

**Minutes of 949<sup>th</sup> Meeting of the  
Town Planning Board held on 11.12.2009**

**Present**

Permanent Secretary for Development  
(Planning and Lands)  
Mr. Thomas Chow

Chairman

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

Mr. Edmund K.H. Leung

Professor Bernard V.W.F. Lim

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. Y.K. Cheng

Ms. Anna S.Y. Kwong

Professor Paul K.S. Lam

Dr. James C.W. Lau

Hon. Starry W.K. Lee

Mr. K.Y. Leung

Mr. Rock C.N. Chen

Mr. Timothy K.W. Ma

Principal Assistant Secretary (Transport)

Transport and Housing Bureau

Mr. Fletch Chan

Deputy Director of Environmental Protection

Mr. Benny Wong

Assistant Director(2), Home Affairs Department

Mr. Andrew Tsang

Director of Lands

Miss Annie Tam

Director of Planning

Mrs. Ava S.Y. Ng

Deputy Director of Planning/District

Miss Ophelia Y.S. Wong

Secretary

**Absent with Apologies**

Professor David Dudgeon

Professor N.K. Leung

Mr. Raymond Y.M. Chan

Mr. Felix W. Fong

Professor Edwin H.W. Chan

Mr. Maurice W.M. Lee

Dr. Winnie S.M. Tang

**In Attendance**

Assistant Director of Planning/Board  
Mr. Lau Sing

Chief Town Planner/Town Planning Board  
Mr. J.J. Austin

Senior Town Planner/Town Planning Board  
Ms. Amy M.Y. Wu

**Agenda Item 1**

[Open Meeting]

**Confirmation of Minutes of the 948<sup>th</sup> Meeting held on 27.11.2009**

[The meeting was conducted in Cantonese.]

1. The minutes of the 948<sup>th</sup> meeting held on 27.11.2009 were confirmed without amendments.

**Agenda Item 2**

[Open Meeting]

**Matters Arising**

[The meeting was conducted in Cantonese.]

2. There were no matters arising.

**Agenda Item 3**

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/H20/159

Proposed Flat, Public Transport Terminus and Shop and Services (Proposed Amendments to an Approved Scheme) in “Comprehensive Development Area (1)” and “Open Space” zones, Former Bus Depot at 391 Chai Wan Road, a section of Sheung On Street and the Adjoining Bus Terminus, Chai Wan

(TPB Paper No. 8458)

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[The hearing was conducted in English and Cantonese.]

**Presentation and Question Session**

3. The following members had declared interests on this item:  
Mr. Raymond Y.M. Chan                      Having current business dealings with Swire Properties Ltd. which was involved in the proposed development under

application.

Dr. Daniel B.M. To

Being a Member of Eastern District Council (EDC), and the Planning, Works and Housing Committee of EDC had passed a motion against the proposed development

4. Members noted that Mr. Raymond Y.M. Chan had tendered apologies of being not able to attend the meeting while Dr. Daniel B.M. To had not yet arrived at the meeting.

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

Ms. Brenda Au - District Planning Officer/Hong Kong (DPO/HK),  
Planning Department (PlanD)

Mr. Derek Cheung - Senior Town Planner/Hong Kong, PlanD

Mr. Ian Brownlee ) Masterplan Ltd.

Ms. Helen Lung )

Mr. Christopher Foot - ADI Ltd.

Ms. Margaret Wong ) Wong & Ouyang (Hong Kong) Ltd.

Mr. Jip Chu )

Dr. Henry Ngan - China Motor Bus Co. Ltd.

Mr. Guy Bradley - Swire Properties Ltd.

Mr. Desmond Ng - Swire Properties Ltd.

Ms. Mandy To - ERM Hong Kong Ltd.

Mr. Roy Wong ) Wilbur Smith Associated Ltd.

Mr. Derek Leung )

Mr. Alan Yip - JSM

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

[Ms. Sylvia S.F. Yau, Mr. David W.M. Chan and Mr. Fletch Chan arrived to join the meeting at this point.]

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

- (a) the background of the application as set out in paragraph 1 of the Paper. A previous application (No. A/H20/119) for a residential development with retail shops and a covered public transport terminus (PTT) on the “CDA(1)” portion and a public open space on the “O” portion was approved by the Metro Planning Committee (MPC) on 8.2.2002 with validity of permission extended twice up to 8.2.2011;
- (b) the application site fell within an area partly zoned “Comprehensive Development Area(1)” (“CDA(1)”) (10,750m<sup>2</sup>) (72.9%), subject to a maximum GFA of 86,268m<sup>2</sup> and partly zoned “Open Space” (“O”) (4,000m<sup>2</sup>) (27.1%) on the approved Chai Wan Outline Zoning Plan (OZP) No. S/H20/17;
- (c) on 27.3.2009, the MPC rejected the application for the reasons of excessive building heights and adverse visual impact; excessive podium structure; insufficient information in the traffic impact assessment (TIA) report to demonstrate that there would not be any adverse traffic impacts; and insufficient information in the submission to demonstrate that the risk posed by nearby liquefied petroleum gas (LPG) filling station and petrol filling station to the proposed development did not exceed the Government Risk Guidelines;
- (d) the applicant had submitted written representation with a revised TIA, a Quantitative Risk Assessment (QRA), a revised Traffic Noise Impact Assessment and a revised Sewerage Impact Assessment (SIA), a Modified Scheme and an Alternative Scheme in support of the review application as summarised in paragraph 2 of the Paper;

- (e) compared with the scheme submitted in the s.16 application, both the Modified Scheme and the Alternative Scheme adopted a reduction in site coverage of the podium from 81.4% to 73.7% and a reduction in the width of the deck over Sheung On Street from 28.5-31.5m to 10m. The Modified Scheme adopted the same building height profile of 193-205.65mPD as in the s.16 scheme whereas the Alternative Scheme adopted a building height of 191.85mPD, similar to the building height of 192mPD in the previously approved scheme in 2002. The applicant considered that the reduction of 14m in building height achieved in the Alternative Scheme was insignificant and had indicated preference to proceed with the Modified Scheme;
- (f) the justifications put forward by the applicant in support of the review application as detailed in paragraph 3 of the Paper are summed up below:
- the planning intention of the “CDA(1)” zone contained in the OZP should serve as a basis for consideration of the subject application;
  - the current application was fundamentally the same as the previously approved application;
  - there had been no change in planning circumstances since the previous application was approved;
  - the revised TIA, QRA and SIA had adequately addressed the technical issues; and
  - the scale of podium and the width of the deck over Sheung On Street had been reduced;
- (g) departmental comments – the departmental comments were detailed in paragraph 5 of the Paper. Assistant Commissioner for Transport/Urban, Transport Department (AC for T/U, TD) did not support the application as the feasibility of the proposed traffic mitigation measures could not be ascertained and the covered PTT incurred much higher maintenance and management costs. TD did not agree with the applicant’s intention to deal with the arrangement for the construction, management and

maintenance of the future covered PTT at the detailed design and land exchange stage. District Lands Officer/Hong Kong East, Lands Department (DLO/HKE, LandsD) advised that there was no guarantee that the land exchange application would be approved by the Government and shared TD's view that the arrangement for the construction, management and maintenance of the proposed PTT should be sorted out at the present stage instead of at the land exchange stage. Director of Environmental Protection (DEP) did not support the application as the traffic noise compliance rate had dropped from 57% in the scheme submitted at the Section 16 application stage to 51% which meant that 49% of flat units would be affected by excessive traffic noise with no additional mitigation measures. Chief Town Planner/Urban Design and Landscape (CTP/UD&L), PlanD commented that the stepped height adopted in the Modified Scheme had no significant benefit to outweigh the visual impact on the surrounding areas and the Alternative scheme was considered to be better than the Modified Scheme. CTP/UD&L concurred with the public views that the proposed building height was excessive and the ground coverage of the podium was extensive for both schemes. Chief Building Surveyor/Hong Kong East and Heritage Unit, Buildings Department (CBS/HKE&H, BD) advised that since the proposal did not serve any public interest and would unlikely gain support from the relevant government departments, exemption to permit the proposed podium deck over Sheung On Street would not be granted. Director of Electrical and Mechanical Services (DEMS) had no comment on the application as the revised QRA concluded that the risks posed by the LPG filling station were acceptable in accordance with the Government Risk Guideline. District Officer (Eastern) (DO(E)) advised that the EDC had passed the following motion in its Planning, Works and Housing Committee's meeting on 12.11.2008 to object the proposed development:

“The Planning Department and Town Planning Board are requested to cancel the development application for a multi-storey building at Chai



Wan Depot of China Motor Bus Company. This will avoid impacts on the environment and traffic in Chai Wan and Siu Sai Wan. Request is also made to reject the decking-over design of Sheung On Street. The original site of Chai Wan Bus Terminus at Wing Tai Road and Chai Wan Road should be developed as a leisure park for the enjoyment of Chai Wan residents.”

Since there was no change in development intensity under the two revised schemes, the DO envisaged that the EDC Members would maintain their strong objection.

- (h) public comments - during the statutory publication period, 11 public comments on the review application were received which were submitted by the residents nearby, Incorporated Owners (IO) of buildings in the vicinity of the site, EDC Members and individuals. Of the 11 public comments, one supported the application whilst 3 (by the same IO) suggested that the landscape area of the proposed building should be located near Chai Wan Road with an entrance of public access and the number of storeys of the proposed buildings should be reduced to below 50. The remaining 7 comments objected to the application and criticised the building mass and height of the proposed buildings, the traffic noise nuisance and its adverse impacts on local traffic, air ventilation and visual quality. One commenter did not support the development as it would occupy public space and involve land exchange;

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

- (i) planning considerations and assessment - planning considerations and assessment were detailed in paragraph 7 of the Paper and summed up below:

*Planning Intention*

- the MPC partially agreed to the rezoning request submitted by the

applicant by rezoning the site from “I”, “G/IC” and ‘Road’ to “CDA” and “O” back in January 2001. The zoning amendments were intended to provide for comprehensive development at the application site for commercial/residential use to replace the CMB Bus Depot and to bring about such benefits as additional open space provision, a new PTT, and the opportunity to incorporate some needed G/IC facilities in the “CDA” site if considered necessary by concerned Government departments;

*Fresh application to be Considered Based on Latest Circumstances*

- the proposed amendments to the approved scheme in 2002 involved major changes in various aspects including the number and disposition of building blocks, building heights (for the Modified Scheme), and distribution in non-domestic and domestic GFAs. They fell outside the scope of Class A and Class B amendments and the subject application had therefore been submitted as a fresh s.16 application. When considering a fresh s.16 application, the Board should have due regard to the latest planning circumstances;
- with a lapse of more than seven years since the approval of the previous application on 8.2.2002, the planning circumstances (e.g. public aspirations, traffic conditions and traffic noise) had changed in various ways. There were rising public aspirations for lower development intensity and building height on new development and redevelopment. In fact, since the applicant’s first application for extension of the validity of the approved scheme in 2004, the local residents and the EDC had been objecting to the proposed development on grounds of adverse traffic, environmental and visual impacts. On the technical front, the traffic in the area had increased over the years, especially since the opening of the Chai Wan Public Filling Barging Point in December 2008. The increase in traffic, particularly involving an increased volume of heavy vehicles, had in turn impacted on the level of traffic noise in the area. All these were the latest circumstances that the Board

would need to take into account;

