

**Minutes of 952nd Meeting of the
Town Planning Board held on 5.2.2010**

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

Professor David Dudgeon

Mr. Tony C.N. Kan

Mr. Edmund K.H. Leung

Dr. C.N. Ng

Dr. Daniel B.M. To

Mr. Alfred Donald Yap

Ms. Sylvia S.F. Yau

Mr. B.W. Chan

Mr. Walter K.L. Chan

Ms. Maggie M.K. Chan

Mr. Raymond Y.M. Chan

Mr. K.Y. Leung

Mr. Felix W. Fong

Ms. Anna S.Y. Kwong

Professor Paul K.S. Lam

Hon. Starry W.K. Lee

Professor Edwin H.W. Chan

Mr. Rock C.N. Chen

Mr. Maurice W.M. Lee

Director of Lands

Miss Annie Tam

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 Planning

Mrs. Ava S.Y. Ng

Deputy Director of Planning/District

Miss Ophelia Y.S. Wong

Secretary

Absent with Apologies

Professor N.K. Leung

Professor Bernard V.W.F. Lim

Mr. Stanley Y.F. Wong

Mr. Y.K. Cheng

Dr. James C.W. Lau

Mr. Timothy K.W. Ma

Dr. Winnie S.M. Tang

In Attendance

Assistant Director of Planning/Board
Mr. Lau Sing

Chief Town Planner/Town Planning Board
Miss Chu Hing Yin (a.m.)
Ms. Christine Tse (p.m.)

Senior Town Planners/Town Planning Board
Ms. Maggie Chin (a.m.)
Mr. Jerry Austin (p.m.)

1. The Chairman extended a welcome to Members.

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 951st Meeting held on 22.1.2010

[The meeting was conducted in Cantonese.]

2. The minutes of the 951st meeting held on 22.1.2010 were confirmed without amendments.

[Hon. Starry W.K. Lee, Dr. C.N. Ng and Professor Paul Lam arrived to join the meeting at this point.]

Agenda Item 2

Matters Arising

[Closed Meeting]

3. This item was recorded under confidential cover.

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

Agenda Item 3

[Open Meeting]

Consideration of Representations and Comment in Respect of the
Draft Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan No. S/NE-LYT/13
(TPB Paper No. 8480)

[The meeting was conducted in Cantonese]

4. The Secretary informed Members that Mr. Alfred Donald Yap, being a member of Heung Yee Kuk, had declared interest on the item as Fanling District Rural Committee, a member of Heung Yee Kuk, had submitted a representation. Members noted that Mr. Alfred

Donald Yap had not yet arrived to join the meeting.

Presentation and Question Session

5. The Chairman said that while the representers of Representations No. 1 and 2 and the representatives of Commenter No. 1 would attend the hearing, the representer of Representation No. 3 had indicated that they would not attend the hearing. As sufficient notice had been given to the representer of Representation No. 3, Members agreed to proceed with the hearing in the absence of the representer of Representation No. 3.

6. The following representatives from the Planning Department (PlanD), representers and commenter were invited to the meeting:

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

Representation No. R1 (Mr. Wan Chi Hung and Mr. Wan Hok Man)

Representation No. R2 (Mr. Wan Chi Hung, Mr. Wan Hok Man and 26 villagers of
Ma Liu Shui San Tsuen (MLSST))

Mr. Wan Chi Hung]
Ms. Lau Kwan Ying]
Mr. Wan Yau] Representers
Mr. Wan Siu Man]
Ms. Zhang Jie]

Commenter No. C1 (Ms. Yeung Yuen Man)

Ms. Yeung Yuen Man Commenter
Mr. Yam Ping Cham] representatives of Commenter
Mr. Lee Kim Ming]
Mr. Siu Hing Wang]

7. The Chairman extended a welcome and explained the procedures of the hearing. He then invited Mr. W.K. Hui, DPO/STN to brief Members on the background to the representations and comment.

8. With the aid of a powerpoint presentation, Mr. W.K. Hui briefed Members on the Paper and made the following points as detailed in Paper No. 8480:

- (a) on 28.8.2009, the draft Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (the OZP) No. S/NE-LYT/13 incorporating the zoning amendments was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). During the two-month exhibition period, a total of three valid representations (R1 to R3) were received. On 6.11.2009, the Town Planning Board (the Board) published the representations for three weeks for public comments and one comment (C1) was received;

- (b) background information of the Amendment Items:

Representation Sites (i.e. Amendments Items A1 and A2) of Representations R1 and R3

- Amendment Items A1 and A2 were related to a religious institution (church) which had been established in Ma Liu Shui San Tsuen (MLSST) since 1999;

- on 11.5.2007, a rezoning application (No. Y/NE-LYT/4) to rezone the representation sites from “Residential (Group C)” (“R(C)”) and “Village Type Development” (“V”) to “Government, Institution or Community” (“G/IC”) to reflect the current use of the church as a religious institution and to facilitate the proposed future extension of a two-storey building to the existing church was considered by the Rural and New Town Planning Committee (RNTPC). To address the concerns of the Director of Environmental Protection on the implementation of the proposed sewerage measures, the RNTPC decided to rezone the sites to “G/IC(1)” with ‘Religious Institution’ use put under Column 2 of the Notes of the OZP requiring planning permission for the proposed extension of the church from the Board;

[Mr. Felix W. Fong arrived to join the meeting whilst Mr. K.Y. Leung left the meeting temporarily at this point.]

Representation Site (i.e. Amendment C2) of Representations R2 and R3

- on 10.7.2009, Application No. Y/NE-LYT/9 for rezoning an area from “Agriculture” (“AGR”) and “V” to “R(C)” for a proposed low-rise residential development was considered by the RNTPC. The RNTPC decided to partially agree to the rezoning application by rezoning part of the application site outside ‘village environ’ (‘VE’) from “AGR” to “R(C)”, but the areas falling within ‘VE’ of MLSST would be partly retained as “V” and partly rezoned from “AGR” to “V”;

[Mr. Nelson W.Y. Chan, Dr. Daniel B.M. To and Mr. Tony C.N. Kan arrived to join the meeting at this point.]

- (c) as set out in paragraph 2.2.1 of the Paper, R1 and R3 opposed to Amendment Items A1 and A2 on the major grounds that :
 - the extension of the existing church in MLSST would have adverse impacts on traffic, environmental hygiene, local facilities and *fung shui*, and would destroy the tranquil living environment within MLSST;
 - the objection to the church extension was endorsed by the North District Council (NDC) and Fanling District Rural Committee (FDRC) and views of the villagers should be carefully considered. The Board should consult the concerned Village Representatives (VR) prior to proposing any zoning amendment to village land;
- (d) as set out in paragraph 2.2.2 of the Paper, R2 and R3 opposed to Amendment Item C2 on the major grounds that :
 - the objective of the Small House policy was to rezone the private agricultural land of local indigenous villagers as “V” zone for Small House development. The amendment catered for a private developer’s

proposal would infringe on the interests of the indigenous villagers. The subject area should be reserved for house development by indigenous inhabitants;

- the villagers of MLSST had no knowledge of the application submitted by the private developer. The Board should consult the concerned VR prior to proposing any zoning amendment to village land;
- (e) R2 proposed to rezone the agricultural land to the east of MLSST to “V” as the agricultural land owned by the villagers of MLSST was located to the east of MLSST. R1 and R3 had not submitted any proposal;

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

- (f) Comment No. C1 - One comment was received from Ms. YEUNG Yuen-man objecting to R2. She considered the grounds of R2 unreasonable. The main points made in her submission as set out in paragraph 2.4 of the paper were summarized as follows:
- the rezoning of land to the west of MLSST from “AGR” to “V” resulting in an enlarged “V” zone would bring more benefits to the villagers of MLSST;
 - the rezoning of the representation site from “AGR” to “V” catered for the future development in the locality as the land opposite and adjacent to the application site had been rezoned to “R(C)” and the adjoining Lung Ma Road would be widened;
 - rezoning of the private land would not infringe on the interests of other residents. There was no Government-business collusion as payment of premium was required for the change of land use; and;
 - the proposed development under application No. Y/NE-LYT/9 would be used for private residential use with building design

sensitive to the surrounding areas. Land within the 'VE' of MLSST would be used for garden purpose with no structures. Hence, the landscape of the existing land would be enhanced;

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

(g) PlanD's views – planning consideration and assessment as stated in paragraph 4.4 covered the following main points:

i) Responses to grounds of Representations of R1 and R3 were as follows:

adverse impacts on traffic, environmental hygiene, local facilities and fung shui within MLSST -

- the proposed OZP Amendment Items A1 and A2 were to take on board the decision of the RNTPC on the rezoning application (No. Y/NE-LYT/4). The existing church and its proposed extension were basically a low-rise, low density development with a maximum plot ratio of 0.38 and a maximum building height of 19 to 22 mPD. They would have a separate access from Hai Wing Road and sufficient car parking spaces would be provided. Technical assessments, including landscape impact assessment and sewerage impact assessment had been submitted at the rezoning application stage. Concerned Government departments had no adverse comment or objection to the rezoning proposal;
- 'Religious Institution' was put under Column 2 under "G/IC(1)" zone which required planning permission for the proposed church extension from the Board. Through the mechanism of submitting s.16 application, the applicant would need to demonstrate that the proposed development would not cause adverse traffic, environmental hygiene, landscape, visual and drainage impacts on the surrounding area. Relevant approval conditions could be stipulated by the Board to ensure the implementation of necessary mitigation measures;

- concerns on adverse impacts on fung shui and psychological effects to nearby residents and villagers raised by the representers were noted. However, fung shui per se was not a material planning consideration;

local concerns were not considered

- the public views on or local objections to the rezoning application (No. Y/NE-LYT/4) had been fully incorporated into the relevant TPB paper and were duly considered by the RNTPC. In view of the strong local objections to the rezoning application, the RNTPC had advised the applicant to note the local views and to brief and liaise with the local villagers regarding the proposed church extension;
- the NDC and FDRC were consulted on the amendments to the OZP during the 2-month publication period of the draft OZP. The statutory planning procedure which provided for the making of representation and comment to the Board was itself a public consultation process. All representations and comment would be considered under the provision of the Town Planning Ordinance;

