scheme Area would not be much different from the planned uses as set out in the Notes of the draft DSP. Noting that the ground floor shops within the Scheme Area were now characterized by retail shops selling decoration and construction materials, the same Member asked whether such retail shops would be preserved by URA. The Chairperson also asked whether URA had any concrete

idea on the future uses or types of trade to be provided within the Development Scheme.

63. Mr. Michael Ma said that the Scheme Area was located near the existing cluster of shops in the Mong Kok area selling decoration and construction materials. However, the vicinity of the Scheme Area had been undergoing transformation pursuant to the development of Langham Place just across Argyle Street. As the retail shops selling decoration and construction materials within the Scheme Area only accounted for a small share of the trade in the Mong Kok area, URA's current thinking was that the Development Scheme would preserve and revitalize the shophouses for commercial and/or cultural uses, or any other uses compatible with the surrounding land uses, particularly those related to the daily necessities of the community. That said, URA had an open mind on the future uses of the Development Scheme. Detailed proposals would be worked out upon further discussion with the District Council and the public, after the publication of the draft DSP.

64. A Member noted that the 10 pre-war shophouses within the Scheme Area were recently proposed to be re-graded from Grade I to Grade II according to the preliminary assessment of 1,444 historic buildings carried out by the Antiquities Advisory Board (AAB). In this connection, the Chairperson asked whether AAB's re-grading would affect URA's initiative to conserve the shophouses covered by the DSP. Mr. Michael Ma said that according to an independent consultancy study commissioned by URA, the shophouses within the Scheme Area were found to be rare and worthy of preservation in view of their architectural, cultural and historical significance. URA's intention on preserving this shophouse cluster was more than historical and URA's intention would not be affected by the re-grading.

65. As Members had no further question to raise, the Chairperson thanked the representatives of URA and PlanD for attending the meeting. They all left the meeting at this point.

66. The deliberation session was reported under confidential cover.

Agenda Item 7

[Open Meeting (Presentation and Question Sessions only)]

Submission of the Draft Development Scheme Plan for the Urban Renewal Authority

Prince Edward Road West/Yuen Ngai Street Development Scheme (MK/02)

(TPB Paper No. 8313)

[The meeting was conducted in Cantonese.]

[Ms. Anna S.Y. Kwong left the meeting at this point.]

67. The Secretary said that as the Development Scheme Plan (DSP) was submitted by the Urban Renewal Authority (URA), the following Members had declared interests on this item:

Mr. Jimmy C.F. Leung as Acting Director of Planning]]]
Miss Annie Tam as Director of Lands] being non-executive directors] of URA
Mr. Walter K.L. Chan]]]
Mr. Andrew Tsang as Assistant Director of Home Affairs who was an alternative member of Director of Home Affairs]]]]]]]
Mr. Maurice W.M. Lee	Former non-executive director of URA up to 30.11.2008
Mr. B.W. Chan	Chairman of the Appeal Board Panel under the URA Ordinance
Dr. James C.W. Lau	Member of the Appeal Board Panel under the URA Ordinance
Dr. Greg C.Y. Wong	having current business dealings with URA and being a co-opt member of the Planning, Development and Conservation Committee of URA
Professor Bernard V.W.F. Lim	having current business dealings with URA

68. Members noted that Miss Annie Tam, Mr. Walter K.L. Chan, Mr. Andrew Tsang, Mr. Maurice W.M. Lee, Mr. B.W. Chan, Dr. James C.W. Lau and Dr. Greg C.Y. Wong had left the meeting while Professor Bernard V.W.F. Lim had tendered apology for not being able to attend the meeting and Mr. Jimmy Leung was yet to return to join the meeting.

Presentation and Question Session

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

Ms. Heidi Chan	District Planning Officer/Tsuen Wan and West Kowloon, PlanD
Mr. C.K. Soh	Senior Town Planner/Yau Tsim Mong, PlanD
Mr. Michael Ma) URA's representatives
)
Mr. David Au)

70. The Chairperson extended a welcome and briefly explained the procedures of the meeting. She then invited Ms. Heidi Chan to brief Members on the background of the DSP.

71. With the aid of a Powerpoint presentation, Ms. Heidi Chan covered the following points as detailed in the Paper:

- (a) background – URA on 16.1.2009 submitted the draft URA Prince Edward Road West/Yuen Ngai Street DSP No. S/K3/URA2/A under section 25(5) of the URA Ordinance (URAO) to the Board for consideration;
- (b) the proposal – URA proposed to adopt the DSP approach and rezone Nos. 190-204 and 210-212 Prince Edward Road West (the Scheme Area) in Mong Kok from “Residential (Group A)” (“R(A)”) and “Road” to “Other Specified Uses” annotated “Shophouses for Commercial/and or Cultural Uses” (“OU (Shophouses for Commercial and/or Cultural Uses)”) to