*Building Height, Podium Design and Decking over Sheung On Street*

- with the same building height as in the scheme rejected at s.16 stage, the Modified Scheme had not addressed the adverse visual impact caused by the proposed development on the surrounding area which was one of the major concerns of the MPC and the locals. The building height of the 191.85mPD under the Alternative Scheme was more than double of heights of nearby buildings of mainly medium-rise buildings ranging from 49 to 93mPD with only one at 134mPD. It was considered excessive and incompatible with the developments in the area;
- the podium structure was still excessive and should be further reduced. Permeability of the podium should also be improved;
- BD had advised that since the proposed podium structure to be built over Sheung On Street would not benefit the public at large and would unlikely gain the support from relevant Government departments, exemption under section 31(1) of the Buildings Ordinance would not be granted in principle to permit the proposed decking over a public street. The revised scheme might be disapproved at the building plan submission stage. As such, the proposed Modified/Alternative Schemes would need to be further revised to address BD's comment, such as by incorporating basement to provide the necessary connection between the two portions of the development, which might cause substantial deviation from the schemes submitted;

*Traffic Noise Impact*

- DEP did not support the application as traffic noise compliance rate dropped from 57% in the scheme rejected by MPC at the s.16 stage, to 51%. Around 49% of the units would be affected by excessive traffic noise but the applicant had not applied additional measures to reduce the impact. The applicant should apply all practicable measures to protect the units from traffic noise with the support by

a proper Noise Impact Assessment (NIA). The traffic noise compliance rate was far below those in other schemes recently approved by the Board;

*Traffic Impact and Covered PTT*

- TD did not support the application as the feasibility of the proposed traffic mitigation measures could not be ascertained based on the information submitted; and
- TD advised that the existing open-air bus terminus at Sheung On Street operated satisfactorily whilst the covered PTT proposed in the application would incur much higher maintenance and management costs. TD, LandsD and HyD did not agree to the applicant's suggestion to deal with the construction, management and maintenance issues of the proposed PTT at the detailed design and land exchange stage;

- (j) PlanD's view – PlanD did not support the application for the reasons as stated in paragraph 8 of the Paper.

8. The Chairman then invited the applicant's representatives to elaborate on the application. Members noted that a plan showing the traffic improvement measures for the site was tabled by the applicant at the meeting.

[Ms. Maggie M.K. Chan and Miss Annie Tam arrived to join the meeting at this point.]

9. With the aid of a Powerpoint presentation, Mr. Ian Brownlee made the following points:

*Background of Rezoning*

- (a) the applicant could have proceeded with the redevelopment of the site for an industrial building with a plot ratio of 15 under the previous "Industrial" zone when the franchise for bus service ended in 2001.

However, in view of PlanD's concern on the potential industrial/residential interface problems, the applicant submitted a rezoning request to the Board proposing a "CDA" zone for the industrial lot and the existing open-air bus terminus. Under the rezoning request, the applicant swapped part of their private lot (about 4,000m<sup>2</sup>) for open space use in return for the same area of Government land;

- (b) the rezoning request was supported by PlanD in principle given that there were potential benefits for the community in terms of the supply of flats, removal of environmental nuisance from the bus depot, contribution to the upgrading of the area, provision of additional local open space and government, institutional and community (GIC) facilities, and reprovisioning of the PTT. The rezoning request was partially accepted by the Board on 12.1.2001. The "CDA(1)" and "O" zones were then gazetted on 20.4.2001 which included the portion of Sheung On Street between the two sites so as to provide a vehicular connection between the two sites, traffic noise mitigation and internal landscaped area for residents. The maximum GFA of 86,268m<sup>2</sup> was stipulated in the Notes of the OZP;

#### *Planning Intention*

- (c) the Board should consider the s.16 planning application within the context of the OZP. Based on the planning intention as stipulated in the Notes and the Explanatory Statements (ES) of the OZP, it was clear that the Board required the bus terminus to be reprovided and was satisfied that a development of 86,268m<sup>2</sup> was of a compatible scale;
- (d) there was no public objection to the amendment to the OZP to introduce the "CDA(1)" zone. The OZP was approved by the Chief Executive in Council on 26.11.2002 and the current version was also an approved plan. The planning intention and controls had remained unchanged since the rezoning request was approved. Under s.13 of the Town Planning Ordinance, approved plans should be used by all public officers

and bodies as standards for guidance in the exercise of any powers vested in them, and that included the Board;

*Previous and Current Applications*

- (e) the previous application (No.A/H20/119) was approved by the MPC on 8.2.2002 in accordance with the “CDA(1)” zoning and the planning intention as stipulated in the Notes. The applicant had applied to LandsD for land exchange based on the approval but negotiations had been protracted and the planning approval had been extended twice up to 8.2.2011. The applicant could proceed with the implementation of the approved scheme should the current application be rejected by the Board. The current application was an amendment to, and an improvement on, the approved scheme mainly in response to the conditions and advisory clauses of the approved application;

*Response to Approval Conditions and Advisory Clauses of Previous Application*

- (f) Condition (h) required the setting back of the building line along Chai Wan Road for footpath widening and street tree planting and advisory clause (d) said that this set back “should be in the order of 3m.” This requirement had been included in the current design of the development and resulted in a reduced site coverage at ground level, more space for tree planting and visual softening of the building mass;
- (g) Advisory clause (b) advised the applicant “to consider adopting a variation of building heights and reducing the height of the podium to minimise the visual impact”. The building height profile had been adjusted to incorporate a stepped height profile stepping down from the east and the west of the site to Sheung On Street which helped to break up the continuous building mass (compared with 4 building blocks at 192mPD) in elevated views as proposed in the approved scheme. This resulted in some building heights being slightly taller than in the approved scheme and some being lower by about 6 metres;

- (h) Advisory clause (c) advised the applicant “to consider the practicability of reducing the overall height of the development”. The applicant considered this advice in the overall context of the design. The reduction of the site coverage by the 3 metre set-back, the stepped height profile, and the concerns over the possible “wall effect”, made a reduction in height of the development impractical;

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

*Response to Concern on “Wall Effect”*

- (i) to address public concern over the potential “wall effect”, a different design had been adopted for the residential towers which provided more variety in building form within the site. In addition, the physical and visual spacing above Sheung On Street between Towers 1 and 2 had been increased with the deletion of one tower, creating a central gap of approximately 46m between the towers with a visual emphasis along Sheung On Street; and
- (j) regarding PlanD’s assessment in paragraph 7 of the Paper, it was important for Members to understand that for such a complex development, there was a need to optimise various factors and there were often trade-offs that needed to be made to achieve the overall objective and planning intention. The option submitted by the applicant provided a basis for considering and understanding these compromises.

10. With the aid of a Powerpoint presentation, Ms. Margaret Wong made the following points:

- (a) as compared with the previously approved scheme, the following improvements had already been made to the rejected s.16 scheme:
  - (i) a reduction in the number of residential towers from four to three;
  - (ii) a change of typical plan shape from one with a straight edge along

Chai Wan Road to a profiled edge which helped to reduce the visual impact of the towers;

- (iii) a stepped roof profile;
  - (iv) an increase in visual corridor from 14m to 46m between buildings;
  - (v) a reduction in the mass of the podium structure by:
    - reducing the height from 18m to 14m with deletion of one level of retail;
    - reducing the coverage of the podium structure from 100% to 81.4%;
    - providing a 3m set back along Chai Wan Road and preserving the existing trees;
    - reducing the width of the deck over Sheung On Street from 52.5m to 28.5m;
- (b) there were a number of constraints in designing the podium including:
- (i) the need to provide adequate headroom for the PTT of 10.5 metres;
  - (ii) insufficient space to provide separate vehicular access for private cars to Tower 1 located above the PTT;
  - (iii) the need to accommodate the required car parking within the site, and to have a vehicular connection over Sheung On Street between the two parts of the site;
  - (iv) the need to include traffic noise mitigation measures into the design of the podium so as to achieve the minimum compliance rate of 50% of the total units as in the approved scheme;
  - (v) basement construction being impractical given likely soil contamination in the former bus depot portion of the site;
- (c) having considered the reasons for rejection and the departmental comments, further design improvement were made to the proposed development, as follows:
- (i) the podium parking levels on the northern edge of the development under Towers 2 and 3 had been stepped to provide space for more landscaping. This additional planting space would allow for the edge of the podium to be softened and would be merged with the



- 4,000 m<sup>2</sup> open space to the north of the site;
- (ii) the width of the deck over Sheung On Street was reduced to 10 m. This would still allow for a covered vehicular bridge at the Level 2 car park, with a covered pedestrian walkway at the level above. The reduction in width of the crossing had caused the podium to be visually segregated instead of forming one continuous podium. Hence, the total visual mass was significantly reduced;
  - (iii) the overall result is that the extent of the podium coverage would be significantly reduced from 81% to 73.7%;
  - (iv) the clubhouse at the podium roof along Chai Wan Road was important to act as a noise barrier to mitigate the traffic noise. A noise barrier of 6m would also be required as a mitigation measure at the bridge connection above Sheung On Street;
  - (v) with additional mitigation measures in the form of architectural fins in Tower 1 and Tower 2, the traffic noise compliance rate could be increased to 56%; and
  - (vi) the use of vertical greening and edge planting to soften the façade at detailed design stage.

11. With the aid of a Powerpoint presentation, Mr. Christopher Foot made the following points:

- (a) various landscape and visual impact mitigation measures had been incorporated into the revised scheme to improve the design of the development, including:
  - setback along Chai Wan Road to create a more spacious pedestrian environment;
  - existing significant trees along Chai Wan Road retained to maintain a green corridor along the road;
  - a podium structure creating incidental open spaces along Chai Wan Road to help break up the visual mass of the podium structure;
  - set back and public spaces at the ground level along Sheung On Street to improve visual permeability; and
  - various greening measures such as planters, climbing plants and

green façade;

- (b) the applicant had closely liaised with various government departments for the approval of the landscaping proposal which covered 4,000m<sup>2</sup> of the landscaped area;
- (c) an extensive visual impact assessment had been conducted based on the various viewpoints agreed with PlanD. Photomontages as viewed from the southwest, southeast and northwest demonstrated that the proposed scheme with the adoption of stepped height profile, visual corridor and special façade treatment, was an improvement to the previously approved scheme in terms of visual impact and compatibility with the surrounding area.