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

- ii) Responses to grounds of Representations of R2 and R3 were as follows:

infringement on interests of indigenous villagers -

- the proposed OZP Amendment Item C1 was pursuant to a land use review of the areas along Lung Ma Road undertaken by PlanD. Taking into account that there was insufficient land available in the existing “V” zone of MLSST to meet the outstanding and 10-year forecast on Small House demand, it was recommended that the area to the west of MLSST within the ‘VE’ be rezoned from “AGR” to “V” as an extension to the existing “V” zone to cater for Small

House development;

- R2 was concerned that the land owned by the local villagers of MLSST was concentrated to the east of MLSST. The area concerned was zoned “AGR” on the draft Lung Yeuk Tau and Kwan Tei South OZP. As the agricultural activities of the area were still active and there was no imminent demand for Small House development in MLSST, it was considered that the current zoning of “AGR” for the area to the east of MLSST was appropriate for the time being. If the local villagers wished to develop Small Houses in the area, they could submit planning applications to the Board and each application would be considered based on individual merits;

Local concerns were not considered

- the public views or local objections to the rezoning application (No. Y/NE-LYT/9) had been fully incorporated into the relevant TPB paper and were duly considered by the Committee;
 - the NDC and FDRC were consulted on the amendments to the OZP during the 2-month publication period of the draft OZP. The statutory planning procedure which provided for the making of representation and comment to the Board was itself a public consultation process. All representations and comments would be considered under the provision of the Town Planning Ordinance;
- iii) comments of Commenter No. C1 were noted;
- iv) R2’s proposal to rezone the land to the east of MLSST as “V” was not supported for the following reasons:
- there was only a slight shortage of land in the existing “V” zone of MLSST (about 0.12 ha) to meet the long term demand of Small houses;

- the Director of Agriculture, Fisheries and Conservation (DAFC) opposed to the representers' proposal from the agricultural point of view as the area was still under active farming. The boundary of the existing "V" zone of MLSST could be reviewed by PlanD in future taking into account the latest Small House demand and land use characteristics of the area. Planning applications could be submitted to the Board for Small House development within the "AGR" zone and each application would be considered based on individual merits;

- (h) PlanD did not support the representations for the reasons as set out in paragraph 6 of the Paper.

9. The Chairman then invited the representers and the representatives of the commenter to elaborate on their representations and comment.

Representations No. R1 and R2 (Mr. Wan Chi Hung, Mr. Wan Hok Man and 26 villagers of MLSST)

10. Mr. Wan Chi Hung, on behalf of R1 and R2, made the following main points:

Amendment Items A1 and A2

- (a) in 1999, the Church of Jesus Christ of Latter-Day Saints bought a village house in MLSST and redeveloped it into the existing church. Since then, the villagers of MLSST did not have good relationship with the church. In fact, the villagers had been adversely affected by the church's operation;
- (b) the villagers of MLSST strongly opposed to the church extension in MLSST as it would have adverse impacts on fung shui, traffic, environmental hygiene and local facilities of MLSST. It would also destroy the tranquil living environment of the village;

- (c) the villagers' objection to the church extension was endorsed by NDC and FDRC;

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

Amendment Item C2

- (d) villagers of MLSST had no knowledge that the developer had applied for the "V" zone for the land to the west of MLSST. PlanD did not consult the villagers direct, but only asked NDC to pass the relevant documents to FDRC as a means to consult the villagers. Hence, the local villagers who were affected by the application had absolutely no knowledge of it. The present consultation system was fraught with problems;
- (e) the objective of the Small House policy was to rezone private agricultural land of the local indigenous villagers as "V" sites for construction of Small House. In this regard, rezoning of part of land to the west of MLSST was not beneficial to the villagers of MLSST as all the agricultural land owned by the villagers was situated to the east of MLSST. Furthermore, a villager had made Small House applications twice involving land to the east of MLSST and within the 'VE'. However, his applications had been rejected;
- (f) LandsD did not answer the villagers' query of whether "V" sites should be the entitled interests of the indigenous villagers. However, as indicated from the replies of DLO/N and DO(N) to the villagers, the PlanD was in favour of the developer and this had infringed the interests of the villagers of MLSST;
- (g) to show respect, it was the tradition of indigenous villagers to build their houses on land behind their ancestors' houses. Due to that reason, villagers of MLSST had begun building Small Houses on agricultural land to the east of MLSST in the 1960s. Villagers of MLSST had also requested PlanD to rezone land to the east of MLSST to "V" zone, but were unsuccessful; and

- (h) why was the villagers' land to the east of MLSST not zoned "V" while the developer's land to the west of the village was? That would infringe the villagers' entitled interest and defeat the objective of the Small House Policy.

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

Comment No. C1 (Ms. Yeung Yuen Man)

11. In response to the Chairman's enquiry, Mr. Yam Ping Cham, one of the representatives of C1 stated that they did not have any representation to make at the meeting.

12. Members had the following questions on R1 in relation to Amendment Items A1 and A2:

- (a) the reasons why the villagers did not have good relationship with the church;
- (b) whether the villagers had previously objected to the church and its proposed extension;
- (c) how many people attended the church gathering on Sundays; and
- (d) whether it was necessary for the church to submit a s.16 planning application for the proposed extension of the church. If yes, whether the church had submitted the application.

13. In response to Members' questions in paragraph 12(a) and (b), Mr. Wan Chi Hung made the following points:

- (a) when the church was first built in MLSST, there was no VR in MLSST. Moreover, the villagers thought that it was the redevelopment of an old village house. If they knew that it was the development of the church, they

would have objected to it;

- (b) the ceremonial and funeral services of the church had caused nuisances to and triggered uncomfortable feelings of the villagers. Moreover, the Bombax ceiba planted by the church had branched out to the adjoining village houses and had adversely affected the villagers who had respiratory problem;
- (c) the congregation on Sundays had destroyed the tranquil living environment within MLSST; and
- (d) the villagers of MLSST had already written to PlanD in 2005 indicating their objection to the church extension. With its extension, the bulk of the church would be huge and have damaging effect on the fung shui of MLSST.

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

14. Regarding Members' question in paragraph 12(b), Mr. W.K. Hui referred to Annex V-a of the TPB Paper and said that during the departmental consultation of application No. A/NE-LYT/60 for a two-storey church development in 1995, DO(N) advised that the locals consulted had no objection to the application. During the departmental consultation of application No. A/NE-LYT/283 for a proposed extension of the existing church in 2005, DO(N) advised that the VR of MLSST raised strong objection to the application on fung shui, traffic, environmental hygiene and drainage grounds and was worried that the proposed development would destroy the tranquillity and view of the village.

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

15. Regarding Members' questions in paragraph 12(c) and (d), Mr. W.K. Hui made the following points:

- (a) the proposed church extension comprised a 2-storey building annexed to the existing church, with a maximum plot ratio of 0.379. According to the development proposal of the rezoning application (No. Y/NE-LYT/4), the

extension accommodated 278 persons in the church on the first floor and 140 persons for bible study on the ground floor. The church could accommodate around 400 persons; and

- (b) as the proposed church extension was zoned “G/IC(1)” on the OZP and ‘Religious Institution’ was a Column 2 use of the Notes covering the “G/IC(1)” zone, the proposed church extension required planning permission from the TPB under s.16 of the Town Planning Ordinance. The church had not submitted s.16 planning application for the chapel extension.

16. Regarding R2 in relation to Amendment Item C2, Members had the following questions:

- (a) whether the representers recognized that the developer had no right to develop Small House on the representation site as they were not indigenous villagers and therefore could not take away the villagers’ entitled interest;
- (b) whether the MLSST was a recognized village and whether there was any village office; and
- (c) whether the villagers of MLSST had submitted any application to rezone the land to the east of MLSST to “V” zone.

17. In response to Members’ questions in paragraph 16(a) to (c) above, Mr. Wan Chi Hung made the following points:

- (a) “V” sites were the entitled interests of indigenous villagers for building their Small Houses. Rezoning the land to the west of MLSST which was owned by the developer but not the villagers would infringe the entitled interests of the villagers of MLSST;
- (b) the villagers of MLSST had applied to rezone the land to the east of MLSST to “V” zone; and

- (c) MLSST originated from the area currently occupied by the Chinese University. It was relocated to Fanling when the area was developed for the expansion of the Chinese University. It was not until 1993 that MLSST was recognized by the Government as an indigenous village and had its VR.

18. In response to Members' question in paragraph 16(c) above, Mr. W.K. Hui said that PlanD had not received any application to rezone the land to the east of MLSST to "V". However, a s.16 planning application for a Small House development in the subject "AGR" zone had recently been received.

19. As the representers and the representatives of the commenter had finished their presentations and Members had no further question to raise, the Chairman informed them the hearing procedures had been completed, and the Board would deliberate on the representations and comment in their absence and would inform the representers and commenter of the Board's decision in due course. The Chairman thanked the representers and representatives of the commenter and DPO/STN for attending the hearing. They all left the meeting at this point.

Deliberation Session

Representations No. R1 and R3 related to Amendment Items A1 and A2

20. A Member said that the grounds given by R1 and R3 for objecting to the "G/IC(1)" zoning of the representation site were not sufficient. The existing church had been in MLSST for many years and there was no strong evidence that the church had caused nuisance to the villagers. In supporting the rezoning application to facilitate the proposed church extension, various technical assessments had been submitted demonstrating that the proposed church extension would not cause significant adverse traffic, environmental hygiene, landscape and visual impacts on the surrounding area. In this regard, concerned Government departments had no objection to the rezoning application. Moreover, 'Religious Institution' was a Column 2 use under the "G/IC(1)" zone, which required planning permission for the proposed church extension from the TPB. Taking account of the above consideration, this Member considered that the proposed "G/IC(1)" zone for the representation site, which was to reflect the existing church use and to facilitate its proposed extension, was appropriate, and that there was no strong justification to uphold the representations No. R1 and R3. Nevertheless, in view of the conflict

between the local villagers and the church, DO(N) should be requested to undertake more liaison work to resolve their conflict so as to create a harmonious neighborhood. The above views were shared by other Members.