facilitate in-situ preservation and revitalisation of the existing historic buildings. The proposal covered a total area of about 1,440m² and comprised 10 pre-war verandah-type shophouses of 4 storeys high built in the 1930s. The 10 pre-war buildings had identical height and façade design, forming a unique cluster with a uniform frontage but was bisected by an existing 15-storey residential building at Nos. 206 and 208 Prince Edward Road West completed in the 1960s. The cluster effect was an important attribute to the successful revitalisation of the shophouses for commercial and/or cultural uses or other uses compatible with the surroundings. The maximum building height of the Scheme Area was restricted to 4 storeys or the height of the existing building whichever was the greater. Any new development, except alteration and/or modification to an existing building and new structure(s) for facilities (including lifts and means of escape facilities) that were ancillary and directly related to the always permitted uses, would require planning permission;

- (c) the justifications provided by URA were detailed in paragraph 3 of the Paper;
- (d) public engagement – URA had undertaken several public engagement exercises including a brainstorming session, an owners and tenants survey and an independent public opinion survey from September to December 2008. The findings were detailed in paragraph 4 of the Paper;
- (e) Social Impact Assessment (SIA) - according to section 25(3)(c) of URAO, an assessment of the likely effect of the implementation of the Development Scheme in relation to the residential accommodation of persons who would be displaced by the Development Scheme should be prepared by the URA. The findings of the SIA Report (Stages 1 and 2) were detailed in paragraph 6 of the Paper;
- (f) Government bureaux/departments' views – relevant Government bureaux/departments had been consulted on the draft DSP. Their comments and URA's responses were summarized in paragraph 10 of the

Paper;

- (g) public consultation - the draft DSP and the SIA Report (Stages 1 and 2) were made available for public inspection from 20.1.2009 to 10.2.2009. There had been no public comment on the SIA Report. As to the draft DSP, one public comment raising objection was received. Another comment was received after the public inspection period. The main points of the two public comments were summarised in paragraph 11.2 of the Paper;
- (h) PlanD's view – PlanD had no objection to the draft DSP for the reasons set out in paragraph 13 of the Paper:

Need for Preservation and Revitalisation

- the preservation and revitalisation of the pre-war shophouses was in response to the call of the Chief Executive's 2007/08 Policy Address to extend the scope of historic building protection to preservation and revitalization of pre-war buildings. It would help enhance the local character of the Mong Kok area and the proposal was supported by the Commissioner for Heritage, Antiquities and Monuments Office and Commissioner for Tourism;

DSP Approach

- rehabilitation approach could not guarantee all the owners to participate, nor prevent the owners from carrying out piecemeal redevelopment. Rezoning the site to "OU" for the purpose of preservation could protect the historic buildings from redevelopment but could not provide the timely maintenance services required to upkeep the buildings. Under the Town Planning Ordinance (TPO), there was no provision for compensation for the affected owners and tenants for site zoned "OU" on the Outline Zoning Plan (OZP) alone. Therefore, the DSP approach under section 25 of URAO was considered as a more effective means to serve the purpose of preservation. The DSP could set out clearly the intention of preservation and how it would be implemented, and provide a more

definite programme to improve the condition of the historic buildings. The owners and tenants would be compensated and rehoused according to URA's policies;

DSP Boundary

- the DSP boundary proposed by URA covered 10 pre-war shophouses. The inclusion of the footpath under the verandahs was to preserve the unique cluster of verandah of the shophouses;

Notes and ES of the Draft DSP

- the uses under Columns 1 and 2 of the Notes had been drawn up to reflect the nature of the project and the intention for the preservation and adaptive re-use of the pre-war shophouses for different purposes to serve the needs of the public and reinforce the distinct local character (e.g. flower market);
- to preserve the shophouses, the Notes of the draft DSP had specified that any new development within Scheme Area would require planning permission;
- to maintain the existing building height profile of the shophouse cluster, a restriction of maximum building height of 4 storeys or the height of the existing buildings had been specified in the Notes of the draft DSP;

PlanD's responses to the public comments were as follows:

Rationale for Preservation

- the shophouses at Prince Edward Road West were identified by URA for preservation and revitalisation in view of their outstanding historic value of the shophouses and the Flower Market as a local heritage. The historic value of the shophouses was affirmed by the Antiquities Advisory Board (AAB), which proposed to accord Grade II for the buildings;

Approach Taken by URA for the Project

- rehabilitation approach could not guarantee all the owners to participate in the Development Scheme, nor prevent them from carrying out redevelopment. The DSP approach was more effective to meet the objectives of preservation and revitalisation of the shophouse cluster;

Consultation

- URA had organised public engagement exercises from September to December 2008 to collect views and comments of the owners/tenants affected by the Development Scheme and carried out SIA in August and September 2008 to ascertain the possible social impact; and
- upon publication of the draft DSP by the Board, the public would have the opportunity to submit representations on the draft DSP and comments on the submitted representations. The DSP would only be implemented after going through the relevant statutory planning process and obtaining approval of Chief Executive in Council (CE in C).