12. With the aid of a Powerpoint presentation, Mr. Ian Brownlee made the following points:

*Traffic Impact Assessment*

- (a) a revised TIA was submitted to address TD's concern on junction analysis and detailed calculation of signal timings. TD did not have any further objection to the revised TIA which showed that, with the proposed mitigation measures, the relevant junctions would have more than adequate capacity to accommodate the anticipated traffic flows for the whole area and for the proposed development. The reserve capacity available in 2014 was 15%;
- (b) the mitigation measures were relatively minor improvements as shown in the plan tabled at the meeting including:
  - the junction of Fung Yip Street/Sheung On Street was an existing priority junction which required minor civil engineering works modification, e.g. by setting back a small portion of kerblines abutting the petrol filling station;
  - the works for junction of Chai Wan Road/Sheung On Street

consisted of road widening and changes to road markings and traffic lights, mainly by revising the existing near-kerbside share-lane of 'left-turning/straight ahead' to an exclusive left-turning lane for the left turning traffic of Chai Wan Road eastbound. The revised exclusive left-turning movement and straight ahead movement of Chai Wan Road eastbound would be signalled separately. Other measures included changes to the existing junction layout by setting back the boundary of the PTT on Sheung On Street, and providing an additional right turn lane for those traffic traveling from Sheung On Street into Chai Wan Road. These details could be covered by an approval condition relating to submission of a revised TIA and implementation of mitigation measure;

*Public Transport Terminus*

- (c) the reprovisioning of the PTT was included in the approved scheme in accordance with the planning intention of the "CDA(1)" zone. The Notes of the "CDA(1)" also provided for the floor space of the PTT to be exempted from the permitted GFA;
- (d) the cost of the PTT should not be a planning concern for the consideration of the Board. It should be a matter for the applicant to negotiate with the LandsD at the land exchange stage. DLO/HKE had already stated that the PTT should be funded, managed and maintained by the Government and it was undesirable for the private developer to take up the future management and maintenance of such public facilities. The applicant would build the PTT and hand it over to Government for management and maintenance. A temporary PTT would be provided by the applicant during the construction period;
- (e) the applicant would adopt the most cost-effective design and would review the design of the PTT upon consultation with the relevant departments to reduce the operational costs such as by providing natural

lighting and ventilation;

*Connection over Sheung On Street*

- (f) the covered area over Sheung On Street had a dual function of providing mitigation against traffic noise impact on the residential flats and a functional connection between the two parts of the site. The objective of mitigating traffic noise impact had to be balanced against the objectives of minimising the visual mass of the podium and to minimise coverage over Sheung On Street;
- (g) EPD's Practice Note PN1/97 did not require sites of less than 2 ha. in size to meet the traffic noise compliance rate. The applicant had tried to address the traffic noise impact as a matter of good design and to minimise the adverse impact on future residents by reducing the width of the covered area to 10m with a noise barrier of 6m in height on the side facing Chai Wan Road. This resulted in a compliance rate slightly higher than that of the approved scheme. Further consideration at detailed design stage could result in greater mitigation, and a preliminary estimate is that introduction of fins could achieve a traffic noise compliance rate of about 56%;

[Mr. B.W. Chan left the meeting temporarily at this point.]

*No Change in Planning Circumstances*

- (h) PlanD agreed that the planning intention, the Notes of the "CDA(1)" zone and the ES had remained the same since the site was rezoned and the previous application was approved. The Board was thus obliged to consider the application in this planning context and should not confuse its "plan making" function with the "planning approval" function when considering this application under section 16. Unless the so-called "present day community aspirations" were reflected in the provisions of the statutory plan, they were not factors which should be given undue

weight when considering this application;

- (i) there were only 11 public comments and of these only 7 objected. There had not been major public objection to the height of the proposed development possibly because the site was not at a prominent location and the development was compatible with the locational context of new buildings in the area;
- (j) it was also noted that in the minutes of the MPC held on 27.3.2009 relating to this site, it was recorded in paragraph 38 that “...*the Board noted that there was no significant change in the planning circumstances since the original approval and the Board should be mindful of the fact that an approval had been granted to the development and the Board had to act fairly and reasonably. Any reconsideration of an earlier approved scheme would not only create uncertainty, it might be subject to legal challenge*”. As the situation had remained the same and the planning circumstances had not changed, the same requirement to act fairly and reasonably should also apply ;

[Mr. B.W. Chan returned to join the meeting at this point.]

#### *Responses to PlanD's View*

##### Feasibility of Implementing Traffic Improvements

- (k) the road improvements required to be implemented as identified in the TIA were minor changes including the widening of roads and realignment of footpaths, relocation of street lights and changes to traffic lights. These were matters of detail which were usually covered by an approval condition and were not sufficient to be a reason for rejection;

##### Adverse Traffic Noise

- (l) given that the site was not big enough for the traffic noise compliance rates to be applied, adverse traffic noise impact should not be a reason for rejection. However, to achieve a better design, mitigation measures

had been introduced to maintain the same level of compliance as the previously approved scheme. A condition could be applied and the matter further addressed at the detailed design stage;

#### Excessive Podium Structure

- (m) major changes had been introduced to the podium design when compared with that in the approved application. A floor had been removed and height lowered, a set-back of 3 metres was provided along Chai Wan Road and the coverage across Shing On Street was reduced to 10 metres, and a stepped landscaped podium was adopted where possible. The total site coverage of the podium was now reduced to 73% compared with the original coverage of 100%. This was a reasonable size given the need to accommodate the PTT and for the podium to act as a noise barrier. There was much space around the podium to allow for significant planting to soften the visual impact and to improve the pedestrian environment significantly. This was not an adequate reason to reject the application;

#### Excessive Building Height

- (n) a maximum GFA was stipulated in the Notes of the “CDA(1)” zone at the rezoning request stage so as to provide an incentive for the owner to give up rights of industrial development, to provide a public open space of 4,000m<sup>2</sup>, to re-provision an improved PTT and to provide a large number of flats to meet public demand;
- (o) as stated in the ES, the maximum GFA was established “to ensure that the development will be of compatible scale”. The Board did not impose a height restriction on the site as it was not as important as control over the scale of the development;
- (p) the building height of the development should not be considered excessive as the applicant had tried to achieve an optimal design to address the concern on wall effect, given the Board’s request for a 3 m set-back, a variation in building height design and a reduction of the bulk

and site coverage of the podium;

- (q) to sum up, the “CDA(1)” zoning was imposed by the Board after full consideration of the alternative form of development that was permitted under the existing lease, and it decided that the rezoning to “O” and “CDA(1)” was in the public interest. The form of development envisaged on the site had been clearly confirmed by the Board in the previously approved application which gave the owner a high degree of expectation that the zoning could and would be implemented. The scheme proposed in this application was a much better scheme in terms of design. The owner could have proceeded to build an industrial building on their land in 2001 but accepted an alternative as a better way forward, with significant planning gains for the community. However, PlanD and the Board had reversed their stand and prevented the implementation of the statutory zoning. The statutory zoning represented planning law as applied to this site and the Board was invited to respect the law and to act in a fair and reasonable manner in considering this application.

13. Members had the following views and questions:

*Open Space*

- (a) Whether the applicant intended to develop the Government land zoned “O” abutting Fung Yi Street which was currently allocated to government departments for temporary uses as part of the scheme as it was included in the Master Layout Plan of the application?

*Fresh Application*

- (b) Making reference to paragraph 38 of the minutes of the MPC meeting held on 27.3.2009, what was PlanD’s response to the applicant’s suggestion that the Board should not take into account the latest planning circumstances in considering the current application so as to be fair and

reasonable to the applicant?

- (c) As the proposed amendments to the approved scheme involved major changes which fell outside the scope of Class A and Class B amendments, whether the applicant considered his application a fresh application, which would require the Board to have due regard to the latest planning circumstances?

#### *Building Height*

- (d) What was the general building height profile of the surrounding developments in the area and whether there was building height control for the area? Had Air Ventilation Assessment been undertaken for the proposed development?
- (e) A Member noted that a basement was proposed in the originally approved scheme. In view of the public concern on the excessive building height, had the applicant explored other possibilities to further reduce the building height of the development, e.g. by putting car parks into the basement, spreading some GFA above the club house which was closer to the garden and the football courts, relocating the mechanical and electrical facilities from the podium levels, redesigning the layout of the club house and employing other innovative measures to mitigate traffic noise?
- (f) Other than those constraints stated by the applicant in the presentation such as soil contamination which could be technically resolved, were there other constraints which prevented the applicant from further reducing the building height, or was it mainly a concern on the overall cost?

#### *Traffic Noise*

- (g) What was the vehicle speed control along Chai Wan Road?



- (h) Mr Benny Wong commented that the Noise Impact Assessment (NIA) showed that the traffic noise compliance rate for the proposed residential buildings had dropped from 57% under the rejected s.16 scheme to 51% under the revised schemes. This meant that 49% of the units would be affected by excessive traffic noise. Although the applicant claimed that the site needed not conform with the traffic noise compliance rate required under EPD's Practice Note (PN) due to the small size of the site, the applicant should consider all practicable measures, such as alternative layout/design, building set back and provision of cantilever noise barriers, to minimise the number of units affected by traffic noise and to achieve a higher compliance rate.

#### *Open Space*

14. In response to question (a), Mr. Ian Brownlee said that the applicant was responsible for the provision of open space within its lot boundary (i.e. 4,000m<sup>2</sup> of the site area zoned "O") and the area would then be handed over to Leisure and Cultural Services Department. For the "O" site at Fung Yip Street currently occupied by temporary uses, it was not part of the application site and the applicant was not obliged to provide the open space. However, given that it was immediately adjacent to the site, the applicant would offer to implement the two open spaces as an integrated scheme.

#### *Fresh Application*

15. In response to questions (b) and (c), Ms. Brenda Au clarified that the applicant's quotation from paragraph 38 of the minutes of the MPC meeting held on 27.3.2009 was totally out of context. What she said at that juncture was in respect of the Board's consideration of the first application for extension of the validity of the approved scheme in 2004. It had no relevance to the consideration of the current application which was a new planning application and should be considered afresh based on the prevailing circumstances. Under the current application, the proposed amendments to the approved scheme involved major changes in various aspects including the number and disposition of building blocks, building heights (for the Modified Scheme), and distribution in

non-domestic and domestic GFAs. These changes fell outside Class A and Class B amendments under s.16A of the Town Planning Ordinance (the Ordinance), the scope of which was set out in Town Planning Board Guidelines No. 36A for Class A and Class B Amendments to Approved Development Proposals. The subject application had therefore been submitted as a fresh application under s.16 of the Ordinance. When considering a fresh s.16 application, the Board should have due regard to the prevailing planning circumstances.