Representation Nos. R2 and R3 related to Amendment Item C2

21. A Member noted that there were still agricultural activities on the land to the east of MLSST and DAFC opposed to rezone the land to “V”. As land ownership was subject to change, it should not be a primary factor in deciding the land use zoning of the area. In any case, the proposed amendment resulting in a larger “V” zone would facilitate Small House development. Mrs. Ava Ng, D of Plan, pointed out that the representation site to the west of MLSST which was zoned “V” on the OZP fell within the ‘VE’ boundary of MLSST.

22. Members then had a discussion on whether there was any merit to rezone the agricultural land to the east of MLSST which was owned by the villagers from “AGR” to “V”, taking into account the tradition of indigenous villagers to build their houses behind their ancestral village houses on the land to the east of MLSST. Members noted that, as indicated in Plan H-3 of the paper and the Powerpoint presentation of DPO/STN, the land to the east of MLSST was still under active agricultural use. However, as indicated in Plans H-4b of the Paper, the land to the west of MLSST was not used for agricultural activities and was partly covered by grass and partly formed with some open storage of excavators and construction materials. As the land to the west of the MLSST fell within the ‘VE’ boundary, by rezoning it to “V” could help meet the long-term Small House demand of local villagers. In this regard, as set out in the Paper, there was a shortage of five Small House sites to meet the long-term demand of Small Hosues in MLSST. Moreover, the villagers could submit s.16 application for Small House development on land to the east of MLSST under its “AGR” zoning and the Board would consider each application based on individual merits. In view of the above, Members considered it appropriate to retain the “AGR” zoning of the land to the east of MLSST and rezone the land to the west of MLSST to “V” as reflected in the Amendment Item C2. There were no strong grounds to uphold representations No. R2 and R3.

23. After deliberation, the Chairman summed up that Members generally agreed that there was no strong justification to uphold the representations. For representations No. R1 and R3 relating to Amendment Items A1 and A2, technical assessments had been submitted at

the rezoning application stage to show that the proposed development would not cause significant adverse traffic, environmental hygiene, landscape and visual impacts on the surrounding area. As 'Religious Institution' was put under Column 2 of the "G/IC(1)" zone, through the mechanism of submitting s.16 application, the applicant would need to demonstrate to the TPB that the proposed church extension would not have adverse impacts on the surrounding area. Nevertheless, Members considered that DO(N) should be requested to undertake liaison work to resolve the conflict between the local villagers and the church. Regarding representations No. R2 and R3 relating to Amendment Item C2, Members generally considered that the "AGR" zoning of the land to the east of MLSST should be retained to reflect the existing active agricultural uses. However, the boundary of the "V" zone could be reviewed by PlanD in future taking into account the latest Small House demand and land use characteristics of the areas.

24. Members then considered the reasons for not upholding the representations as set out in Paragraph 6 of the Paper.

Representation No. R1

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

- (a) the rezoning of an area at Ma Liu Shui San Tsuen from "Residential (Group C)" ("R(C)") and "Village Type Development" ("V") to "Government, Institution or Community (1)" ("G/IC(1)") zone on the OZP was to reflect the existing religious institution and to facilitate its extension. No adverse environmental and traffic impacts would be generated by the religious institution on the surrounding area;
- (b) as 'Religious Institution' was a Column 2 use under the Notes for the "G/IC(1)" zone, through the mechanism of submitting s.16 application, the applicant would need to demonstrate to the Town Planning Board that the proposed church extension would not have adverse impacts on the surrounding area; and

- (c) there were statutory procedures and established practices for the Town Planning Board to consult the locals and general public on planning applications and the amendments to the OZP received. All the views received from the locals and the general public would be incorporated into the relevant papers for due consideration by the Town Planning Board.

Representation No. R2

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

- (a) rezoning of the area to the west of Ma Liu Shui San Tsuen (MLSST) from “Agriculture” (“AGR”) to “Village Type Development” (“V”) on the OZP was to enlarge the “V” zone to make good the shortfall of land available within the existing “V” zone to meet the long-term Small House demand in MLSST;
- (b) the existing “AGR” zoning for the land to the east of MLSST was considered appropriate as the land was still under active agricultural uses. Application for Small House development within the “AGR” zone could be made to the Town Planning Board under s.16 of the Town Planning Ordinance and each application would be considered based on individual merits; and
- (c) there were statutory procedures and established practices for the Town Planning Board to consult the locals and general public on planning applications and the amendments to the OZP received. All the views received from the locals and the general public would be incorporated into the relevant papers for due consideration by the Town Planning Board.

Representation No. R3

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

- (a) the rezoning of an area at Ma Liu Shui San Tsuen (MLSST) from “Residential (Group C)” (“R(C)”) and “Village Type Development” (“V”) to “Government, Institution or Community (1)” (“G/IC(1)”) zone on the OZP was to reflect the existing religious institution and to facilitate its extension. No adverse environmental and traffic impacts would be generated by the religious institution on the surrounding area;
- (b) as ‘Religious Institution’ was a Column 2 use under the Notes for the “G/IC(1)” zone, through the mechanism of submitting s.16 application, the applicant would need to demonstrate to the Town Planning Board that the proposed church extension would not have adverse impacts on the surrounding area;
- (c) rezoning of the area to the west of MLSST from “Agriculture” (“AGR”) to “Village Type Development” (“V”) on the OZP was to enlarge the “V” zone to make good the shortfall of land available within the existing “V” zone to meet the long-term Small House demand in MLSST; and
- (d) there were statutory procedures and established practices for the Town Planning Board to consult the locals and general public on planning applications and the amendments to the OZP received. All the views received from the locals and the general public would be incorporated into the relevant papers for due consideration by the Town Planning Board.

28. As the applicant’s representatives for the review application under Agenda Item 4 had not yet arrived, the Chairman proposed and Members agreed to proceed with Agenda Item 10 first.

Agenda Item 10

[Closed Meeting]

29. This item was recorded under separate cover.

30. As the applicant's representatives for the review application under Agenda Item 4 had not yet arrived, the meeting was adjourned for a break.

[Mr. Rock C.N. Chen and Mr. Andrew Tsang left the meeting at this point.]

Agenda Item 4

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/K7/92

Proposed Minor Relaxation of Building Height Restriction for Permitted Residential Use in "Residential (Group B)" zone, 170C, 170D, 170E and 170F Boundary Street, Ho Man Tin (KIL No. 3277 s.C, s.D, s.E and s.F), Kowloon
(TPB Paper No. 8481)

[The meeting was conducted in Cantonese.]

[Mr. Leslie H.C. Chen, Mr. Maurice W.M. Lee and Professor Edwin H.W. Chan arrived to join the meeting at this point.]

31. The Secretary informed Members that Mr. Alfred Donald Yap had declared interest on the item as he lived in Ho Man Tin. Members noted that Mr. Yap had not yet arrived to join the meeting.

Presentation and Question Session

32. The following representatives from the PlanD and the applicant were invited to the meeting at this point:

Mr. Eric Yue District Planning Officer/Kowloon (DPO/K), PlanD

Ms. Cindy Tsang]

Ms. Keren Seddon] Applicant's representatives
Mr. Gary Lui]
Ms. Edith Fung]
Mr. Anthony Pong]
Mr. Otto Tang]

33. The Chairman extended a welcome and explained the procedures of the review hearing. The Chairman then invited Mr. Eric Yue, DPO/K to brief Members on the background to the application.

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

34. With the aid of a Powerpoint presentation, Mr. Eric Yue, DPO/K presented the application on review and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for minor relaxation of building height (BH) restriction from 80mPD to 89.47mPD for a proposed residential development at a site zoned "Residential (Group B)" ("R(B)") on the Ho Man Tin Outline Zoning Plan (the OZP);
- (b) on 24.7.2009, the Metro Planning Committee (MPC) of the Town Planning Board (the Board) decided to reject the application for the following reasons:
 - there were insufficient planning justifications and design merits in the submission for the proposed relaxation of the BH restriction;
 - there was insufficient information in the submission to demonstrate that the proposed redevelopment could not be achieved without minor relaxation of the BH restriction; and
 - the approval of the application would set an undesirable precedent for other similar applications.

Background Information

- (c) the application site was zoned “R(B)” (with a maximum plot ratio of 5 and a maximum BH restriction of 80mPD) and located in a low to medium-density residential area. With the exception of The Lamma Palace, the adjacent residential development, which was about 123.5mPD, the height of the existing buildings in the surrounding area was around 20-50mPD and was subject to a maximum BH restriction of 80mPD;
- (d) during the OZP review, a maximum BH of 80mPD was imposed on the “R(B)” zone to the north of Argyle Street including the application site in order to maintain a smooth transition of BH, preserve the existing townscape and minimize air ventilation problem. In drawing up the BH restriction of 80mPD, it had been estimated that the maximum plot ratio of 5 could be achieved within the restriction taking into account the provision of recreational and clubhouse facilities, car parking provision in accordance with the Hong Kong Planning Standards and Guidelines and the setback requirements under the lease;
- (e) a set of building plans for residential development at the application site was approved by the Building Authority in November 2008. The approved building plans showed a 20-storey residential development at 80mPD at main roof level and a plot ratio of approximately 4.96 as well as the 6m setback along Boundary Street and setbacks along the other 3 sides of the proposed development;
- (f) in support of the review application, the applicant had further revised the development proposal as detailed in paragraph 4 of the Paper. The BH of the revised development proposal had been reduced by 2.75m from the proposed BH of 89.47 mPD originally proposed in the s.16 planning application to 86.72 mPD by replacing one car parking storey with a mezzanine floor and reducing 5 car parking spaces. As compared with the approved building plans, the increase of the proposed BH under the revised development proposal mainly resulted from the increase of the floor-to-floor height in domestic floors (from 3.05m to 3.15m), an additional domestic

floor (from 20 storeys to 21 storeys) and a mezzanine floor for carpark;