72. The Chairperson then invited the representatives of URA to elaborate on the draft DSP.

73. With the aid of a Powerpoint presentation and a physical model, Mr. Michael Ma made the following main points:

- (a) the draft DSP covered 10 pre-war shophouses constructed by a Franco-Belgian construction firm in the 1930s. These shophouses had identical height (4-storey) and façade design, forming an unique cluster though bisected by an existing 15-storey residential building;
- (b) according to an independent consultancy study commissioned by URA, the 10 pre-war shophouses were identified as having “Outstanding Heritage

Value”; and

- (c) the Scheme Area was close to Boundary Street having a historical connection with flower business/trade which was still vibrant today. At present, there were a number of flower shops operating on the ground floors of the pre-war shophouses within the Scheme Area. These flower shops formed part of the flower market business relating to Flower Market Road. On the upper floors of the buildings, apart from 4 to 5 domestic units, the remaining units were largely used as private schools for dancing, tutorial classes and film studio/office. The existing uses within these 10 pre-war shophouses had a peculiar local character and URA would try to preserve such uses in the Development Scheme as far as possible.

74. Members had the following questions:

- (a) whether the ground floors of the 10 shophouses were all being used as flower shops; and
- (b) whether the existing owners and tenants would have the priority to be reprovisioned within the Scheme Area; and should they choose not to stay, whether URA would consider providing some other uses compatible with the local character.

75. In response to Members’ questions above, Mr. Michael Ma made the following main points:

- (a) amongst the 10 ground floor shops, eight were being used as flower shops. The remaining two shops were occupied by the Golden Dragon School Uniform Co. Ltd. and Po Shing Shoe Co. Ltd. which were among the oldest shops in the district. URA would try to retain the existing uses in the Development Scheme; and
- (b) as the 10 pre-war shophouses had rear staircases, the building services as required under the current building requirements could be accommodated at

the backyard of the existing buildings as “extended structures”. Therefore, an incremental approach could be taken by URA for this preservation project, thus allowing existing uses to stay throughout the implementation of the Development Scheme. Upon CE in C’s approval of the DSP, URA would approach the affected owners and tenants to discuss the compensation and rehousing arrangements, and welcome them to remain in this preservation project. However, should they choose to leave, URA would consider providing other compatible uses having a peculiar local character.

76. As Members had no further question to raise, the Chairperson thanked the representatives of URA and PlanD for attending the meeting. They all left the meeting at this point.

77. The deliberation session was reported under confidential cover.

Agenda Item 8

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/K11/188

Proposed Extension of Religious Institution (Temple) in "Green Belt" zone, Government Land on the Slope off Tsz Ching Estate, Tsz Wan Shan

(TPB Paper No. 8322)

[The hearing was conducted in Cantonese.]

[Mr. Jimmy C.F. Leung returned to join the meeting at this point.]

Presentation and Question Session

78. The Secretary reported that Ms. Maggie M.K. Chan had declared an interest on this item for being a member of the Wong Tai Sin District Council. Members noted that Ms. Chan had left the meeting.

79. The following representatives from the Planning Department (PlanD) and the applicant were invited to the meeting at this point:

Mr. Eric Yue	District Planning Officer/Kowloon (DPO/K), PlanD
Miss Annie To	Senior Town Planner/Kowloon, PlanD
Mr. Lau Yu Seng] Applicant's representatives
Mr. Lam King Wai]
Mr. Chou Wah Hing]
Ms. Lam Yau Heung]
Ms. Fan Lai King]
Ms. Hung Shui Ling]

80. The Chairperson extended a welcome and explained briefly the procedures of the review hearing. She then invited Mr. Eric Yue to brief Members on the background to the application.

81. With the aid of a Powerpoint presentation, Mr. Eric Yue did so as detailed in the Paper and made the following main points:

- (a) the applicant sought planning permission for extending an existing religious institution (temple) at the application sites (north site and south site) which fell within an area zoned "Green Belt" ("GB") on the Tsz Wan Shan, Diamond Hill and San Po Kong Outline Zoning Plan (OZP);
- (b) the reasons for the Metro Planning Committee (MPC) to reject the application on 19.12.2008 were set out in paragraph 1.2 of the Paper;
- (c) justifications in support of the review application had been submitted by the applicant and were set out in paragraph 3 of the Paper;
- (d) departmental comments – departmental comments were summarized in