16. Mr. Ian Brownlee pointed out that under the current planning procedures, there was a limit on the number of times that the validity of the planning permission could be extended. The approved scheme would be valid up to 8.2.2011. It was stated in the advisory clause of the approval letter that no further extension would be granted. As such, the applicant had no choice but to submit a fresh application for the proposed development. While agreeing that the current proposed amendments to the originally approved scheme were not minor amendments under s.16A, the current application was actually a continuation and implementation of an approved scheme. It was stated in the application that the proposal was an amendment to an approved scheme by addressing the approval conditions and advisory clauses of the previously approved scheme.

17. Mr. Ian Brownlee said that the Board needed to take into account the legal context that there was no change in the planning intention and Notes of the OZP. It was unreasonable for PlanD to refer to the change in planning circumstances in paragraph 7.5 of Paper which should only be taken into account in the plan making process but not in the planning application approval process. He opined that the revised scheme with appropriate mitigation measures as explained in the presentation had already addressed the concern of the public in relation to the traffic, environmental and visual impacts. He also did not agree that the increase in traffic arising from the opening of Chai Wan Public Filling Barging Point was a change in planning circumstances as there was increase in traffic in every part of the territory. He considered that when considering the planning application, those public objections should not be given too much weight given the context of the development and the statutory planning requirement of the OZP. There was insufficient information in the Paper to demonstrate that the change in planning circumstances was so drastic as to warrant a rejection of the current application.

### *Building Height*

18. In response to question (d), Ms. Brenda Au advised that there was currently no statutory building height restriction shown on the relevant OZP for the area. However, this did not mean that the Board should not concern itself with the building height of a development scheme, particularly when the scheme fell within a “CDA” zone and required approval from the Board. In considering a development/redevelopment proposal under the planning permission system, the Board would need to take into account of the existing building height profile in the area. For the subject site zoned “CDA(1)”, the applicant would need to submit a Master Layout Plan with the support of relevant technical assessments including landscape and urban design proposals and visual impact assessments to ensure that the proposed development would be compatible with the surrounding developments. As shown on Plan R-3 of the Paper, the existing buildings were mainly medium-rise buildings with heights ranging from about 49-93mPD with only one at 134mPD. The proposed building height under the two revised schemes submitted by the applicant (Alternative Scheme – 191.85mPD and Modified Scheme – 193 to 205.65mPD) was more than double that of the nearby buildings. Hence, building height was definitely a major concern.

19. Mr. Ian Brownlee, however, pointed out that while the public was concerned with both the building height and the wall effect of the development, the applicant needed to strike a balance on the two issues in designing the revised schemes. The revised schemes had addressed the wall effect issue by creating a visual gap between buildings and by deleting one residential block. The height of the development was similar to that in the previously approved scheme. To further reduce the building height, the possibility of incorporating the car parks into the basement was examined but considered impractical due to soil contamination under the former bus depot. Expert advice was that it would be better to cover the contaminated soil at the existing location instead of removing it. He pointed out that the height of the proposed podium at 14m was considered reasonable giving the practical requirement to incorporate the PTT, the clubhouse and a small amount of retail facilities above ground. Besides, there was significant improvement to the bulk and extent of the podium by providing various setbacks along the edge. However, he agreed to further examine the basement option at the detailed design stage if the application was approved and the Board might consider including an advisory clause on

this matter.

20. Ms. Margaret Wong supplemented that the car park was required as a noise mitigation measure against traffic noise along Chai Wan Road. Removal of the car park podium would mean that a taller noise barrier would be required to fulfil the traffic noise compliance rate. Mr Christopher Foot also added that the existing trees of about 10-15m in height along Chai Wan Road would be retained and new trees would also be planted to screen the mass of the podium structure.

21. In response to question (f) regarding other constraints, Mr. Ian Brownlee said that the site was located to the south of the industrial area and adjacent to a LPG filling station. The disposition of the building blocks along the southern part of the site was to minimise noise and pollution impact from the industrial area and the potential risk of the LPG filling station to the future residents. Another constraint was the need to take into account the location and layout of the PTT. The applicant had already examined different orientations and options for the development layout and the current layout was the optimal one taking into account the above constraints. He further pointed out that there was no building height restriction on the site and the applicant had adopted the building height of 192mPD in the previously approved scheme accepted by the Board as a basis for improving the scheme.

#### *Traffic Noise*

22. In response to question (g), Mr. Ian Brownlee advised that as confirmed by their traffic consultant, the vehicle speed allowed along Chai Wan Road was 50km per hour. On the impact of traffic noise, he said that a balance needed to be struck between the need to mitigate traffic noise and the need to reduce visual impact. While the car park podium was already provided as a noise mitigation measure against traffic noise along Chai Wan Road, he agreed to investigate the possibility of incorporating additional mitigation measures such as cantilevers, closed windows with air-conditioning and other form of noise mitigation measures at the detailed design stage. He also accepted EPD's suggestion to include an approval condition in relation to the submission of revised NIA and implementation of mitigation measures.

23. Ms. Brenda Au considered that the traffic noise could be further mitigated through a better building disposition and revision to development layout as it was not absolutely necessary to align all the buildings along Chai Wan Road. The minimum separation distance required between the residential use and the LPG filling station was only 55m and hence there was scope for the building blocks to be moved towards the northern part of the site.

24. Dr. Henry Ngan asked the Board to look at the scheme from a broader perspective, rather than on the technical details. He said that in the past, the applicant had the right to develop a tall industrial building at the site but agreed to rezone the site to “CDA(1)” and “O” for the provision of a residential development, a public open space of 4,000m<sup>2</sup> and a covered PTT which were all provided in the public interest. The proposal was also supported by government departments. The applicant had strived to improve the approved scheme in the past seven years but the Government had now moved the goalpost. He urged the Board to consider the application from a legal and fairness perspective.

25. As the representatives of the applicant had no further comment to make and Members had no further question, the 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 Chairman thanked the representatives of the PlanD and the representatives of the applicant for attending the meeting. They all left the meeting at this point.

#### Deliberation Session

26. Some Members opined that the Board needed to be fair to all parties concerned, including the applicant and the public. In view of the departmental concerns and public views on the proposed development, the applicant should make more effort to improve the development scheme by reducing the building height and improving the mitigation against traffic noise. Those Members commented that the applicant had only proposed modest changes to the scheme and minor improvement measures without addressing those issues on building height, traffic noise and air ventilation. In this regard, the applicant should explore alternative means to improve the development proposal such as by changing the disposition of building blocks, providing basement car parks and introducing other noise

mitigation measures as raised by Members at the meeting. On this point, a Member pointed out that the MPC had recently approved planning applications to residential developments with innovative building design and measures to mitigate noise impact by varying the profile of the building. Hence, the argument that the building height could not be reduced due to the need to provide a podium to mitigate traffic noise could not be accepted.

27. A Member noted that the applicant had admitted that the current application was a fresh planning application. That Member considered that in accordance with established practice, the Board should consider the application based on the prevailing planning circumstances and criteria.

28. Two Members considered that due to the change in planning circumstances including the community aspirations, the Board should consider the application based on the latest situation and the applicant should revise the scheme taking into account the latest planning and environmental requirements.

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

29. A Member opined that although there was no building height control for the site, the site was zoned “CDA(1)” which was to facilitate appropriate planning control over the development mix, scale, design and layout of the development, taking account of various environmental, traffic, infrastructure and other constraints. The applicant would need to demonstrate that the proposed residential development had no unacceptable adverse impact on the surrounding area.

30. On environmental impact, Mr. Benny Wong stated that although the site needed not follow the traffic noise compliance rate required under EPD’s Practice Note due to its size, he could not accept the drop of traffic noise compliance rate for the proposed residential buildings from 57% under the rejected s.16 scheme to 51% under the revised schemes. This meant that around 49% of the units would be affected by excessive traffic noise. He considered that there was further scope for the applicant to mitigate the traffic noise impact, e.g. by further setback from Chai Wan Road and Sheung On Street, use of innovative window/façade design etc. In response to a Member’s

enquiry on the effectiveness of closed windows with air-conditioning as a form of noise mitigation measure, he stated that this was the least preferable as it might not be welcomed by residents who preferred natural ventilation.

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

31. The Secretary supplemented that the EPD's Practice Note (PN 1/97) only provided guidelines which spelt out the pragmatic compliance requirement which DEP would consider as acceptable when vetting residential proposals. It was stated under the said PN that for sites equal to or smaller than 2 ha, there was no requirement to meet a certain traffic noise compliance rate. However, this did not mean that the Board needed not take into account noise impact in considering the planning applications for residential developments smaller than 2 ha. She stated that in some recent planning applications, the EPD had requested a traffic noise compliance rate of 80% or more, taking into consideration individual site circumstances.

32. In conclusion, Members generally agreed that the proposed development was incompatible with the surrounding area in terms of building height and there was further scope for the applicant to reduce the building height and the scale of the podium structure. Members also considered that the applicant should explore other measures to mitigate the traffic noise impact on the future residents.

33. Members then went through the reasons for rejection as stated in Paragraph 8.1 of the Paper and agreed to refine the reasons to appropriately reflect the Board's deliberation.

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

- (a) the building heights of the proposed development were considered excessive in the local context and incompatible with the surrounding developments. The applicant had failed to demonstrate that the proposed building height would not bring about adverse visual impact on the area. There was scope to further reduce the building height to a more

acceptable level;

- (b) the podium structure of the proposed development was considered excessive in scale and undesirable to the pedestrian level environment of the area. There was scope to reduce the scale of the podium structure to reduce the adverse impact; and
- (c) the proposed development schemes were subject to adverse traffic noise impact and the applicant had failed to demonstrate that all practical measures including layout and design of the buildings had been applied to mitigate the impact.

[Ms. Maggie M.K. Chan, Mr. B.W. Chan, Professor Bernard V.W.F. Lim and Mr. Y.K. Cheng left the meeting at the point.]

[The Chairman left the meeting temporarily at this point.]

#### **Agenda Item 4**

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/NE-TK/285

Proposed Temporary Shop and Services (Fresh Provision Shop and Food Factory) for a Period of 3 Years in "Agriculture" zone, Lot 1030 (Part) in D.D. 29, Ting Kok, Tai Po  
(TPB Paper No. 8459)

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[The hearing was conducted in Cantonese.]

#### **Presentation and Question Session**

35. The Vice-chairman took over the meeting at this point and invited the applicant and his representatives and the representatives of the Government to the meeting as follows:

Mr. W.K. Hui - District Planning Officer/Shu Tin, Tai Po and North  
(DPO/STN), Planning Department (PlanD)



Mr. Chi Kim Chau - Applicant  
Mr. Chi Yiu Wang ) Applicant's representatives  
Ms. Helen Fang )

36. The Vice-chairman extended a welcome and explained the procedures of the review hearing. He then invited Mr. W.K. Hui to brief Members on the background to the application.

[The Chairman returned to join the meeting at this point.]