(g) the justifications put forth by the applicant in support of the review application were detailed in paragraph 3 of the Paper and were summed up as follows:

- the proposed minor relaxation of BH restriction was required to enable the residential development to achieve its full permitted development potential (i.e. a plot ratio of 5) that was in line with the applicant's legitimate expectation with regard to redevelopment potential and the applicant's design intent;
- the application site was an amalgamation of four smaller sites to enable a more comprehensive development with sufficient space to accommodate ancillary facilities as well as better urban design and local improvements such as a more unified streetscape, including implementation of a better designed 6m setback along Boundary Street;
- the proposed development would bring additional planning gains and design merits including amalgamation of smaller sites for better urban design and local improvements, providing better streetscape, good quality street level public urban space and providing separation between buildings to enhance air and visual permeability;
- there was no relevant precedent and the application would not set undesirable precedent;
- given the requirements under the lease and the Building (Planning) Regulations, the application site was severely constrained due to the 6m non-building area (NBA) required under the lease and the setback along the 3 sides of the application site;
- the 3.15m floor-to-floor height was considered to be acceptable in the current market and to allow a comfortable residential development in

terms of a more spacious living environment and enhanced air ventilation and natural daylight penetration; and

- the design had been thoroughly studied to minimise any adverse visual impact and to better integrate the development into the surrounding urban area from urban design perspective;
- (h) departmental comments – the departmental comments were summarized in paragraph 6 of the Paper. Relevant departments including Lands Department, Urban Design and Landscape Section of PlanD, Architectural Services Department, Buildings Department, Environmental Protection Department and Transport Department had no in-principle objection to or adverse comment on the review application;
- (i) 89 public comments on the review application were received (they were from a District Councillor, the management company and the Owner Committee of The Lamma Palace, three companies and 83 individuals). All the commenters objected to the application on the grounds of air ventilation problems, adverse environmental, landscape, traffic and visual impacts, setting undesirable precedent, increasing burden on the infrastructure capacity and community facilities, affecting natural light penetration as well as degradation of living quality and local character;
- (j) planning considerations and assessments – planning considerations and assessments were detailed in paragraph 7 of Paper. The key points were:
 - i) as compared with the original scheme under s.16 application, the applicant in the review application had adopted various measures to reduce the proposed BH from 89.47mPD to 86.72mPD, which included reducing the number of car parking spaces and minimizing the floor-to-floor heights of the podium levels. However, the floor-to-floor height of the domestic floors remained unchanged as 3.15m, which was higher than 3.05m of the approved building plans;

- ii) while it was noted that effort had been made by the applicant for reducing the proposed BH, there were insufficient justifications for the proposed minor relaxation of BH for the following reasons:
- the approved building plan had demonstrated that a reasonable development at the application site could be achieved with the BH restriction of 80mPD. The approved building plan showed a 20-storey residential development (two storeys less than the subject application) at 80mPD at main roof level with a plot ratio of approximately 4.92 (i.e. approximately 60m² less than the maximum plot ratio of 5.0 as stipulated in the OZP). The applicant had not demonstrated that the remaining 60m² could not be accommodated within the proposed development without minor relaxation of the BH restriction;
 - as compared with the approved building plan, the increase of the proposed BH under the current application mainly resulted from the increase of the floor-to-floor height in domestic floors, an additional domestic floor and a mezzanine floor for carpark;
 - although it was noted that more planting and greening were proposed within the application site, the planning justifications and design merits for the proposed minor relaxation of BH restriction were considered insufficient;
 - given the importance of maintaining the integrity of a building height profile, any relaxation of BH restrictions should be justified. The applicant had not demonstrated other design alternatives such as revising layout and re-arrangement of plant rooms to substantiate the argument that it was impossible to accommodate all permissible development intensity and ancillary facilities with the BH of 80mPD on the application site. It was therefore considered not justifiable to relax the BH restriction. The approval of the application would set an

undesirable precedent for other similar applications;

- (k) PlanD's view – based on the assessments made in paragraph 7 and having taken into account the public comments mentioned in paragraph 6 of the Paper, the PlanD did not support the application.

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

36. With the aid of a Powerpoint presentation, Ms. Cindy Tsang made the following main points:

Development History of the Site

- (a) the application site was originally amalgamated from 4 lots of tenement buildings to enable a comprehensive residential development. On 23.8.2007, the Applicant accepted the basic terms for a land exchange application and paid full premium for development on the site with valuation based on the adjacent development, The Lamma Palace. As such, the Applicant had reasonably expected to achieve a similar height of The Lamma Palace, i.e. 123.5mPD with a same degree of development flexibility, including maximization of plot ratio under the prevailing OZP. General Building Plans (GBP) were submitted on 27.11.2007 for a residential development with a height of 116.695mPD. However, on 18.1.2008, the Draft Ho Man Tin OZP No. S/K7/19 was gazetted stipulating a maximum BH of 80mPD on the "R(B)" zone including the application site;
- (b) the GBP were rejected on 28.1.2008 on the ground of contravening the height restriction in the Draft OZP. An objection to the Draft OZP was then lodged on 17.3.2008 on the ground that the 80mPD height restriction prevented reasonable development on the site given the development rights secured under the recently executed lease. In addition, the Applicant explained to the Board at the Representation Hearing that it was not possible to fully maximize the development potential on the site with the 80mPD height restriction due to the small site area and the required setbacks on all sides of the site in order to comply with the design requirements of a

“detached building”;

- (c) although the objection was not upheld in the TPB Representation Hearing on 11.7.2008, some members of the TPB expressed sympathy for the case. In the deliberation, Members decided that minor amendment of the BH restriction could be considered if the Applicant could demonstrate compliance with a list of general criteria set out in the Explanatory Statement of the Draft OZP;
- (d) on 6.10.2008, revised building plans were submitted to the Building Authority. The revised building plan submission was made for the sole purpose of enabling timely commencement of construction works on the site in compliance with the time clause on the executed lease requiring the building to be completed and made fit for occupation on or before 30.6.2012. However, the said building plans did not fully utilize the permitted plot ratio of 5, let alone accommodate other design improvements, such as on-site loading/unloading bay and increased domestic floor-to-floor height to a modern standard of 3.15m;

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

- (e) after the rejection of the s.16 application, the Applicant had refined the scheme to address PlanD and TPB concerns. It should be noted that:
 - i) the Applicant had a reasonable expectation to achieve full development potential under the terms of the executed lease. That was also a legitimate expectation of private ownership rights as protected under the Basic Law; and
 - ii) a minor relaxation of BH restriction was required to realize the maximum permitted plot ratio because of unique site constraints. The Applicant would lose some of the GFA if the application for minor amendment was not approved.

Addressing the S16 Grounds of Rejection

(f) rejection reason (a) stated that “There were insufficient planning justifications and design merits in the submission for the proposed relaxation of BH restriction”. The five specific criteria for minor relaxation of BH restriction as set out in the Explanatory Statement of the draft Ho Man Tin OZP and the Applicant’s responses were summarized as follows:

Criteria for Minor Relaxation of BH Restriction	Applicant’s Responses
1. amalgamating smaller sites for achieving better urban design and local area improvements;	the site had been amalgamated from four smaller sites to allow for a more comprehensive development, including a 6m setback from Boundary Street;
2. accommodating the bonus plot ratio granted under the Buildings Ordinance in relation to surrender/dedication of land/area for use as public passage/street widening	not applicable as the applicant sought to develop to the maximum plot ratio;
3. providing better streetscape/good quality street level public urban space;	in addition to the 6m setback from Boundary Street, the Applicant was committed to greening the front of the development to improve the street-level visual amenity. On-site loading/unloading was proposed to discourage on-street activities and related pedestrian conflicts;
4. providing separation between buildings to enhance air and visual permeability; and	the proposed development would have 2.3m setbacks on three sides to reduce site coverage at ground level; and
5. other factors, such as site constraints, need for tree preservation, innovative building design and planning merits that would bring about improvements to townscape and amenity of the locality, provided that no adverse landscape and visual impacts would be resulted from	the unique site constraints were the fundamental reason that the permissible GFA could not be accommodated within the 80mPD height restriction. No adverse landscape or visual impacts would be resulted from the proposed relaxation of BH and that was confirmed by both the Architectural

the innovative building design.	Services Department and the Urban design and Landscape Section of PlanD.
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Genuine Intention to Comply with the Statutory Building Height Restriction

(g) PlanD considered that the planning justifications and design merits of the revised development scheme were insufficient. It should be noted that:

- i) the Applicant had already made every effort to minimize the proposed building height by adopting lower floor-to-floor heights for the G/F, carparking levels and clubhouse. These sacrifices made by the Applicant demonstrated the real difficulties in incorporating all permissible GFA within the statutory BH restriction;
- ii) the proposed residential floor-to-floor heights of 3.15m was not unreasonable or excessive according to current market standards for the Ho Man Tin area. Residential developments in the area like The Lamma Palace, Sky Garden, Oxford Heights and Padek Palace had floor-to-floor heights ranging from 3.15m to 3.325m;
- iii) the additional domestic floor was required to fully utilize the maximum domestic GFA, and it was in the form of a upper-duplex unit, which help minimize the need to extend the lift overrun and minimize the absolute height of the development; and

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

- iv) one of the key design merits of the proposed development was an on-site loading/unloading bay. Given the traffic volume on Boundary Street and the Transport Department's previous concern regarding the impacts of on-street queuing for the car lift, the on-site loading/unloading bay should be considered as a major planning justification and design merit. The benefits of the on-site loading/unloading had not been addressed at all in the TPB Paper. The additional mezzanine floor was required to accommodate the

carparks displaced by the ground floor loading/unloading bay;