paragraph 5 of the Paper. The Assistant Commissioner for Transport/Urban, Transport Department considered the submitted Traffic (Pedestrian) Impact Assessment Report acceptable. The applicant, however, was required to provide and maintain a minimum 2m-wide pedestrian access connecting the existing staircase and footpath to the application sites. The Chief Building Surveyor/Kowloon, Buildings Department advised that the requirement for an emergency vehicular access (EVA) and an access for persons with a disability would be considered upon formal submission of building plans. The Director of Fire Services commented that detailed fire service requirements would be formulated upon receipt of formal submission of building plans. Arrangement on EVA should comply with the Code of Practice for Means of Access for Fire Fighting and Rescue. The Head of Geotechnical Engineering Office, Civil Engineering and Development Department advised that the applicant should carry out a Natural Terrain Hazards Study, and implement necessary mitigation measures identified therein. The Director of Environmental Protection had no record of environmental complaint against the existing temple and advised that the proposed extension would unlikely have major environmental implication. The Chief Town Planner/Urban Design and Landscape, PlanD considered that the proposed extension was small in scale, and its incorporation of landscape treatment and sensitive construction finishes could improve the existing dilapidated site conditions from visual point of view. District Officer (Wong Tai Sin) advised that no complaint against this temple had been received from the local community;

- (e) public comments – during the statutory publication period, 18 public comments on the review were received. One comment was submitted by the Mutual Aid Committee of Ching On House, Tsz Ching Estate, and another by the local residents. The remaining 16 comments were submitted by the Wong Tai Sin (North) District Area Committee, 10 Mutual Aid Committees from Tsz Ching Estate, Tsz Hong Estate, Tsz Man Estate, and Tsz Lok Estate, and 5 local community organizations. All of them supported the review application mainly on the grounds that worship at the temple was the daily habit of most of the residents of Wong Tai Sin

and Tsz Wan Shan; and

- (f) PlanD's view – PlanD did not support the application for reasons stated in paragraph 8.1 of the Paper in that there was insufficient information to demonstrate that proper vehicular and pedestrian accesses would be provided for the proposed temple extension, and the proposed temple extension would not cause disturbance or nuisance to the residents of Tsz Ching Estate.

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

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

83. With reference to some supplementary information tabled at the meeting, Mr. Lau Yu Seng made the following main points:

- (a) to clarify some misunderstanding of the application, the Lunar Goddess and the Great Duke of Tin Ho Court Charity Association Limited (the Association) would like to confirm the following:
 - there was an urgent need to extend the existing temple with a view to accommodating all the ten statues of god. If the Board approved the application, they undertook that no application for further extension of the temple would be made;
 - no columbarium would be provided within the existing temple and the application sites;
- (b) as to MPC's concerns about the disturbance or nuisance to the residents of Tsz Ching Estate, it should be noted that there had been no complaint against the temple from the local community since its establishment. The Association had kept reminding the worshippers from time to time not to cause any disturbance to the residents of Tsz Ching Estate. For their visit

to the temple, the worshippers had been advised not to use Ning Wah Street but encouraged to take another route via Fung Wah Street which was away from Tsz Ching Estate. On festive days, the Association would arrange volunteers to assist the worshippers to go to the temple in an orderly manner. Two wheelchairs were also made available to help the elderly and disabled in need of assistance;

[Mr. K.Y. Leung returned to join the meeting at this point.]

- (c) there would be no burning of ritual paper within the application sites. The Association would only carry out an annual large-scale ritual performance and related activities in the playground of Tsz Wan Shan Estate;
- (d) the Association had all along enjoyed the support of the local residents. Apart from the 18 comments expressing support of the application as stated in the Paper, there were seven more local associations giving support to the application as stated in the letters tabled at the meeting;
- (e) the Association had managed to maintain a cordial relationship with the Hong Kong Housing Authority (HKHA) in that the latter had allowed the electricity cables providing electricity supply to the temple passing through Tsz Ching Estate. During the construction period, HKHA had not made any complaint of noise nuisance to the Association;
- (f) as to the access arrangement to the application sites which might affect the areas under the management of HKHA, the Association would work out the necessary details for discussion with HKHA; and
- (g) regarding the fire safety requirements, the Association had made a submission on the provision of necessary fire safety installations and equipment (including water tank and pumping system) for the consideration of the Fire Services Department (FSD) when the temporary building structures were submitted to the Buildings Department (BD). FSD had confirmed the fire service installations acceptable and BD on 20.3.2009

issued a temporary occupation permit for the temple.

84. Mr. Eric Yue, DPO/K, informed Members that the seven additional comments in support of the application as mentioned by Mr. Lau Yu Seng were received after the statutory publication period.

[Ms. Sylvia S.F. Yau left the meeting temporarily at this point.]

85. Members had the following questions:

- (a) the number of worshippers to the temple on festive days;
- (b) the mode of transport to the temple normally taken by the worshippers; and
- (c) measures provided by the Association to assist the elderly and disabled to visit the temple.