37. With the aid of some plans and photos, Mr. W.K. Hui presented the application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for a proposed temporary shop and services (fresh provision shop and food factory) use for a period of three years at the site zoned "Agriculture" ("AGR") on the approved Ting Kok Outline Zoning Plan (OZP). The site formed part of an area occupied by an existing agricultural related structure currently used for temporary storage. The site was accessible via an access track, shared with an adjoining barbecue site, leading to Ting Kok Road;
- (b) the Rural and New Town Planning Committee (RNTPC) rejected the application on 7.8.2009 for the reasons that the development was not in line with the planning intention of the "AGR" zone which was to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no justification given in the submission for a departure from such planning intention even on a temporary basis; and there was insufficient information in the submission to demonstrate that the development would not cause adverse traffic impacts and potential nuisances to the nearby residents;
- (c) the applicant had not submitted any further written representation in support of the review application;

- (d) departmental comments – the departmental comments were summarised in paragraph 4 of the Paper. Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD) had no objection to the application but commented that adequate parking, loading and unloading spaces should be provided within the site to prevent vehicles waiting and queuing back onto Ting Kok Road. Director of Agriculture, Fisheries and Conservation (DAFC) did not support the application from agricultural point of view as the site was considered suitable for various agricultural purposes. District Officer/Tai Po, Lands Department (DO/TP, LandsD) advised that the Indigenous Inhabitant Representatives and the Resident Representative of Ting Kok had been consulted. They attached a list of 52 signatures raising objection to the application for the pollution and nuisances that the proposed temporary use would generate to the nearby residents. As the site fell within “AGR” zone, they opined that it should not be used for house building and commercial use;
- (e) public comments - during the statutory publication period, two public comments from individual members of the public were received objecting to the application. The commenters were of the view that the proposed use was not in line with the planning intention of “AGR” zone and good quality agricultural land should be retained for agricultural uses; and
- (f) PlanD’s view – PlanD did not support the application based on the planning consideration and assessment in paragraph 6 and the reasons in paragraph 7.1 of the Paper. The proposed fresh provision shop and food factory were not in line with the planning intention of the “AGR” zone, which was intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no justification given in the submission for a departure from such planning intention even on a temporary basis. There was insufficient information in the submission to demonstrate that the

development would not cause adverse traffic impacts and potential nuisances to the nearby residents.

38. The Chairman then invited the applicant and his representative to elaborate on the application. Members noted that supplementary information with plans and photos in support of the review application was tabled by the applicant at the meeting.

39. With the aid of the plans and photos tabled at the meeting, Mr. Chi Yiu Wang made the following key points:

- (a) the applicant had been engaged in farming activities for more than 40 years. In recent years, he had been actively promoting organic farming and, in 2002, he had established an environmental friendly organic farm in Ting Kok. This provided an opportunity for the public to engage in organic farming and the farm became a place for family and educational activities;
- (b) the current application for fresh provision shop and food factory was submitted in response to the request of the part-time farmers of the organic farm to provide a place for them to carry out immediate processing or/and consumption of the farm products. There were also requests from visitors and tourists to buy organic products from the farm;
- (c) the site was only about 66m<sup>2</sup> in size and was currently used as a storage area for simple equipment. The proposed food factory was even smaller, taking up an area of only 3m by 4m;
- (d) the applicant did not agree with the rejection reason that the development was not in line with the planning intention of the “AGR” zone. The proposed development would help integrate agriculture with tourism development and would not be incompatible with the agriculture use in the area. By providing the necessary facilities to meet the needs of visitors and tourists, it would help promote organic farming, attract more tourists and stimulate the economy. It would also provide more

employment opportunities to farmers;

- (e) the proposed use would not have adverse traffic impact on the surrounding area as the anticipated car parking demand could be met by the existing car parking spaces within the farm. The farm had good accessibility to public transport as it was located near a bus stop. The existing vehicular traffic along Ting Kok Road was also insignificant;
- (f) the proposed use was small in scale and would not generate nuisance to the local residents. The applicant also had good relationship with the nearby villagers;
- (g) apart from the addition of some equipment, there would not be substantial modification to the existing structures and rehabilitation to agricultural use was possible if necessary;
- (h) it was incorrect to state in paragraph 3.6 of the Paper that there was no previous application at the same application site and no similar application in the vicinity of the site. According to the record of the Food and Environmental Hygiene Department (FEHD), a licence had been granted for a fresh provision shop located within 80m of the site which also fell within the “AGR” zone. As such, the current application should be given a fair treatment;
- (i) regarding the public comment in Annex E of the Paper, the objection was related to a hotel proposal and should not be applied to this application; and
- (j) the applicant was willing to remove the proposed use if the site was required to be rehabilitated to agriculture use in future.

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

40. Members had the following comments and questions:

- (a) What was the operation mode of the existing and proposed fresh provision shop and food factory and whether it would involve the processing of farm products from the farm only or whether the processing of other fresh food including meat or seafood would be involved? Would it be similar to the operation of a bazaar or market?
- (b) What were the actual procedures involved in the processing of food? In addition to cutting and washing of farm products, would cooking be undertaken, similar to a restaurant?
- (c) How come so many locals objected to the application (52 signatures) if the applicant had a good relationship with the local villagers as claimed?
- (d) Where was the exact location of the site with licence for fresh food shop granted by FEHD and how come licence had been granted?
- (e) Was the proposed use located within the organic farm? What were the uses surrounding the site and where was the exact location of the organic farm and barbecue area?
- (f) Whether the Kadoorie farm along Lam Kam Road fell within “AGR” zone?

41. In response to questions (a) and (b) above, Mr. Chi Yiu Wang explained that the application for the proposed fresh provision shop and food factory was made in response to the request of the part-time farmers frequenting the organic farm for a place for them to immediately consume or/and process their farm products. While organic farm products would be the main component for processing and consumption, the applicant would provide other ingredients/food upon request such as salad dressing. Meat might also be packaged together with the fresh vegetables into a soup pack. However, it would not be operated as a bazaar or market where large amounts of seafood or meat were normally available. He advised that the applicant had been closely liaising with FEHD on the legality of the proposed use as he did not want to contravene any law or regulations.

FEHD requested that a food factory licence be obtained even for the proposed cutting and washing of vegetables without any processing of meat involved. Mr. Chi Kim Chau supplemented that some customers would take away the farm products (e.g. vegetables and fruits) for consumption in the adjacent barbecue area. He confirmed that no cooking would be involved at the application site.

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

42. In response to questions (c) and (d), Mr. W.K. Hui advised that the local objections were not submitted as public comments but were reflected through the District Officer as local views. He also indicated that he had no information on the licence for food factory mentioned by the applicant or the reason for its approval. Based on the information tabled by the applicant, he advised that the site was located within a barbecue area to the east of the application site. He noted that the owner of the barbecue area also owned a food processing establishment in Tai Po and that the licence might be granted in relation to the one in Tai Po. Mr. Chi Yiu Wang said that the tabled information was extracted from the database of the FEHD and Members could consult FEHD on the reason for approval if necessary.

43. In response to question (e), Mr. Chi Yiu Wang confirmed that the proposed use was located within the organic farm. With the aid of a plan, Mr. W.K. Hui explained the various uses surrounding the site. The site was located adjacent to a barbecue site which was the subject of an approved planning application (No.A/NE-TK/281) submitted by the same applicant. The barbecue site included some plant nurseries and a car park. Regarding Kadoorie Farm, he did not have information on the zoning of the Kadoorie Farm.

44. As the applicant and his representatives had no further comment to make and Members had no further question, the 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 Chairman thanked the representatives of the PlanD, the applicant and his representatives for attending the meeting. They all left the meeting at this point.

Deliberation Session

45. A few Members were sympathetic to the applicant and considered that the applicant had genuine intention to provide the necessary facilities to cater for the need of the part-time farmers of the organic farm. Given the small scale of the proposed use and its merits in promoting organic farming, those Members opined that temporary approval should be granted. Should there be a concern on any abuse of the temporary planning approval, a shorter approval period of 2 years and an approval condition could be considered for monitoring the operation of the proposed use.

46. Other Members considered that the application for fresh provision shop and food factory should not be approved although they had sympathy for the applicant. Their concern was that there was no guarantee that upon approval, the site would not be used for a food factory involving other forms of food processing and the sales of other fresh food. Those Members considered that the applicant's representative had not provided a clear and firm reply on the mode of operation of the proposed use and the types of food involved in the processing. They considered that it would also be difficult for relevant government departments to enforce the compliance of approval conditions on the operation of the proposed use. The Secretary drew Members' attention that if approval was granted, it would be granted on the terms of the application and it was specifically stated in the applicant's submission that the food sold from the fresh provision shop and food factory would be taken away by the customers and there would be no cooking or eat-in service.

47. Some Members considered that according to the presentation by the applicant, the proposed use was in fact an ancillary use to hobby farm rather than a fresh provision shop and food factory. The application was submitted by the applicant solely due to FEHD's advice on a food factory licence. The Secretary advised that according to the Definition of Terms, 'hobby farm' belonged to 'Place of Recreation, Sports or Culture' use and required planning permission under the "AGR" zone of the subject OZP.

48. After some discussion, Members agreed that the application should be rejected as the proposed food factory should not be permitted within "AGR" zone. Nevertheless, Members agreed that DPO/STN should advise the applicant to consider seeking planning permission for 'hobby farm' use for the site which might be a more appropriate use.

49. 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 “AGR” zone, which was intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no justification given in the submission for a departure from such planning intention even on a temporary basis; and
- (b) there was insufficient information in the submission to demonstrate that the development would not cause adverse traffic impacts and potential nuisances to the nearby residents.

50. The Board also agreed to request DPO/STN to advise the applicant to consider seeking planning permission for ‘hobby farm’ use at the site.

[Mr. Fletch Chan left the meeting at this point.]

### **Agenda Item 5**

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/NE-TK/289

Proposed House (New Territories Exempted House - Small House) in "Agriculture" zone, Lot 699 S.B in D.D. 17, Ting Kok Village, Tai Po

(TPB Paper No. 8460)

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[The hearing was conducted in Cantonese.]

### **Presentation and Question Session**

51. The following representative of the Government, the applicant and his representative were invited to the meeting at this point:



- Mr. W.K. Hui - District Planning Officer/Sha Tin, Tai Po and North (DPO/STN), Planning Department (PlanD)
- Mr. Leung Kwok Kin - Applicant
- Mr. Leung Bak Yin - Applicant's representative

52. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited Mr. W.K. Hui to brief Members on the background to the application.