No Adverse Precedent and not Setting an Undesirable Precedent

- (h) rejection ground (c) stated that approval of the application would set an undesirable precedent for other similar applications. However, the subject application was an unique case and the minor relaxation of BH restriction was required in order to secure the maximum development potential allowed under the prevailing OZP. The Notes and Explanatory Statement of the Draft OZP stated that “each application for minor relaxation of BH restriction will be considered on its own merits”;

No Relevant Precedent

- (i) a “Similar Application” was quoted by PlanD as a ‘precedent’ for minor relaxation of BH restriction at 211-215C Prince Edward Road West. However, the proposed minor relaxation of BH restriction in the ‘similar application’ was mainly due to the incorporation of a 6m high sky garden on the 5/F which was not supported by either the Urban Design and Landscape Unit of PlanD or the Environmental Protection Department. The other application site did not have the severe constraints and design requirements like the subject site;

Response to Local Objections

- (j) the local objections were generally raised to any intensification of development on the site, rather than specifically to the 6.72m relaxation of height restriction. The minor relaxation of BH had no bearing on most of the concerns raised, including air ventilation, environmental impact, visual impact, infrastructural capacity and community facilities. Some of the local objectors had suggested that the proposed development would adversely affect traffic conditions. However, the proposed development would accommodate an on-site loading/unloading bay, which was not possible in the approved building plans. On concerns relating to visual impact, neither the Architectural Services Department or the Urban Design Unit of PlanD had raised any objection to the proposed development. A visual assessment had shown that the proposed development would have

negligible difference in visual impact compared to an 80mPD development on the site and could maintain the integrity of the 80mPD building height profile which was extended along the southern side of Boundary street.

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

37. With the aid of a Powerpoint presentation, Mr. Anthony Pong elaborated on the architectural details of the proposed development and the main points were summarized as follows:

Plant Room Areas on Ground Floor

- (a) in revising the development proposal, the Applicant had studied the alternatives of relocating the transformer room to the basement. As the major concern of the China Light and Power Company Limited was flooding, there was a general requirement of China Light and Power Company Limited. that the transformer room could not take up the lowest basement floor. As such, at least a 2-storey deep basement was required to meet the minimum standard. Due to the very small site area of the application site, effective flooding control while allowing vehicular access to the transformer room could be difficult. Basement transformer room could only be practical for large and extensive basement and it was not very practical for a small site;
- (b) there was no advantage in relocating the transformer to upper floors as it still took up valuable floor height and would not lower the overall BH. By the nature of the function or by requirements under the Buildings Ordinance, most of the provisions (transformer room, switch room, entrance lobby, lift lobby, refuse collection room, disabled car park and loading / unloading bay) on ground floor could not be relocated to other floors;

Provision of Car Parking Spaces

- (c) by exploring alternative layouts, it was concluded that a maximum of 8 car parks could be put on one floor and that was a very efficient design. For The Lamma Palace (25% larger in site area as compared to the application site), there were only 10 car parking spaces on one floor. Padek Palace,

33% larger in site area, could park an average of only 12 cars on one floor. In the currently proposed car park layout, the Applicant proposed to put in three and a half-storeys of car park instead of four storeys. The number of required car parking spaces had been strictly set out in the lease. Squeezing the half floor of car park to the upper part of ground floor would further reduce the building height by 1.5m;

Constraints to Accommodate the Permissible GFA

- (d) in the previous approved building plans, there were 60m² GFA that could not be put into the floor plates of the building. In that submission, the Applicant had already used up the full 33% site coverage for all residential floors and 100% full site coverage for the podium floors after set backs. It was not possible to squeeze in any more GFA;
- (e) the situation became worse when the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) Regulations came into force on 1.12.2008 which required refuse storage room and material recovery chambers to be provided on each floor. They took up valuable area on each floor and the deficit of 60 m² would be further increased;
- (f) a BH relaxation of one floor had been requested for the outstanding GFA and another half a floor had been requested for the provisions of the additional car parking facilities including the ground floor loading/unloading bay; and
- (g) the Applicant had made strenuous efforts to address TPB's concerns through in-depth consultations with PlanD. By adopting a number of design refinements, the Applicant had further reduced the BH from 89.47mPD to 86.72 mPD as compared with the original development scheme. The Applicant was now only seeking an 8.4% minor relaxation of the BH. The floor-to-floor heights of the podium were now less than those of the approved building plans.

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

38. Members had the following questions on the review application:

- (a) according to the Applicant's representatives, there were 60m² GFA that could not be accommodated in the previously approved building plan and the full permissible development potential of the site allowed under the OZP could not be achieved. However, to accommodate the outstanding 60m² GFA, the provision of one additional floor would be adequate. Why did the Applicant request for a minor relaxation of 6.72m and was a reduced BH relaxation acceptable ?
- (b) whether the BH and the site coverage had been reduced in the revised development proposal;
- (c) whether the Applicant had explored other design alternatives such as relocating the transformer room and car park to the basement;
- (d) the reason for the clubhouse to have a floor-to-floor height of 4.1m;
- (e) why did the Applicant previously submit a set of building plans that did not fully utilize the permitted plot ratio of the site; and
- (f) whether the proposed floor-to-floor height of the domestic floors of 3.15m and the proposed car parking provision in the revised development scheme were reasonable and comparable with the market standard in the area.

39. In response to Members' questions in paragraph 39(a) on the proposed BH relaxation, Mr. Eric Yue, DPO/K said that as set out in Annex H of the Paper, the approved building plan with a BH of 80mPD had a plot ratio of about 4.92 and a GFA of 3,787m² (i.e. about 60m² or 1.6% less than the maximum plot ratio of 5 as stipulated in the OZP). In this regard, Mr. Anthony Pong said that one additional domestic floor and one mezzanine floor for car park were proposed in the revised development scheme. Apart from fully utilizing the GFA permitted on the OZP, the proposed BH relaxation of 6.72m was required to allow additional design improvements such as increasing the floor-to-floor height of the domestic floors to modern standard of 3.15m and providing an on-site loading and unloading bay at

ground level.

40. In response to Members' questions in paragraph 39 (b) to (f), Mr. Anthony Pong and Ms. Cindy Tsang made the following main points:

- (a) the Applicant had further revised the development scheme to address the concerns of PlanD and TPB. The BH of the proposed development under the revised scheme had been reduced by 2.76m (i.e. about 3.2%) from the original proposal of 89.47mPD. There was no change in respect of site coverage. The revised development scheme had already used up the full site coverage (i.e. 100% for podium floors and 33% for residential floors after set back);
- (b) the Applicant had studied the alternatives of relocating the transformer room to the basement. However, there was a general requirement of China Light and Power Company Limited as set out in the relevant code of practice that the transformer room could not take up the lowest basement floor to avoid flooding. The very small site area of the application site had rendered it impossible to provide acceptable flood control measures for the transformer room at the basement level. The provision of basement transformer room would only be practical in large site. Regarding the provision of basement car parks on the application site, PlanD had previously advised that according to PlanD's estimation, the permitted plot ratio of 5 for the application site could be achieved under the 80mPD height restriction without the development of basements. As such, the applicant had not considered the basement option. Besides, basement car parks which relied on artificial lighting and ventilation were not environmentally sustainable;
- (c) as compared with the original proposal, the floor-to-floor height of the clubhouse had been reduced from 5.m to 4.1m. The clubhouse was designed for multi-functions with the provision of a gym and other recreational facilities. The net floor height of the clubhouse would be about 3m after excluding the structural development, the electrical and mechanical installation and the required decorations. That was the practical minimum

floor height for such purpose;

- (d) the previous building plans were submitted to the Building Authority to enable timely commencement of construction works on the site in compliance with the time clause on the executed lease, which required the building to be completed and made fit for occupation on or before 30.6.2012;
- (e) the proposed domestic floor-to-floor height of 3.15m was reasonable and comparable with the current market standard in Ho Man Tin area. Local examples included the Lamma Palace, Sky Garden, Oxford Heights and Padek Palace which had floor-to-floor heights ranging from 3.15m to 3.325m. The car parking layout in the revised development scheme would provide a maximum of 8 car parks on one floor and thus was a very efficient design; and
- (f) the floor-to-floor heights of the podium floors were the practical minimum heights and could not be further reduced.

41. In response to a Member's enquiry, Mr. Eric Yue, DPO/K said that the BH of the podium floors under the revised development scheme was about 36.32mPD which was about 2.07m higher than that in the previously approved building plans. Mr. Anthony Pong stated that as compared with the original proposal submitted at s.16 stage, the Applicant had already reduced the BH of the podium floors from 38.82mPD to 36.32mPD in the revised scheme.

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

42. Members had the following questions for Mr. Eric Yue, DPO/K:

- (a) there were 189 local objections against the application on the grounds of air ventilation problems, adverse environmental, landscape, traffic and visual impacts. Whether DPO had any views on these adverse impacts;
- (b) whether it was technically feasible to locate the transformer room in the basement floor; and

- (c) whether the subject application was in compliance with the five assessment criteria set out in the Explanatory Statement of the OZP.

43. In response to Members' questions above, Mr. Eric Yue, DPO/K made the following points:

- (a) the proposed minor relaxation of a net increase of 6.72m would not have significant adverse environmental and traffic impacts. However, PlanD considered that the applicant had not provided sufficient planning justifications and design merits for the proposed relaxation;
- (b) it was technically feasible to locate the transformer room to the basement floor. The required flood control measures could be addressed in the building design and future building management and maintenance; and
- (c) five relevant criteria for consideration of minor relaxation of building height had been set out in paragraph 7.5 of the Explanatory Statement of the draft Ho Man Tin OZP. Whilst criteria (b) was not applicable to the subject case, the development scheme in the previously approved building plan had already fulfilled criteria (a), (c) (d) and (e) with the permitted BH of 80mPD. The previously approved building plan had demonstrated that a reasonable development at the application site could be achieved with the BH restriction of 80mPD. The proposed planting and greening proposed within the site was insufficient to justify the minor relaxation. The Applicant had failed to demonstrate that the outstanding GFA could not be accommodated within the BH restriction without minor relaxation of BH.