86. Mr. Lau Yu Seng made the following responses:

- (a) owing to site constraints, worshippers would be divided into groups of about 49 persons for each round of the ceremony which would take about one and half hours. The maximum number of worshippers to the temple was estimated to be about 500 persons daily on festive days;
- (b) the worshippers largely visited the temple by bus or minibus. The Association had reminded them not to disturb the local residents when they proceeded to the temple after alighting the public transport; and
- (c) amongst the worshippers, there were only two elders requiring assistance for visiting the temple. As such, the Association had arranged some volunteers and arranged two wheelchairs to assist them.

[Ms. Sylvia S.F. Yau returned to join the meeting at this point.]

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

Deliberation Session

88. A Member asked whether the proposed development would comply with the planning intention of the "GB" zone. The Chairperson explained that the proposed development intensity of two one-storey temple blocks and the landscaped seating and resting area at the application sites were considered not incompatible with the character of the surrounding areas. The submitted technical assessments indicated that the proposed development would not cause adverse impacts on traffic, environment, slope stability and infrastructure in the surrounding areas. The proposed development was generally in line with the relevant Town Planning Board Guidelines No. 10 for Development within "Green Belt" Zone.

89. The Chairperson said that the application was previously rejected by MPC mainly on the grounds of access arrangement and the possible nuisance to the residents of Tsz Ching Estate. In the hearing, the applicant's representative had explained the measures on the access arrangement to the application sites and the efforts of minimizing disturbance to the local residents. Besides, all the public comments received from the locals including the residents of Tsz Ching Estate were in support of the application. MPC's previous concerns had been properly addressed by the applicant. Members agreed that the application could be favourably considered.

90. Another Member pointed out that the applicant should be advised to give thoughts to some safety measures in view of the large number of worshippers visiting the application sites on festive days. He suggested an advisory clause on this issue should be included in the planning permission should the application be approved by the Board. Other Members agreed.

91. Another Member suggested whether a new access for wheelchairs or other mechanical equipment along the existing staircase could be provided by the applicant to assist the elderly and disabled. The Chairperson said that given the length and gradient of the access road leading to the application sites and the nature of the development, it would not be reasonable to require the applicant to provide a new access or to provide mechanical equipment for wheelchairs along the existing staircase.

92. After further deliberation, the Board decided to approve the application on review on the terms of the application as submitted to the Town Planning Board. The permission should be valid until 3.4.2013, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The permission was subject to the following conditions:

- (a) the submission of a Natural Terrain Hazards Study prior to detailed design of the site formation works and the implementation of the necessary mitigation measures identified therein to the satisfaction the Director of Civil Engineering and Development or of the Town Planning Board;
- (b) the provision of water supplies and fire service installations for the proposed development to the satisfaction of the Director of Fire Services or of the Town Planning Board;
- (c) the submission and implementation of a landscape proposal for the proposed development to the satisfaction of the Director of Planning or of the Town Planning Board; and
- (d) the provision and maintenance of a minimum 2m-wide pedestrian access connecting the existing staircase and footpath within Tsz Ching Estate to the application sites to the satisfaction of the Commissioner for Transport or of the Town Planning Board.

93. Members also agreed to advise the applicant:

- (a) to note that the approval of the application did not imply that necessary approvals would be given by any Government department. The applicant should approach the relevant Government departments direct for any necessary approvals;
- (b) to consult the Director of Buildings regarding the building plans submission for the proposed development;
- (c) to ensure that provision of emergency vehicular access should comply with Part VI of the Code of Practice for Means of Access for Fire Fighting and Rescue;
- (d) to note the comments of Director of Drainage Services that the adjacent natural stream should not be wholly or partially altered or obstructed at any time and any materials or debris should not be allowed to drop from the temple into the stream;
- (e) to note the comments of Director of Water Supplies that the applicant should be responsible for construction, operation and maintenance to Water Supplies Department's standards of any private water supply system for water supply to the application sites;
- (f) to note the comments of Director of Housing that the estate management and the Estate Management Advisory Committee of Tsz Ching Estate should be consulted on the proposed upgrading works to the existing footpath that fell within the boundary of Tsz Ching Estate;
- (g) to undertake necessary measures to ensure the safety of people visiting the temple and the application sites, particularly on festive days; and
- (h) the incense/ritual paper burners (if any) should be properly designed and operated to avoid causing air nuisance to the nearby residents of Tsz Ching Estate.

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

Agenda Item 9

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/YL-KTS/448

Proposed Two Houses (New Territories Exempted Houses) in “Agriculture” and “Village Type Development” zones, Lot 810 in DD 113, Ma On Kong, Pat Heung, Yuen Long (TPB Paper No. 8325)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

94. Ms. Amy Cheung, District Planning Officer/Tuen Mun & Yuen Long, Planning Department (DPO/TMYL, PlanD) and the following representatives of the applicant were invited to the meeting at this point:

Mr. Eric Chih Ming Yuen

Ms. Leman Chan Lee Man

95. The Chairperson extended a welcome and explained briefly the procedures of the review hearing. She then invited Ms. Amy Cheung to brief Members on the background to the application.