53. With the aid of some plans and photos, Mr. W.K. Hui presented the application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission to build a house (New Territories Exempted House (NTEH) – Small House) on the application site which fell within an area zoned “Agriculture” (“AGR”) on the approved Ting Kok Outline Zoning Plan (OZP). The site fell outside the “Village Type Development” (“V”) zone and the village ‘environs’ (‘VE’) of any recognised villages. The site was also located to the southwest of a site which was the subject of a s.12A planning application (No.Y/NE-TK/6) approved by the Rural and New Town Planning Committee (RNTPC) on 27.2.2009 for rezoning from “AGR” to “Other Specified Uses” annotated “Spa Resort Hotel” (“OU(SRH)”);
- (b) the RNTPC rejected the application on 21.8.2009 for the reasons that the proposed development did not comply with the interim criteria for assessing planning application for New Territories Exempted House/ Small House development (Interim Criteria) as the site was entirely outside the “V” zone and the ‘VE’ of any recognised villages; and the approval of the application would set an undesirable precedent for other similar applications in the area;
- (c) the applicant had submitted further written representation with justification in support of the review application as summarised in

paragraph 3 of the Paper and summed up below:

- (i) comments from relevant Government departments were not correct and were biased towards the approved planning application No.Y/NE-TK/6;
  - (ii) there were three existing village houses No. 225, 226 and 227 in close proximity of the site;
  - (iii) the rejection of the application was in contravention of Article 40 the Basic Law; and
  - (iv) the Interim Criteria should be of no relevance and effect to the application which was submitted before its promulgation;
- (d) departmental comments – the departmental comments were summarised in paragraph 5 of the Paper. District Lands Officer/Tai Po (DLO/TP) did not support the application as the site was not within the ‘VE’ of any recognised village. Director of Agriculture, Fisheries and Conservation (DAFC) objected to the application from agricultural point of view as the site had high potential for agricultural rehabilitation. Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, Transport Department) had reservation on the application as NTEH development should be confined within the “V” zone with existing and planned traffic and transport facilities. Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) objected to the application from landscape point of view. The site served as a buffer between the existing villages and the proposed spa resort development under application No. Y/NE-TK/6, to relieve the adverse impact arising from urban sprawl and maintain the rural landscape character. Approval of the application would set an undesirable precedent to other similar Small House applications in the area encouraging village developments in the remnant “AGR” zone and resulting in a more urbanised “fringe” landscape character;
- (e) public comments - during the statutory publication period, two public comments were received from the Indigenous Inhabitant Representatives of Shan Liu Village supporting the application while the Designing Hong

Kong Limited objected to the proposal raising concern on the lack of a plan for a sustainable village layout for the area. A letter was also received from a Tai Po District Council Member supporting the application and a letter from The Office of a Legislative Councillor requesting the Board to reconsider the application; and

- (f) PlanD's view – PlanD did not support the application based on the planning considerations and assessment in paragraph 7 and the reasons in paragraph 8.1 of the Paper:
- (i) although there was a general shortage of land in meeting the future Small House demand in Ting Kok Village, the proposed development did not comply with the Interim Criteria in that both the site and the footprint of the proposed Small House were entirely outside the “V” zone and the ‘VE’ of any recognised villages;
  - (ii) the subject site fell outside the site boundary of planning application No. Y/NE-TK/6 and was not directly affected by the proposed development under application No. Y/NE-TK/6. Application No. Y/NE-TK/6 had no direct relevance to the subject application, and each application would be considered by the Board based on its own merit;
  - (iii) DLO/TP advised that the Small House applications for the three village houses No. 225, 226 and 227 were approved administratively by Government in early 1970s and 1980s. These houses were in existence before the Ting Kok OZP came into effect on 7.9.1990 and were regarded as “existing use” that would be allowed to continue on site until there was a change of use or the building was redeveloped. As such, the three village houses could not be taken as similar or precedent cases for consideration of the s.16 application;
  - (iv) DLO/TP also advised that the Small House application submitted by the applicant on the concerned lot was first received by the DLO/TP on 24.4.2007 and was currently under processing. Contrary to the applicant's claim, there was no record of any Small House application submitted by the applicant to the LandsD nor to

the Board before that date; and

- (v) the 'Interim Criteria' were agreed by the Board for consideration of NTEH/Small House applications. The Heung Yee Kuk was consulted on the preparation and revision of the 'Interim Criteria'. The first version was promulgated on 24.11.2000 and subsequently revised with the latest version being promulgated on 7.9.2007. As the subject s.16 application was submitted on 26.6.2009 and not before the promulgation of the Interim Guidelines as claimed, the current version of the 'Interim Criteria' was relevant to the consideration of the application.

54. The Chairman then invited the representative of the applicant to elaborate on the application.

55. Mr. Leung Bak Yin made the following key points:

- (a) his son was the applicant and the site was inherited from his ancestors. This was the only site they possessed for building a Small House. The Small Houses No.225 and 266 belonged to his brothers;
- (b) the site was suitable for Small House development, given that there was currently no land available for Small House development within the "V" zone;
- (c) while the Board rejected the application on the ground of setting an undesirable precedent, it was unreasonable for the Board to approve Application No. Y/NE-TK/6 for spa resort which would also set a precedent;
- (d) the current application for Small House development would not affect the buffer between the approved spa resort and the village as there were already two existing Small Houses nearby;
- (e) the Board was biased towards large developers in approving the spa

resort while rejecting the current application. He had previously submitted his comment to the Board in relation to Application No.Y/NE-TK/3 for spa resort on 9.9.2008 but was later informed by the Board that the consideration of that application was deferred and his comment would not be submitted to the Board at that stage but would be submitted when the application was further considered by the Board. However, application No.Y/NE-TK/6 for spa resort was subsequently approved without considering his submission. It seemed that the Board intended to reject the Small House application so that land could be made available for development by large developers. The villagers of Ting Kok village would object to the Chief Executive against the proposed spa resort if no land was made available for them to build Small Houses;

- (f) DAFC commented that the site had high potential for agricultural rehabilitation. However, it was unreasonable that the same comment was not mentioned in the consideration of Application No.Y/NE-TK/6 for spa resort;
- (g) TD commented that the proposed Small House would generate adverse traffic impact on the surrounding area. However, it was difficult to understand why the impact of a Small House would be more significant than a large scale spa resort development; and
- (h) Mr. Cheung Hok Ming, the Vice-chairman of the Heung Yee Kuk and Legislative Council Member, also agreed that the above departmental comments were unreasonable.

56. A Member asked DPO/STN to explain the background on the applicant's claim that his comment in relation to the application on spa resort had not been considered by the Board. Mr. W.K. Hui said that both Application No. Y/NE-TK/3 and Y/NE-TK/6 were submitted for the same site and for the same use as spa resort. The former application was however of a larger scale and the consideration of that application was deferred at the request of the applicant of that application. At that time, Mr. Leung, the

applicant of the current application, submitted a comment to Application No. Y/NE-TK/3 and was advised by the Board that the application was deferred. Subsequently, Application No. Y/NE-TK/3 was withdrawn upon approval of Application No. Y/NE-TK/6.

57. The same Member asked the applicant why he considered the Board was unfair to him in considering the application, given that the two adjacent Small Houses actually existed before the OZP came into effect. Mr. Leung Bak Yin said that the Board should not link up the current application with Application No. Y/NE-TK/6. He considered that the proposed Small House would not affect the buffer between the existing villages and the proposed spa resort under Application No. Y/NE-TK/6 as there were already two existing Small Houses nearby. Besides, he did not understand why relevant departments raised concern on the traffic, agricultural and landscape impact of the proposed Small House under the current application. With the aid of a photo, he pointed out that the impact of the proposed spa resort under Application No. Y/NE-TK/6 was even more significant by affecting the existing trees and woodland.

58. As the applicant and his representative had no further comment to make and Members had no further question, the 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 Chairman thanked the representative of the PlanD, the applicant and his representative for attending the meeting. They all left the meeting at this point.

#### Deliberation Session

59. Members generally considered that the application should be rejected as the site was entirely outside the "V" zone and the 'VE' of any recognised village and did not comply with the Interim Criteria.

60. One Member considered that the applicant did not understand the difference in circumstances between the proposed Small House under application and the two existing Small Houses in the vicinity. The two Small Houses were approved by LandsD in the early 1970s and 1980s and were in existence before the subject OZP came into effect on

7.9.1990. They were regarded as “existing use” that would be allowed to continue on site until there was a change of use or the building was redeveloped. As such, they could not be taken as precedent cases for the consideration of the current application. This Member suggested DPO/STN to explain this to the applicant.

61. In response to a Member’s enquiry, the Secretary explained that the applicant had previously submitted a comment on Application No. Y/NE-TK/3 for spa resort (the same site as Application No.Y/NE-TK/6 but with a higher development intensity). Application No. Y/NE-TK/3 was then deferred and as a commenter, the applicant was advised by the Board that the application was deferred and his comment would only be submitted to the Board when the application was further considered by the Board. However, the application was subsequently withdrawn after the approval of Application No.Y/NE-TK/6 against which the applicant had not submitted any comment. The applicant’s comment on the Application No. Y/NE-TK/3 therefore had not been submitted to the Board. The Secretary also pointed out that the rejection of the application by RNTPC at the s.16 stage was mainly for the reasons that the proposed development did not comply with the Interim Criteria as the site was entirely outside the “V” zone and the ‘VE’ of any recognised village and that it would set an undesirable precedent. The reason for rejection was not on agricultural or traffic grounds, nor related to Application No.Y/NE-TK/6.

62. A Member opined that the consideration of the subject application should not be related to the spa resort approved under Application No.Y/NE-TK/6 as the criteria for assessing the two types of applications were entirely different. The Board would be concerned with the traffic, environmental, visual impact etc. of the proposed spa resort development whereas for the subject application for Small House development, the Board would be more concerned with whether the site fell within ‘VE’ and complied with the Interim Criteria.

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

- (a) the proposed development did not comply with the interim criteria for assessing planning application for New Territories Exempted House/ Small House development as the site was entirely outside the “V” zone and the ‘VE’ of any recognised villages; and
- (b) the approval of the application would set an undesirable precedent for other similar applications in the area.

64. The Board also agreed to request DPO/STN to explain to the applicant the different circumstances between the proposed Small House at the site and the two existing Small Houses nearby as well as the different planning considerations in granting approval for the spa resort development under Application No.Y/NE-TK/6.

[Mr. Stanley Y.F. Wong, Professor Paul K.S. Lam, Mr. Rock C.N. Chen and Mr. Timothy K.W. Ma left the meeting at this point.]

#### **Agenda Item 6**

Review of Application No. A/NE-TK/290

Proposed House (New Territories Exempted House (NTEH) - Small House) in "Agriculture" zone, Government Land in D.D. 15, Shan Liu Village, Tai Po

#### **Agenda Item 7**

Review of Application No. A/NE-TK/291

Proposed House (New Territories Exempted House (NTEH) - Small House) in "Agriculture" zone, Government Land in D.D. 15, Shan Liu Village, Tai Po

(TPB Paper No. 8461)

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[Open Meeting (Presentation and Question Session only)]

[The hearing was conducted in Cantonese.]

#### **Presentation and Question Session**

65. Members noted that Professor David Dudgeon, being a member of the Mai Po Management and Development Committee, and Dr. James C.W. Lau and Professor Paul



K.S. Lam, being ex-members of World Wide Fund Hong Kong (WWF), had declared interests as the WWF had submitted comments on the applications. Members noted that Professor Dudgeon and Professor Lam had tendered apologies for not being able to attend the meeting and they agreed that Dr. Lau could be allowed to stay in the meeting as his interest was indirect and not substantial.