44. Ms. Keren Seddon said that the proposed minor relaxation application fully complied with the criteria set out in the Explanatory Statement of the OZP. According to paragraph 7.2(c) of the TPB Paper, PlanD had acknowledged that more planting and greening were proposed within the application site. The provision of on-site loading and unloading facility was a material improvement as compared with the approved building plan. The proposed increase in the residential floor-to-floor height to 3.15m would allow a comfortable

residential development in terms of a more spacious living environment. It should be noted that the Urban Design and Landscape Section of PlanD and the Architectural Services Department had no objection to the revised scheme.

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

Deliberation Session

46. A Member said that there were no strong justifications to support the review application as the applicant had not explored alternative designs such as by relocating the car park and transformer room to the basement. There were also no planning justifications and design merits to substantiate the required relaxation.

47. Another Member, however, held a different view. The Member opined that the key consideration in the application was whether the minor relaxation of the BH was justified by site circumstances, rather than planning and design merits. The Member was of the view that in imposing the BH restrictions on the Ho Man Tin OZP, it had been based on the premise that the permissible development potential of individual sites could be achieved under the BH restrictions. Flexibility for minor relaxation of BH was provided under the planning application system and all such applications would be considered by the Board on individual merits. Given the special circumstances of the case (i.e. some 60m² GFA could not be accommodated within the BH restriction), a minor relaxation of BH restriction for the site could be considered. The above views were shared by another Member.

48. A Member strongly objected to the application in that the Applicant had not demonstrated that basement development on the application site was not feasible. This Member considered that as the application site did not have any geo-technical problems, it would be technically feasible to put the carpark or the water tank in basement, thereby reducing the BH of the proposed development.

49. In response to a Member's enquiry on whether it was a planning intention to have basement development in the urban areas, the Secretary said that in working out the BH restrictions for some areas like Kai Tak, Yau Tong and the ex-North Point Estate site, the provision of basement carpark was assumed. In working out the BH restriction for sites zoned "R(B)" on the Ho Man Tin OZP, including the subject site, the PlanD had estimated that the permitted plot ratio of 5 for the "R(B)" sites could be achieved under the 80mPD height restriction without the provision of basements. To provide flexibility for innovative design adopted to the characteristics and site conditions of particular sites, minor relaxation of BH restriction might be considered by the Board through the planning permission system. Each application would be considered on its individual merits. The Board was invited to consider whether the site constraints, planning justifications and design merits of the revised development scheme put forward by the Applicant's representatives justified a minor relaxation of the BH restriction.

50. Some Members considered while the planning and design merits might not be sufficient to justify the relaxation, given the special site circumstances and constraints of the application site, the setback requirements of the proposed development and the efforts made by the Applicant to reduce the BH as shown in the revised development scheme, a minor relaxation of 3m could be given so that the Applicant could accommodate the remaining 60m² and fully utilize the GFA permitted on the OZP. These Members also considered that because of the special circumstances and constraints of the application site, the granting of the proposed minor relaxation of BH should not be taken as a precedent case. The Board should consider each application based on individual merits. The above views were shared by some other Members.

51. Two Members, however, maintained their views of not supporting the application as there were no strong planning justifications and design merits to justify a minor relaxation of the BH restriction on the site.

52. The Chairman summed up that apart from two Members not supporting the application, the majority of Members agreed to relax the BH restriction of the application site for 3m from 80mPD to 83mPD.

53. After further deliberation, the Board decided to relax the BH restriction for the application site for 3m from 80mPD to 83mPD. The permission should be valid until 5.2.2014, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or permission was renewed. The planning permission was subject to the following conditions of approval and advisory clauses:

Approval condition

the submission and implementation of a landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory clauses

- (a) the approval of the application does not imply any compliance with the Buildings Ordinance and Regulations. The applicant should approach the Buildings Department direct to obtain the necessary approval;
- (b) to note the comments of the Director of Environmental Protection that measures and effort should be taken for noise mitigation to reduce the traffic noise exposure;
- (c) to note the comment of the Chief Town Planner/Urban Design & Landscape that appropriate site measures should be taken in order to avoid possible damage to the tree branches and to further consider incorporating more greening on the boundary wall or planting more trees along the boundary wall;
- (d) to note the comments of the Director of Fire Services that the arrangement of emergency vehicular access shall comply with Part VI of the Code of Practice for Means of Access for Firefighting and Rescue which is administered by Buildings Department; and
- (e) to resolve any land issue relating to the development with the concerned Government departments.

54. The meeting was adjourned for lunch break at 12:15pm.

55. The meeting was resumed at 1:45 p.m.

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

Mr. Thomas Chow

Dr. Greg C.Y. Wong

Mr. Nelson W.Y. Chan

Mr. David W.M. Chan

Prof. David Dudgeon

Mr. Edmund K.H. Leung

Mr. Alfred Donald Yap

Ms. Sylvia S.F. Yau

Mr. Walter. K.L. Chan

Mr. Raymond Y.M. Chan

Mr. Felix W. Fong

Ms. Anna S.Y. Kwong

Prof. Paul K.S. Lam

Mr. K.Y. Leung

Prof. Edwin H.W. Chan

Miss Annie K.L. Tam

Mr. Benny Y.K. Wong

Mrs. Ava S.Y. Ng

Agenda Item 5

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/KC/341

Proposed Hotel in “Residential (Group A)” zone, Shop No. 12 (Portion) on G/F and the entire 1/F, Po Kai Mansion, 12 Wo Yi Hop Road, Kwai Chung

(TPB Paper No. 8485)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

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

Mr. Wilson Chan	District Planning Officer/Tsuen Wan and West Kowloon, Planning Department
Mr. S.Y. Lo	Senior Engineer/Kwai Tsing, Transport Department
Mr. Ng Kin Siu)
Mr. Chan Ka Lik) Applicant’s representatives
Mr. Ma Ming Chi)

58. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited Mr. Wilson Chan to brief Members on the background of the application.

59. With the aid of some plans and photos, Mr. Wilson Chan made the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for hotel use on the G/F (portion) and the entire 1/F within the 2-storey commercial podium with a 21-storey residential block above at the application site which was zoned “Residential (Group A)” (“R(A)”) on the Kwai Chung Outline Zoning

Plan (OZP). The application premises had a total GFA of 881.1m² and the proposed hotel had 28 guest rooms;

- (b) the application was rejected by the Metro Planning Committee (MPC) on 18.9.2009 for the reasons that the applicant had not demonstrated that the proposed hotel would not cause adverse traffic impact and did not propose feasible measures to address the impact, and the approval would set an undesirable precedent which would lead to penetration of hotel use within the commercial podia of the adjacent residential buildings;

[Prof. Edwin H.W. Chan arrived to join the meeting at this point.]

- (c) the further justifications in support of the review submitted by the applicant were set out in paragraph 3 of the Paper. The applicant claimed that hotel guests were expected to take public transport and that the hotel could make use of the on-street parking area at Tai Loong Street as the temporary picking up and setting down point for hotel guests. The traffic impact of the proposed hotel, with only 28 guestrooms, would be similar to that for the existing use on site. Moreover, the proposed hotel would not be operated as an 'hourly hotel' and the proposal would help rejuvenate the commercial podium of Po Kai Mansion;
- (d) departmental comments – the departmental comments were summarised in paragraph 5 of the Paper. The Commissioner for Transport (C for T) maintained his view that the applicant had not properly identified in his proposal any car parking and loading/unloading facilities and the proposed hotel would generate substantial illegal on-street stopping activities which would undesirably affect vehicular traffic at the junction of Wo Yi Hop Road and Castle Peak Road. It was not possible for the Police to enforce round-the-clock the 24-hour restrictions to curb illegal pick-up/drop-off activities at the location;
- (e) public comments – during the statutory publication period of the review application, 188 public comments were received objecting to the

application on the grounds that the proposed hotel use would be in breach of the DMC, it would adversely affect the public order of the subject building and the neighbourhood, it would affect the drainage system and it would cause fire safety problems; and

- (f) PlanD's views – PlanD did not support the application based on the assessment in paragraph 7 of the Paper. The proposed hotel was not supported as C for T indicated that the lack of off-street facilities for pick-up/drop-off would generate substantial illegal on-street stopping activities which would affect the road traffic at the junction of Wo Yi Hop Road and Castle Peak Road. There was currently no guest-house type hotel operating within the commercial podium of residential buildings in the area. The approval of the application would set an undesirable precedent which could lead to penetration of hotel use within the commercial podia of the adjacent residential buildings. Instead of the proposed hotel use, alternative commercial uses should be considered to help revitalise the commercial podium of the subject building.

60. The Chairman then invited the applicant's representatives to elaborate on the application and Mr. Ng Kin Siu made the following main points:

- (a) the proposed hotel would be provided with facilities for the disabled and access to the hotel would be from G/F. It would not affect the residents above;
- (b) the applicant also operated two similar types of hotels within the podium of composite buildings at 950 Canton Road and at 968 Canton Road. There was market demand for this type of hotel to serve individual tourists who would take public transport to the hotel. The building itself did not provide any parking and loading/unloading facilities for its occupants. With only 28 guestrooms proposed, the hotel would not generate any demand for coaches and hence there was no need for pick-up/drop off points for coaches. There was no reason to require the applicant to provide such facilities within the building;

- (c) traffic management measures (i.e. 24-hour no-stopping restrictions) were already in place to prevent parking and loading/unloading activities along sections of Wo Yi Hop Road and Castle Peak Road in the vicinity of the proposed hotel. The argument that the proposed hotel might give rise to illegal on-street parking and loading/unloading activities was unsound and unreasonable;
- (d) it was unreasonable to reject the proposed hotel use in the commercial podium when hotel use within the residential flats above would not require planning permission. According to Home Affairs Department's (HAD) policy, the applicant could apply for guesthouse licence for the residential flats above without the need to obtain planning permission first;
- (e) since hotel was a kind of domestic use under the Buildings Ordinance, the proposed hotel should be compatible with the residential uses above and the surrounding uses. It would not set any undesirable precedent;
- (f) CCTV would be installed and additional measures would be put in place to strengthen the security control and prevent any nuisance caused to the residents above;
- (g) the number of visitors and the traffic generated by the proposed hotel would be much less than that generated by a restaurant;
- (h) the proposal was in line with Government's policy to provide more hotels to attract tourists, as set out in the Policy Address;
- (i) the hotel would not be operated as an 'hourly hotel' as such hotels would not be sustainable in Kwai Chung which was not an entertainment district; and
- (j) it was not necessary to conduct a traffic impact assessment for the

proposal in view of the small number of visitors (around 50) arriving/leaving the hotel at any one time.