96. With the aid of a Powerpoint presentation, Ms. Amy Cheung did so as detailed in the Paper and made the following main points:

- (a) the applicant sought planning permission for the development of two small houses of 3 storeys in height at the application site which was partly zoned “Agriculture” (“AGR”) (84%) and partly zoned “Village Type Development” (“V”) (16%) on the Kam Tin South Outline Zoning Plan (OZP);
- (b) the reasons for the Rural and New Town Planning Committee (RNTPC) to

reject the application on 19.12.2008 were set out in paragraph 1.2 of the Paper;

- (c) no further justifications in support of the review application had been submitted by the applicant;
- (d) departmental comments – the departmental comments were summarized in paragraph 4 of the Paper. District Lands Officer/Yuen Long, Lands Department advised that the applicant was not an indigenous villager and would not be eligible to apply for small house. Director of Agriculture, Fisheries and Conservation did not support the application as the agricultural life nearby such as vegetable field and orchard were active and the site could be rehabilitated for agricultural purpose. The Chief Town Planner/Urban Design and Landscape (CTP/UD&L), PlanD proposed to impose a condition on submission and implementation of landscape proposal if the application was approved;
- (e) public comments – during the statutory publication period, one public comment was received from a villager of Ma On Kong Village. The commenter had reservation on the application as Ma On Kong Village or its villagers had not been informed. Development of small houses in “AGR” and “V” zones was not compatible with the surroundings. The approval of the application would set an undesirable precedent; and
- (f) PlanD’s view – PlanD did not support the application for reasons as detailed in paragraph 7.1 of the Paper in that the proposed development was not in line with the planning intention of the “AGR” zone which was to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. No strong justification had been provided in the submission for a departure from the planning intention. There was insufficient information to demonstrate that the proposed development was to meet the housing need of the indigenous villagers. The proposed development was not in line with the planning intention of the “V” zone as land within “V” zone was primarily intended for development of small

house by indigenous villagers. The approval of the application would set an undesirable precedent for similar application within the “AGR” zone.

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

98. With the aid of some plans, Mr. Eric Chih Ming Yuen made the following main points:

- (a) the application site was partly zoned “V” and partly zoned “AGR”. The proposed two small houses would be largely located within the “V” zone and only a small portion of the house area (i.e. about 12% or 15m²) would encroach on the “AGR” zone. Even if the balconies and septic tanks were taken into account, the total building area falling within the “AGR” zone would only be 38m² or about 24%. The encroachment on the “AGR” zone was very minor in this regard. The Board should not assess the application merely having regard to the area of the application site falling within the “AGR” zone;
- (b) it was understood that the Board’s approval of the planning application would not necessarily oblige LandsD to approve small house development on the application site as only indigenous villagers were eligible to apply for small house. That said, the applicant had previously indicated that the application site would be assigned to 2 indigenous villagers for the development of small houses. Their identities had been referred to LandsD for verification. Putting aside the issue on the applicant’s eligibility for small house development, the applicant would like to ascertain from the Board that the application was feasible from the planning viewpoint. The Board should not reject the application on the grounds that the applicant was not an indigenous villager; and
- (c) it was originally intended that different vegetation and crops would be grown from time to time at the rest of the application site within “AGR” zone to answer market needs if active agricultural use was rehabilitated.

Hence, there was reservation on the implementation of a landscape proposal as a condition of approval as previously suggested by CTP/UD&L because any changes to the planting of the vegetation and crop would be subject to the planning approval. However, the applicant now agreed to accept an approval condition on a landscape proposal should the application be approved by the Board.

99. The Chairperson asked the following questions:

- (a) whether the two proposed small houses (with a total built over area of 130.06m²) could be entirely located within the “V” zone (with an area of about 165m²); and
- (b) if indigenous villagers could be identified for the two small houses within the “V” zone, there was no need for the applicant to seek planning permission from the Board for developing small houses entirely located within the “V” zone. A small house application could be made direct to the LandsD for processing the land matters.

100. With the aid of a plan, Mr. Eric Chih Ming Yuen made the following responses:

- (a) the current design proposed by the applicant had tried to minimise possible encroachment on the “AGR” zone by locating the two small houses within the “V” zone as far as possible. On the other hand, the design of the small houses was constrained by such considerations as LandsD’s standard design for small house and provision of reasonable building separation between the two small houses to ensure proper air ventilation and sunlight penetration. Hence, the design of the current proposal had made a balance amongst these considerations; and
- (b) in order to maintain a standard size of 65.03m² for each small house, it was impossible to locate the two small houses entirely within the “V” zone. As such, planning permission from the Board was required for encroaching on a small portion of the “AGR” zone.