66. The following representative of the Government and the representatives of the applicants were invited to the meeting at this point:

Mr. W.K. Hui - District Planning Officer/Shan Tin, Tai Po and North  
(DPO/STN), Planning Department (PlanD)

Mr. Leung Pak Keung )

Mr. Leung Fai Lung ) Representatives of the applicants

Mr. Leung Yuk Ping )

Mr. Cheung Chi Sun )

67. The Chairman asked that the representatives of the applicants and they agreed that the two applications could be considered together.

68. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited Mr. W.K. Hui to brief Members on the background to the applications.

69. With the aid of some plans and photos, Mr. W.K. Hui presented the applications and covered the following main points as detailed in the Paper:

- (a) the applicants sought planning permission to build a house (New Territories Exempted House (NTEH) – Small House) on each of the application sites which fell within an area zoned “Agriculture” (“AGR”) on the approved Ting Kok Outline Zoning Plan (OZP). The sites fell within the ‘Village Environ’ (‘VE’) of Shan Liu Village but outside the “Village Type Development” (“V”) zone;
- (b) the Rural and New Town Planning Committee (RNTPC) rejected the

applications on 4.9.2009 for the reasons that the proposed developments did not comply with the Interim Criteria for assessing planning application for New Territories Exempted House/Small House development (Interim Criteria) as the proposed developments could not be connected to the planned sewerage system in the area; there was insufficient information in the submission to demonstrate that the proposed developments which were located within the Water Gathering Ground (WGG) would not cause adverse impact on the water quality in the area; and the approval of the applications would set an undesirable precedent for other similar applications in the area;

- (c) the applicants had submitted further written justifications in support of the review applications as summarised in paragraph 3 of the Paper. In particular, the applicants claimed that the sewerage system of the proposed developments would be connected to the planned public sewerage system. A drainage engineer would be engaged by the applicants to connect the drains of the proposed development to a connection point at one end of the planned public sewerage system and arrangements would be made to obtain the letters of consent of the owners of the adjoining private lots for laying the underground connecting pipes before the formal commencement of the Shan Liu Village public sewerage system. The applicants also noted that the two successful appeal cases and the planning application No. A/NE-LT/346 had similar problem as the subject application sites involving the laying of drains on private lots, but were finally granted approval. The Board should consider the subject two applications in similar way as those approved cases;
- (d) departmental comments – the departmental comments were summarised in paragraph 5 of the Paper. District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) did not support the applications as the construction of the proposed Small Houses would adversely affect an access road and the proposed septic tanks and soakaway pits system did not meet the 30m minimum distance requirement from nearby stream.

Director of Agriculture, Fisheries and Conservation (DAFC) did not support the applications from agricultural and nature conservation points of view as the sites had high potential for agricultural rehabilitation. Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD) had reservation on the application as NTEH development should be confined within the “V” zone with existing and planned traffic and transport facilities. Director of Environmental Protection (DEP) did not support the applications in view of the potential water quality impact on the WGG and the uncertainty on whether the proposed Small Houses could be connected to the planned sewerage system. Chief Engineer/Development(2), Water Supplies Department (CE/Dev(2), WSD) objected to the applications as the sites were less than 30m from the existing stream course and within the WGG, the proposed Small Houses were unable to be connected to any existing or planned sewerage system and would increase pollution risks to the water quality within the WGG. Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) objected to the applications which would result in incohesive and piecemeal development and an adverse impact on existing rural landscape pattern;

- (e) public comments - during the statutory publication period, one public comment for each of the applications was received from Designing Hong Kong Limited who objected to the applications as the sites were zoned for agricultural use; and
- (f) PlanD’s view – PlanD did not support the applications based on the planning considerations and assessments in paragraph 7 and the reasons in paragraph 8.1 of the Paper. For the two appeal cases and Application No. A/NE-LT/346 quoted by the applicants, the circumstances were not entirely the same as the appellants/applicant in those cases had submitted new evidence (Deed of Grant of Easement) to demonstrate the technical and legal feasibility of making connection to the planned sewerage system via a private lot (over a distance of about 11m). For the subject applications, the sites and the planned sewerage system were separated by

a number of private lots for a distance of over 100m. There was no technical proposal or legal document to demonstrate the technical and legal feasibility of making connections to the planned sewerage system via those concerned private lots. The proposed developments did not comply with the Interim Criteria as the proposed developments could not be connected to the planned sewerage system in the area. The applicants failed to demonstrate that the proposed developments located within the WGG would not cause adverse impact on the water quality in the area. The approval of the applications would set an undesirable precedent for other similar applications in the area. The cumulative impact of Small House developments would result in a general degradation of the rural environment and landscape quality of the area.

70. The Chairman then invited the representatives of the applicants to elaborate on the applications.

71. Mr. Leung Yuk Ping made the following points:

- (a) he was the Chairman of the Shan Liu Village Works Committee. He was very disappointed that the Government did not give proper responses to the written representation submitted by the applicants in support of the review applications in Annex D of the Paper. The Paper only reiterated the Government responses and that application sites were located within the WGG and would affect the water quality in the area;
- (b) though the applicants and the villagers of Shan Liu Village fully understood that there was a need to preserve water quality in the area, the Government should not deprive the right of the villagers to build houses within their own village;
- (c) Shan Liu Village had been abandoned for some time and it was in view of the Government's planned sewerage system that the villagers were now willing to return to the village to build their houses. However, their Small House applications were objected to by various

Government departments, including TD, EPD, WSD and PlanD;

- (d) he did not agree with Drainage Services Department (DSD)'s comment, as stated in paragraph 5.3.3(b) of the Paper, that the distance from the sites to the planned trunk sewers was more than 100m and that it was difficult or even not feasible for the proposed Small Houses to be connected to the public sewerage system; and
- (e) while he noted that the applicant under the two appeal cases and approved application (No.A/NE-LT/346) had submitted evidence to demonstrate the technical and legal feasibility of making connection to the planned sewerage system via a private lot, he opined that DSD had not taken into consideration the actual need of the villagers when designing and building the trunk sewers for Shan Liu Village. It was a waste of public money to provide a planned sewerage system that could only serve less than 10 houses and could not even connect to land within the "V" zone.

72. Mr. Leung Pak Keung made the following points:

- (a) he was the village representative of Shan Liu Village. Shan Liu Village had been abandoned in the past due to construction of Plover Cove Reservoir which affected the main water source for the village. The villagers were forced to leave the village to seek jobs overseas. Now that the villagers had returned to Hong Kong after the reunification with Mainland China, the Government should be responsible for the provision of land for them to build Small Houses under the established policy;
- (b) in planning the sewerage system from Shuen Wan to Tai Mei Tuk, DSD had missed out the connection to Shan Liu Village, despite the strong request from the villagers. It was therefore totally unreasonable for Government departments now to object to the Small House applications due to the lack of connections to the sewerage

system; and

- (c) it was unfair for the Board to approve the spa resort development in the vicinity but reject the subject Small House applications.

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

#### Deliberation Session

74. Members did not support the applications in view of the fact that the proposed developments could not be connected to the planned sewerage system in the area and the proposed developments which were located within the WGG would cause adverse impact on the water quality in the area.

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

- (a) the proposed developments did not comply with the Interim Criteria for assessing planning application for New Territories Exempted House/Small House development as the proposed developments could not be connected to the planned sewerage system in the area. The applicants failed to demonstrate that the proposed developments located within the Water Gathering Ground would not cause adverse impact on the water quality in the area;
- (b) the applicants failed to demonstrate that the proposed development would not have adverse landscape impacts, and the natural stream course and the riparian vegetation in the vicinity of the site would not be affected by the proposed development; and

- (c) the approval of the applications would set an undesirable precedent for other similar applications in the area. The cumulative impacts of Small House developments would result in a general degradation of the rural environment and landscape quality of the area.

[Mr. Edmund K.H. Leung and Mr. Andrew Tsang left the meeting at this point.]

### **Agenda Item 8**

[Closed Meeting]

76. This item was discussed at closed meeting.

### **Agenda Item 9**

[Open Meeting]

Confirmation of Proposed Amendments to the Draft South West Kowloon Outline Zoning Plan No. S/K20/23

(TPB Paper No. 8464)

[The meeting was conducted in Cantonese.]

77. Members noted that the following Members had declared interests on this item:

- |                 |  |
|-----------------|--|
| Miss Annie Tam  | - Being Director of Lands and one of the representation sites (West Kowloon Terminus (WKT) of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL)) was a potential land sale site. |
| Mr. Fletch Chan | - Being Principal Assistant Secretary (Transport), Transport and Housing Bureau (THB) and the Secretary for Transport and Housing (STH) was a Non-executive Director of the Mass Transit                         |

Railway Corporation Limited (MTRCL) and the XRL was an on-going project.

- Mr. Felix W. Fong - Being a Member of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) who had submitted comments during the consideration of the proposed amendments to the OZP by the MPC.
- Hon. Starry W.K. Lee - Being a Member of the DAB who had submitted comments during the consideration of proposed amendments to the OZP by the MPC and a Member of the Legislative Council handling public complaints related to the representation site.

78. Members noted that Mr. Felix W. Fong had tendered apologies for not being able to attend the meeting whereas Mr. Fletch Chan and Hon. Starry W.K. Lee had already left the meeting. Members agreed that as the item was procedural, Miss Annie Tam could stay at the meeting.

79. The Secretary introduced the Paper. On 29.5.2009, the draft South West Kowloon OZP No. S/K20/23 was exhibited for public inspection under section 5 of the Ordinance. During the two-month exhibition of the draft OZP, 10 representations were received. On 7.8.2009, the representations were published for public comments. Upon expiration of the three-week publication period, one public comment was received. On 16.10.2009, after giving consideration to the representations and comment under section 6B(1) of the Ordinance, the Board decided to partially meet Representation No. R1. On 23.10.2009, the proposed amendments were published for three weeks for further representations. A total of four further representations were received. On 27.11.2009, the Board decided that the four further representations were invalid under section 6D(3)(b) of the Ordinance as they were not made in relation to the proposed amendments and could be treated as not having been made.

80. After deliberation, the Board noted that no valid further representation to the



proposed amendments to the Plan was received and agreed that the Plan should be amended by the proposed amendments under section 6G of the Ordinance. The proposed amendments made by the Board as shown at Annex I should form part of the draft South West Kowloon OZP No. S/K20/23. In accordance with section 6H of the Ordinance, the OZP should thereafter be read as including the amendments. The amendments should be made available for public inspection until the Chief Executive in Council had made a decision in respect of the Plan under section 9 of the Ordinance. The Building Authority and relevant Government departments would be informed of the decision of the Board and would be provided with a copy/copies of the amendments.