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

61. In response to a Member's enquiry on the residential care home for the elderly (RCHE) application mentioned in paragraph 5.2.8 of the Paper, Mr. Wilson Chan explained that Social Welfare Department (SWD) had received an application for a proposed RCHE at the application site on 1.9.2009. However, that application was still under processing by SWD.

[Mr. Alfred Donald Yap arrived to join the meeting at this point.]

62. With regard to the applicant's claim in paragraph 60(d) above, a Member enquired whether planning application was required for hotel use within the residential flats above. Mr. Wilson Chan explained that hotel use on the subject site which was zoned "R(A)" would require planning permission from the Town Planning Board. Mr. Ng Kin Siu said that although hotel was a Column 2 use, he understood from HAD that a guesthouse licence could be issued for a hotel which was converted from residential flats.

63. In response to the Chairman's enquiry, Mr. S.Y. Lo explained his concern that hotel guests taking taxis to the hotel might just drop off at the hotel entrance at Wo Yi Hop Road, noting that the hotel was about 800m away from the nearest MTR station. With the aid of a plan showing the location of the 24-hour no-stopping restriction in the vicinity of the hotel, Mr. Lo said that it was likely that hotel guests would be picked up/dropped off illegally at the hotel entrance located close to the Wo Yi Hop Road/Castle Peak Road junction and that would seriously affect traffic flow at the junction.

64. Mr. Ng Kin Siu said that it was unreasonable for TD to object to the hotel proposal based on a presumption that it would generate illegal pick-up/drop-off activities. Any such illegal activities should be enforced by law. He indicated that residents of the subject building would normally make use of an open air car park located just behind the subject site as the pick-up/drop-off point. Taxis taking the hotel guests there could use the same pick-up/drop-off point. Mr. S.Y. Lo disagreed and said that residents were familiar

with the area and would know where they could drop-off but hotel guests would not have the knowledge to do so. Mr. Ng pointed out that the taxi drivers would certainly know where they could pick-up/drop-off passengers. In response to a Member's enquiry on the nearest location to get a taxi, Mr. S.Y. Lo said that the car park behind the proposed hotel site was the nearest point where pick-up/drop-off activities could be carried out legally.

65. A Member enquired whether the applicant had liaised with the Owners' Corporation of the subject building. Mr. Ng Kin Siu said that he was concerned about the residents' views and would ensure that the design of the proposed hotel would address their concerns. He planned to explain to the residents the design proposal and that it would not be an hourly hotel once planning permission was obtained. He supplemented that the applicant owned a similar hotel in Canton Road at the commercial podium with residential flats above and they had installed CCTV and provided additional security measures to address the concerns of the residents living there.

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

66. A Member queried why TD held a different view from that of the Commissioner of Police who raised no objection once the applicant made a commitment that coach parking would not be required. Mr. S.Y. Lo explained that the Police were mainly concerned with prolonged loading/unloading activities while TD was concerned that substantial illegal on-street stopping activities would affect the overall traffic flow at the Wo Yi Hop Road/Castle Peak Road junction.

[Mr. Edmund K.H. Leung arrived to join the meeting at this point.]

67. Mr. S.Y. Lo supplemented that the Wo Yi Hop Road/Castle Peak Road junction was particularly critical because that section of Wo Yi Hop Road was in single lane in both directions and any illegal on-street stopping activities would cause serious disruption to the traffic flow. Mr. Ng Kin Siu commented that it was quite unlikely for taxis to pick-up/drop-off at that location as the junction was very busy. In response to the Chairman's enquiry, Mr. Lo confirmed that there were currently no illegal pick-up/drop-off activities at that location.

68. As the applicant's representatives had no further comment to make and Members had no questions to raise, the Chairman informed them that the hearing procedures for the review application had been completed and the Board would 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 applicant and of the Government for attending the meeting. They all left the meeting at this point.

Deliberation Session

69. A Member asked if the application should be rejected in view of the large number of objections from over 180 local residents. Another Member noted that the local residents were mainly concerned that indecent activities might be introduced.

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

70. The Chairman said that the application should be considered based on its land use compatibility and whether it would cause any adverse impact to the surrounding area. Mrs. Ava S.Y. Ng added that the subject site was zoned "R(A)" where a variety of commercial uses were permitted as of right on the lower three floors of the building and that Members should be careful in considering whether the proposed hotel was a compatible use within the "R(A)" zone. The Secretary said that Members should not only consider the number of local objections received but should consider carefully the reasons of such objection. In the subject case, the local residents were mainly concerned about the breach of the DMC, the law and order issue brought about by the hotel, fire safety and the impact on the drainage system. The Secretary explained that the matters of DMC and the law and order issue were not related to planning and the technical aspects on drainage and fire safety would be dealt with at the building plan submission stage.

71. On the traffic issue, a Member was not too concerned about the problem raised by TD given that the hotel had only 28 rooms. Another Member opined that the problem caused by public light buses waiting for passengers and ambulances stopping at that location to serve the RCHE which was previously in operation at the subject site was much more serious than the problem caused by taxis as suggested by TD. That Member supported the application. A Member, however, said that the strong objection raised by TD as an expert

department on traffic should be respected. Given the strong local objection and the traffic concerns, that Member did not support the application. Another Member, however, was of the view that TD's objection on traffic grounds was not strong enough.

72. A Member enquired about the requirement for the provision of loading/unloading facilities for similar applications. The Secretary explained that TD had an established general practice where hotel proposals with less than 50 guestrooms would not normally be required to provide parking and loading/unloading facilities. However, TD would need to consider the local circumstances and decide whether a lay-by for coaches in the vicinity of the hotel would need to be identified for pick-up/drop-off activities. At the MPC meeting considering the current application, the representative of TD indicated that, given the location of the application site, the proposed hotel development was not suitable and therefore was not supported.

73. A Member pointed out that pick-up/drop-off activities for the hotel could take place at Ta Chuen Ping Street or at the lay-by at the recently completed development (The Apex) on the other side of Wo Yi Hop Road which was only a short distance away from the proposed hotel without causing the traffic problems that TD was worried about. Another Member was also of the view that there would not be traffic problem as claimed by TD. However, another Member considered that the hotel proposal should only be supported when all issues generated were suitably addressed. Noting that TD had maintained his reservation on the hotel, that Member had doubt on the suitability of hotel use at the subject location and was of the view that the application should not be supported.

74. A Member said that even though the applicant was well aware of TD's concerns, the applicant had done nothing to convince the Board that the traffic issues could be resolved. The applicant had in fact indicated that he would not conduct any traffic impact assessment.

75. A Member was of the view that TD's strong objection to the proposal should be taken into account as they were the expert department on traffic. That Member also held the view that the large number of local objections should be taken as a secondary consideration against the proposed hotel. Moreover, the precedent effect should also be a reason for not supporting the application.

76. In response to the Chairman's enquiry on the precedent effect, the Secretary explained that although applications for hotel use within the commercial podium of a residential development had been approved by the Board in other districts, no such applications had been approved in Kwai Chung district. Granting planning permission to this application would set a precedent for similar applications within the Kwai Chung district.

77. The Chairman concluded that Members generally agreed to reject the application as the applicant had not demonstrated to the Board that the proposed hotel would not cause any adverse traffic impact to the surrounding area and that granting approval to the application would set an undesirable precedent for hotel use within the commercial podiums of residential buildings in the district. Members then went through the reasons for rejection suggested by PlanD and considered that they were appropriate.

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

- (a) the applicant had not demonstrated in the application that the proposed hotel would not cause adverse traffic impact on the surrounding area and had not proposed any feasible measures to address the impact; and
- (b) the approval of the application would set an undesirable precedent which would lead to penetration of the hotel use within the commercial podiums of the adjacent residential buildings.

[Mr. Felix W. Fong and Mr. Walter K.L. Chan left the meeting at this point.]

Agenda Item 6

[Open Meeting]

Request for Deferral for Review of Application No. A/K20/108

Proposed 'Office' Use in "Residential (Group A)1" zone, Ground Floor (Part) and Upper Ground Floor (Part), Kowloon Inland Lot No. 11073, Junction of Hoi Wang Road, Yan Cheung Road and Yau Cheung Road, West Kowloon Reclamation Area

(TPB Paper No. 8486)

[The hearing was conducted in Cantonese.]

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

Mr. Raymond Y.M. Chan) had current business dealings with Sino Land
Mr. Felix W. Fong) Co. Ltd. which was a joint owner of the site

80. Dr. Greg C.Y. Wong and Mr. Edmund K.H. Leung also declared interests as they had current business dealings with Sino Land Co. Ltd. As the application was for deferral of consideration of the application, the meeting agreed that the above Members could stay in the meeting. Members noted that Mr. Felix W. Fong had already left the meeting.

81. The Secretary reported that on 14.1.2010, the applicant submitted a request for deferment of consideration of the review application for two months in order to allow time for the applicant to undertake technical studies to address the grounds of rejection raised by the departments. The justifications for deferment met the criteria set out in Town Planning Board Guidelines No. 33 in that the applicant needed more time to prepare documentation for the review hearing, the deferment period was not indefinite, and that the deferment would not affect the interest of other relevant parties.

82. After deliberation, the Board decided to defer a decision on the application as requested by the applicant pending the submission of further information from the applicant. The Board agreed that the application should be submitted to the Board for consideration within three months upon receipt of the further submission from the applicant. The Board

also agreed to advise the applicant that two months were allowed for the preparation of the submission of further information and no further deferment would be granted unless under very special circumstances.