101. A Member asked if there was any scope for the applicant to re-orient the disposition of the two small houses so as not to encroach on the “AGR” zone. Mr. Eric Chih Ming Yuen said that due to the need to provide two houses with standard footprints (each of 65.03m²) and to ensure proper building separation between the two houses for sunlight penetration and air ventilation, it was inevitable that a minor portion of the “AGR” zone would have to be affected by the application.

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

Deliberation Session

103. In response to a Member’s enquiry, the Chairperson explained that under the New Territories Small House Policy, only an indigenous villager was eligible to apply for small house. For the subject application, as the applicant was not an indigenous villager and would not be eligible to apply for small house.

104. A Member considered that RNTPC’s decision should be maintained and the application should not be approved. The Chairperson added that there was scope for the applicant to accommodate the two proposed small houses within the “V” zone without having to seek planning permission from the Board. Also, should the applicant be an indigenous villager, LandsD could be approached direct for the development of small house within the “V” zone.

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

- (a) the proposed development was not in line with the planning intention of the “Agriculture” (“AGR”) zone which was to retain and safeguard good

quality agricultural land/farm/fish ponds for agricultural purposes. It was also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong justification had been provided in the submission for a departure from the planning intention;

- (b) there was insufficient information provided by the applicant to demonstrate that the proposed development was to meet the housing need of the indigenous villagers. The proposed development was not in line with the planning intention of the “Village Type Development” (“V”) zone as land within “V” zone was primarily intended for development of Small House by indigenous villagers. There was no strong justification in the submission for a departure from the planning intention; and
- (c) the approval of the application would set an undesirable precedent for similar application within the “AGR” zone. The cumulative effect of approving such applications would result in the loss of good agricultural land, causing a general degradation of the rural environment of the area.

Agenda Item 10

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/YL-KTS/449

Proposed Filling of Pond for Permitted Agricultural Use in “Village Type Development” zone, Lots 952, 953, 954, 955 and 956 in DD 113, Ho Pui, Yuen Long

(TPB Paper No. 8326)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

106. Ms. Amy Cheung, District Planning Officer/Tuen Mun & Yuen Long, Planning Department (DPO/TMYL, PlanD) and the following representatives of the applicant were invited to the meeting at this point:

Mr. Woo Chor Keung

Mr. Wu Shu Fan

107. The Chairperson extended a welcome and explained briefly the procedures of the review hearing. The Chairperson then invited Ms. Amy Cheung to brief Members on the background to the application.

108. With the aid of a Powerpoint presentation, Ms. Amy Cheung did so as detailed in the Paper and made the following main points:

- (a) the applicant sought planning permission for the proposed filling of pond for permitted agricultural use at the application site which was zoned “Village Type Development” (“V”) on the Kam Tin South Outline Zoning Plan (OZP);
- (b) the reasons for the Rural and New Town Planning Committee (RNTPC) to reject the application on 19.12.2008 were set out in paragraph 1.2 of the Paper;
- (c) justifications in support of the review application submitted by the applicant were detailed in paragraph 3 of the Paper;
- (d) departmental comments – the departmental comments were summarized in paragraph 5 of the Paper. The Director of Agriculture, Fisheries and Conservation did not support the application from a fisheries and ecological point of view. The potential adverse impact of the proposed pond filling on the Ma On Kong, the Ho Pui egretries, and the application site and its surroundings which were quality agricultural land with moderate ecological value had not been fully addressed. Also, ponds should be preserved for fish culture activities. The Chief Engineer/Mainland North, Drainage Services Department did not support the application as there was concern on the proposed pond filling which might reduce flood storage or increase risk of flooding in the area. In view of the large area of pond filling at the application site, there was grave concern on the drainage impact on the

adjacent areas. The applicants should first demonstrate that the proposed development would not cause any increase in the flooding susceptibility of the adjacent areas by carrying out a satisfactory drainage impact study. The Chief Town Planner/Urban Design and Landscape, PlanD had reservation on the proposed pond filling from the landscape planning point of view. Approximately 20 native trees were found on the bunds of the subject pond. Although these trees were located outside the actual pond area, the proposed pond filling would potentially affect the general health condition of the adjacent trees and the trees might die eventually if triggered by other environmental or physiological factors. Having considered that a pond was a more unique landscape feature than cultivated land, the conversion of the existing pond to agricultural land would have an adverse impact on the existing rural landscape;