### **Agenda Item 10**

[Open Meeting]

Submission of the Draft South West Kowloon Outline Zoning Plan No. S/K20/23A to the Chief Executive in Council for Approval

(TPB Paper No. 8465)

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[The meeting was conducted in Cantonese.]

81. Members noted that the following Members had declared interests on this item:

- |                 |   |
|-----------------|---|
| Miss Annie Tam  | - Being Director of Lands and one of the representation sites (West Kowloon Terminus (WKT) of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL)) was a potential land sale site.  |
| Mr. Fletch Chan | - Being Principal Assistant Secretary (Transport), Transport and Housing Bureau (THB) and the Secretary for Transport and Housing (STH) was a Non-executive Director of the Mass Transit Railway Corporation Limited (MTRCL) and the XRL was an on-going project. |

- Mr. Felix W. Fong - Being a Member of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) who had submitted comments during the consideration of the proposed amendments to the OZP by the MPC.
- Hon. Starry W.K. Lee - Being a Member of DAB who had submitted comments during the consideration of proposed amendments to the OZP by the MPC and a Member of the Legislative Council handling public complaints related to the representation site.

82. Members noted that Mr. Felix W. Fong had tendered apologies for not being able to attend the meeting whereas Mr. Fletch Chan and Hon. Starry W.K. Lee had already left the meeting. Members agreed that as the item was procedural, Miss Annie Tam could stay at the meeting.

83. The Secretary introduced the Paper. On 29.5.2009, the draft South West Kowloon OZP No. S/K20/23 was exhibited for public inspection under section 5 of the Ordinance. During the two-month exhibition of the draft OZP, 10 representations were received. On 7.8.2009, the representations were published for public comments. Upon expiration of the three-week publication period, one public comment was received. On 16.10.2009, after giving consideration to the representations and comment under section 6B(1) of the Ordinance, the Board decided to partially meet Representation No. R1. On 23.10.2009, the proposed amendments were published for three weeks for further representations. A total of four further representations were received. On 27.11.2009, the Board decided that the four further representations were invalid under section 6D(3)(b) of the Ordinance as they were not made in relation to the proposed amendments and could be treated as not having been made. Under an earlier agenda item at this meeting, the Board amended the draft OZP by the proposed amendments under section 6G of the Ordinance.

84. After deliberation, the Board agreed:

- (a) that the South West Kowloon OZP No. S/K20/23A together with its Notes at Annex A and Annex B of the Paper were suitable for submission under section 8 of the Ordinance to the Chief Executive in Council (CE in C) for approval;
- (b) to endorse the updated Explanatory Statement (ES) for the draft South West Kowloon OZP No. S/K20/23A at Annex C as an expression of the planning intentions and objectives of the Board for the various land-use zones on the draft South West Kowloon OZP and issued under the name of the Board; and
- (c) that the updated ES was suitable for submission to the CE in C together with the draft South West Kowloon OZP.

**Agenda Item 11**

[Open Meeting]

Submission of the Draft Urban Renewal Authority Prince Edward Road West/Yuen Ngai Street Development Scheme Plan No. S/K3/URA2/1A to the Chief Executive in Council for Approval under Section 8 of the Town Planning Ordinance  
(TPB Paper No. 8462)

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[The meeting was conducted in Cantonese.]

85. Members noted that the following Members had declared interests on this item:

Mrs. Ava Ng	)	
(as Director of Planning)	)	
Miss Annie Tam	)	Being non-executive directors of Urban
(as Director of Lands)	)	Renewal Authority (URA)
Mr. Walter K.L. Chan	)	
Mr. Andrew Tsang	)	
(as Assistant Director of Home	)	
Affairs who was an alternate)	)	

member for 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  |
| Ms. Maggie M.K. Chan         | ) Being members of Home Purchase   |
| Mr. Raymond Y.M. Chan        | ) Allowance (HPA) Appeals Committee  |
| Professor Edwin H.W. Chan    | )  |
| Hon. Starry W.K. Lee         | - Being a Member of the Legislative Council (LegCo) handling public complaints related to the development                            |

86. Members noted that the interests of Mr. B.W. Chan, Dr. James C.W. Lau, Ms. Maggie M.K. Chan, Mr. Raymond Y.M. Chan, Professor Edwin H.W. Chan and Hon. Starry W.K. Lee were indirect and insubstantial. Members also noted that Mr. Maurice W.M. Lee, Mr. Raymond Y.M. Chan, Professor Edwin H.W. Chan had tendered apologies for not being able to attend the meeting while Mr. Walter K.L Chan, Mr. Andrew Tsang, Mr. B.W. Chan, Professor Bernard V.W.F. Lim, Ms. Maggie M.K. Chan, Hon. Starry W.K. Lee had already left the meeting. Members agreed that as the item was procedural, Mrs. Ava Ng, Miss Annie Tam and Dr. James C.W. Lau could stay at the meeting.

87. The Secretary introduced the Paper. On 8.5.2009, the draft URA Prince Edward Road West/Yuen Ngai Street Development Scheme Plan (DSP) No. S/K3/URA2/1 was exhibited for public inspection under section 5 of the Ordinance. During the two-month exhibition period, a total of 7 valid representations were received. On 17.7.2009, the representations were published for three weeks for public comments and

seven valid comments were received. After giving consideration to the representations and comments under section 6B(1) of the Ordinance on 30.10.2009, the Board decided not to uphold the representations but agreed to amend the Explanatory Statement (ES) of the DSP.

88. After deliberation, the Board agreed:

- (a) that the draft URA Prince Edward Road West/Yuen Ngai Street DSP No. S/K3/URA2/1A and its Notes at Annexes I and II of the Paper respectively were suitable for submission under section 8 of the Ordinance to the Chief Executive in Council (CE in C) for approval;
- (b) to endorse the updated ES for the draft URA Prince Edward Road West/Yuen Ngai Street DSP No. S/K3/URA2/1A at Annex III of the Paper as an expression of the planning intention and objectives of the Board for the land-use zoning on the draft DSP and issued under the name of the Board; and
- (c) that the updated ES was suitable for submission to the CE in C together with the draft DSP.

**Agenda Item 12**

[Open Meeting]

Submission of the Draft Urban Renewal Authority Shanghai Street/Argyle Street Development Scheme Plan No. S/K3/URA3/1A to the Chief Executive in Council for Approval under Section 8 of the Town Planning Ordinance  
(TPB Paper No. 8466)

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[The meeting was conducted in Cantonese.]

89. Members noted that the following Members had declared interest on this item:

Mrs. Ava Ng )  
(as Director of Planning) )

- Miss Annie Tam ) Being non-executive directors of Urban  
(as Director of Lands) ) Renewal Authority (URA)
- Mr. Walter K.L. Chan )  
Mr. Andrew Tsang )  
(as Assistant Director of Home )  
Affairs who was an alternate )  
member for 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
- Ms. Maggie M.K. Chan ) Being members of Home Purchase  
Mr. Raymond Y.M. Chan ) Allowance (HPA) Appeals Committee  
Professor Edwin H.W. Chan )
- Hon. Starry W.K. Lee - Being a Member of the Legislative  
Council (LegCo) handling public  
complaints related to the development

90. Members noted that the interests of Mr. B.W. Chan, Dr. James C.W. Lau, Ms. Maggie M.K. Chan, Mr. Raymond Y.M. Chan, Professor Edwin H.W. Chan and Hon. Starry W.K. Lee were indirect and insubstantial. Members also noted that Mr. Maurice W.M. Lee, Mr. Raymond Y.M. Chan, Professor Edwin H.W. Chan had tendered apologies for not being able to attend the meeting while Mr. Walter K.L. Chan, Mr. Andrew Tsang, Mr. B.W. Chan, Professor Bernard V.W.F. Lim, Ms. Maggie M.K. Chan, Hon. Starry W.K. Lee had already left the meeting. Members agreed that as the item was procedural, Mrs. Ava Ng, Miss Annie Tam and Dr. James C.W. Lau could stay at the meeting.

91. The Secretary introduced the Paper. On 8.5.2009, the draft URA Shanghai Street/Argyle Street Development Scheme Plan (DSP) No. S/K3/URA3/1 was exhibited for public inspection under section 5 of the Ordinance. During the two-month exhibition period, a total of 23 valid representations were received. On 17.7.2009, the representations were published for three weeks for public comments and four valid comments were received. After giving consideration to the representations and comments under section 6B(1) of the Ordinance on 30.10.2009, the Board decided not to uphold the representations.

92. After deliberation, the Board agreed:

- (a) that the draft URA Shanghai Street/Argyle Street DSP No. S/K3/URA3/1A and its Notes at Annexes I and II of the Paper respectively were suitable for submission under section 8 of the Ordinance to the Chief Executive in Council (CE in C) for approval;
- (b) to endorse the updated Explanatory Statement (ES) for the draft URA Shanghai Street/Argyle Street DSP No. S/K3/URA3/1A at Annex III of the Paper as an expression of the planning intention and objectives of the Board for the land-use zoning on the draft DSP and issued under the name of the Board; and
- (c) that the updated ES was suitable for submission to the CE in C together with the draft DSP.

### **Agenda Item 13**

[Open Meeting]

Submission of the Draft Ping Che and Ta Kwu Ling Outline Zoning Plan No. S/NE-TKL/13A to the Chief Executive in Council for Approval under Section 8 of the Town Planning Ordinance

(TPB Paper No. 8467)

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[The meeting was conducted in Cantonese.]

93. The Secretary introduced the Paper. On 15.5.2009, the draft Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/13 was exhibited for public inspection under section 5 of the Ordinance. During the two-month exhibition period, a total of five representations were received. On 24.7.2009, the representations were published for three weeks for public comments and a total of 36 comments were received. After giving consideration to the representations and comments under section 6B(1) of the Ordinance on 30.10.2009, the Board decided not to uphold the representations.

94. After deliberation, the Board agreed:

- (a) that the draft Ping Che and Ta Kwu Ling OZP No. S/NE-TKL/13A and its Notes at Annexes I and II of the Paper respectively were suitable for submission under section 8 of the Ordinance to the Chief Executive in Council (CE in C) for approval;
- (b) to endorse the updated Explanatory Statement (ES) for the draft Ping Che and Ta Kwu Ling OZP No. S/NE-TKL/13A at Annex III of the Paper as an expression of the planning intention and objectives of the Board for the various land-use zonings on the draft OZP and issued under the name of the Board; and
- (c) that the updated ES was suitable for submission to the CE in C together with the draft OZP.

#### **Agenda Item 14**

[Closed Meeting]

95. This item was discussed at closed meeting.



**Agenda Item 15**

[Open Meeting]

Any Other Business

[The meeting was conducted in Cantonese.]

96. A Member suggested and the Secretary agreed to examine the possibility of incorporating a computer device which allowed Members to directly point or draw onto the computer screen to facilitate discussion at the meeting.

97. There being no other business, the meeting was closed at 1:15 p.m.

CHAIRMAN  
TOWN PLANNING BOARD