- (e) public comments – during the statutory publication period, 5 public comments were received from two Yuen Long District Councillors, a village representative of Ho Pui Tsuen and two members of the public. 3 supported and 2 expressed concerns on the application. The 3 commenters supported the application mainly for the reasons that the abandoned pond could not be used for fish farming activities; the children of the village playing around the site or the pond were at risk; and agricultural use of the site would not cause adverse impact and would promote agricultural development and offer employment opportunities. The 2 commenters expressed concerns on the application mainly on the grounds that the illegal pond filling works carried out before the granting of planning should not be encouraged; the proposed works were purely for pond filling purpose rather than for agricultural development; the pond filling works had set a bad precedent and attracted more pond filling works in the surroundings; and the pond filling works had generated a lot of dust and caused adverse environmental and ecological impacts; and
- (f) PlanD's view – PlanD did not support the application for reasons as detailed in paragraphs 7 and 8 of the Paper. Although agricultural use was always permitted within the “V” zone, pond filling required planning

permission from the Board primarily to ensure that it would not result in adverse drainage impact. Other consequential impacts, including the ecological and landscape impacts, arising from pond filling should be taken into account in assessing the pond filling proposal. There was insufficient information in the submission to demonstrate that the proposed filling of pond would not cause adverse drainage, ecological and landscape impacts on the application site and the surrounding areas.

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

110. Mr. Woo Chor Keung made the following main points:

- (a) the fish pond had been deserted for a few years. With the support of a District Councillor and the locals, the fish pond was therefore proposed to be filled for the use of organic farming. Mud, instead of construction and demolition wastes, would be used as the materials for filling the fish pond;
- (b) the agricultural use of the application site for organic farming would not create adverse impact on the environment; and
- (c) there were many children living in the vicinity of the application site and the deserted fish pond posed potential risk to them. Given the large size of the fish pond, the local villagers did not have money to erect fencing around the fish pond. The proposed pond filling would help prevent possible accidents of drowning children.

111. The Chairperson asked if there was any more information on the planned agriculture use. Messrs. Woo Chor Keung and Wu Shu Fan made the following responses:

- (a) it was intended that upon filling of the fish pond, the application site would be turned into organic farming, similar to some organic farms in the vicinity; and

- (b) the proposed filling of the fish pond for agriculture use would also provide job opportunities for them who were now unemployed.

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

Deliberation Session

113. A Member expressed concern about the possible ecological impact of the pond filling on the egrettries in the vicinity of the application site.

114. The Chairperson said that although agricultural use was always permitted within the "V" zone, pond filling required planning permission from the Board primarily to ensure that it would not result in adverse drainage impact. Other consequential impacts, including the ecological and landscape impacts, should also be taken into account in assessing the pond filling proposal. However, there was insufficient information in the submission to demonstrate that the proposed filling of pond would not cause adverse drainage, ecological and landscape impacts on the site and the surrounding areas. Members considered that the application could not be supported.

115. After further deliberation, the Board decided to reject the application on review and the reason was:

there was insufficient information in the submission to demonstrate that the proposed filling of pond would not cause adverse drainage, ecological and landscape impacts on the site and the surrounding areas.

Agenda Item 11

[Open Meeting]

Request for Deferral for Review of Application No. A/TM-LTYT/174

Temporary Vehicle Parking (Oil Tank Trailer) and Workshop for a Period of 1 Year in “Village Type Development” zone, Lot 1981 RP(Part) in DD 130 and Adjoining Government Land, Lam Tei, Tuen Mun

(TPB Paper No. 8324)

[The meeting was conducted in Cantonese.]

116. The Chairperson said that the applicant’s agent wrote to the Secretary of the Board and requested the Board to defer making a decision on the review application for 2 months so as to allow time for him to prepare supplementary information to respond to the technical comments from various Government departments and the concerns raised by public commenters on his application.

117. After deliberation, the Board decided to agree to the request for further deferment and that the application would be submitted to the Board for consideration within 3 months upon receipt of further submission from the applicant.

118. The Board also decided to advise the applicant that the Board had allowed 2 months for preparation of submission of further information and no further deferment would be granted unless under very special circumstances.

Agenda Item 12

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Representations and Comments to the Draft Shau Kei Wan Outline Zoning Plan No. S/H9/15

(TPB Paper No. 8328)

[The meeting was conducted in Cantonese.]

119. The Secretary presented the Paper and said that a total of 10 representations and three comments had been received in respect of the draft Shau Kei Wan Outline Zoning Plan

(OZP) No. S/H9/15 gazetted on 7.11.2008. Since the amendments incorporated in the Plan mainly related to the imposition of development restrictions, including restrictions on building height, plot ratio or gross floor area for the Shau Kei Wan area, it was recommended that the representations and comments should be considered by the full Board. She added that as all the representations and comments were concerned with the imposition of development restrictions for the Shau Kei Wan area, it was suggested to consider the representations and the related comments collectively in view of their similar or related nature. Consideration of the representations and the related comments by the full Board was tentatively scheduled for 15.5.2009.

120. After deliberation, the Board agreed that all representations and related comments should be heard collectively by the Board in the manner as proposed in paragraphs 2.1 and 2.3 of the Paper.

Agenda Item 14

[Open Meeting]

Any Other Business

[The meeting was conducted in Cantonese.]

121. There being no other business, the meeting was closed at 4.40p.m..