Agenda Item 7

[Open Meeting]

Review of Application No. A/YL-KTN/334

Temporary Open Storage of Vehicles (Medium Goods Vehicles) for a Period of 3 Years in “Village Type Development” zone, Lots 216 S.S RP (Part), 237 S.B ss.3RP (Part), 237 S.B ss.4 (Part) an 237 S.B RP (Part) in D.D. 103, Ko Po Tsuen, Kam Tin, Yuen Long

(TPB Paper No. 8483)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

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

Ms. Amy Cheung	District Planning Officer/Tuen Mun & Yuen Long, Planning Department
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Miss Lo Ka Man) Applicant’s representatives
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Miss Hung Wai Hing)
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84. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited Ms. Amy Cheung to brief Members on the background of the application.

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

- (a) the applicant sought planning permission for temporary open storage of vehicles (medium goods vehicles) use for a period of 3 years at the application site which was zoned “Village Type Development” (“V”) on the Kam Tin Outline Zoning Plan (OZP);
- (b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 9.10.2009 for the reasons that the application did not comply with the Town Planning Board Guidelines for ‘Application for Open Storage and Port Back-up Uses (TPB Guidelines 13E) in that the development was not compatible with the residential developments in the vicinity and there was adverse departmental comment on the environmental aspect, and the approval of the application, even on a temporary basis, would set an undesirable precedent for similar developments within the “V” zone, the cumulative effect of which would result in a general degradation of the environment of the area;
- (c) no further written justifications in support of the review were submitted by the applicant;
- (d) departmental comments – the departmental comments were summarised in paragraph 4 of the Paper. The Director of Environmental Protection (DEP) did not support the application as there were existing residential dwellings/structures in the vicinity of the site and environmental nuisance was expected. The District Lands Officer/Yuen Long (DLO/YL) indicated that although there were no Small House applications on the subject site, Small House applications on several adjoining lots had been approved by DLO/YL. The other departments maintained their previous views which were mainly technical;
- (e) public comments – during the statutory publication period of the review application, no public comment was received; and
- (f) PlanD’s views – PlanD did not support the application based on the assessment as stated in paragraph 6 of the Paper. The proposed

development was not in line with the planning intention of the “V” zone, the application did not comply with TPB Guidelines 13E in that DEP raised adverse comment on the grounds that environmental nuisance was expected, and the proposed use was not compatible with the surrounding land uses which included existing and proposed residential dwellings and Small House developments.

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

86. The Chairman then invited the applicant’s representatives to elaborate on the application and Miss Lo Ka Man made the following main points:

- (a) it was unreasonable to reject the application as the applicant had started operating the vehicle storage business in that location since 1997 while the Small Houses which were of concern to the Government departments were only recently approved;
- (b) the Small Houses in the vicinity of the application site were built more than 10 years ago and the residents there had never raised objection to the vehicle storage use;
- (c) to address the concerns of PlanD that the owners of the newly built Small Houses might object to the proposed use, the applicant had sought the assistance of the Chairman of the Kam Tin Rural Committee who indicated that the owners of the two newly built Small Houses did not object to the continued operation of the open storage of vehicles at the subject site (the letter from the Chairman of the Kam Tin Rural Committee was tabled at the meeting);
- (d) the applicant noted that DLO/YL did not object to the proposed temporary use. Regarding DEP’s objection in relation to the potential environmental nuisance, she said that DEP and the District Office had never received any complaints from the local residents during the operation of their business throughout the years. Besides, there were no

public comments received on the application;

- (e) the vehicles stored at the site were mainly medium goods vehicles which would not cause any adverse visual impact to the surrounding;
- (f) the applicant was only running a small business using the land for the display of vehicles. She queried whether her application was rejected because it would affect the environment and the value of the large-scale residential development built by large developers nearby; and
- (g) if the application was rejected, the applicant would have to close down the business, thus causing unemployment. The Board should give sympathetic consideration to the application since the existing operation did not cause any environmental or noise nuisance to its surroundings.

87. Miss Hung Wai Hing supplemented that, as shown on the photos, the site had been kept clean and tidy all along and the existing operation would not become a nuisance to its surroundings.

88. The Chairman clarified that the Board would consider the planning and land use issues in considering an application and not such issues as the impact on property value of private development as suggested by the applicant's representatives.

89. Miss Annie K.L. Tam enquired about the mode of operation and the operating hours. Miss Lo Ka Man explained that the site was mainly used for the storage of cars for sale. The cars were parked inside the site and their clients would usually call to make appointment for inspection of the car on site. The cars would not be moved until it was sold.

90. A Member commented that there seemed to be no evidence of local concern as there were no complaints from residents. The Member asked whether the two newly built Small Houses shown on Plan R-4 were occupied. Ms. Amy Cheung explained that the two Small Houses were not yet occupied.

91. A Member noted that the site had a long history of planning applications dating back to 1999. That Member asked whether the applicant's claim that they had complied with the approval conditions of all previous applications were true. In response, Ms. Amy Cheung explained that there were several previous applications for temporary public vehicle park use. According to PlanD's records, the last planning approval was granted for temporary public vehicle park use (A/YL-KTN/280) for one year. However, the applicant failed to comply with one of the approval conditions relating to the submission of fire service installations proposals and the planning approval was subsequently revoked. The applicant's latest application for temporary open storage of vehicles for sale (A/YL-KTN/315) was rejected by RNTPC. Nevertheless, the applicant did comply with the approval conditions of two earlier applications.

92. Miss Lo Ka Man explained that the approval condition of the last planning permission regarding the submission of fire service installations proposals was not complied with because the staff responsible for that had left the company without informing the other colleagues to make the submission. The applicant would have no problem in complying with that approval condition. She also supplemented that the two newly built Small Houses were not yet occupied and the Chairman of Kam Tin Rural Committee had confirmed that the owners did not object to the application.

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

93. As the applicant's representatives had no further comment to make and Members had no questions to raise, the Chairman informed them that the hearing procedures for the review application had been completed and the Board would 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 applicant and PlanD for attending the meeting. They all left the meeting at this point.

Deliberation Session

94. A Member commented that since no Small House application had been granted on the application site, it would be possible to grant permission for the temporary open storage use for a period of one year. The Chairman noted that the application site was in

front of two newly built Small Houses which were ready for occupation.

95. The Secretary explained that in previous applications for public vehicle park within “V” zone, the Board would normally be more sympathetic if the use applied for did not involve the parking of heavy goods vehicles. Nevertheless, the Board would be more stringent if there were Small Houses in the vicinity. According to TPB Guidelines 13E, for sites falling within Category 4 areas, the Board might give sympathetic consideration for open storage use if it would not generate adverse impact on the surrounding area and the Board would normally allow time for the applicant to identify site for relocation. In the subject case, the two Small Houses were not yet occupied. The Board might consider to follow the established practice according to the above guidelines.

96. Mr. Benny Y.K. Wong was of the view that the application should not be allowed even for one year since the Small Houses were ready for occupation. Although the applicant claimed that the owner of the houses did not object to the proposal, the houses could be rented out and the future tenant could complain to EPD of noise nuisance. DEP therefore maintained his views of not supporting the application.

97. A Member said that the future tenant should be aware of the applied use should he decide to move in. If there was indeed nuisance generated, the future tenant could always complain. That Member opined that the application could be granted for a period of at least one year. Mr. Benny Y.K. Wong commented that it was not appropriate to assume that the future tenant would be aware of the applied use.

98. Another Member considered that the Board could give sympathetic consideration to the application for a period of one year. That Member said that the letter from the Chairman of the Kam Tin Rural Committee should be taken into account.

99. A Member indicated support for granting planning permission for one year but was concerned whether the requirement for fire service installations would be complied with when planning permission was granted for only one year. The Member also enquired whether it would affect PlanD’s enforcement action. Mrs. Ava S.Y. Ng clarified that as the application was for temporary open storage of vehicles use without structures and not for a public vehicle park, Fire Services Department might have different fire service

installations requirements. Moreover, enforcement action was a separate matter which should not be a consideration in the subject review.

100. A Member pointed out that if planning permission was granted for one year on sympathetic grounds, it should be stated clearly that no further approval would be granted. Another Member, however, opined that if there were no complaints from the local residents after one year or the Small Houses were not occupied, further approval might still be considered.

101. The Chairman concluded that Members generally agreed to approve the application considering that there were no small house applications on the subject site, the proposal would not affect the long term planning intention of the site, and the owners of the two Small Houses adjoining the site did not object to the application as confirmed by the Chairman of Kam Tin Rural Committee. The Board agreed to give sympathetic consideration to the application and grant planning permission for a period of one year.

102. After further deliberation, the Board decided to approve the application on review. The permission should be valid for a period of 1 year until 5.2.2011 to allow time for the applicant to relocate the use to another suitable location and, after the said date, the permission should cease to have effect unless before the said date, the permission was renewed. The permission was subject to the following conditions:

- (a) no night-time operation between 6:00 p.m. and 9:00 a.m., as proposed by the applicant, was allowed on the site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, was allowed on the site during the planning approval period;
- (c) no vehicle dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities should be carried out on the site during the planning approval period;
- (d) no heavy goods vehicles exceeding 24 tonnes as defined in the Road Traffic Ordinance or container trailers/tractors were allowed to be parked/stored on the site during the planning approval period;

- (e) the drainage facilities on the site should be maintained at all times during the planning approval period;
- (f) the submission of tree preservation proposal within 3 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 5.5.2010;
- (g) in relation to (f) above, the implementation of tree preservation proposal within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 5.8.2010;
- (h) if any of the above planning conditions (a), (b), (c), (d) or (e) was not complied with during the planning approval period, the approval hereby given should cease to have effect and should be revoked immediately without further notice;
- (i) if any of the above planning conditions (f) or (g) was not complied with by the specified date, the approval hereby given should cease to have effect and should on the same date be revoked without further notice; and
- (j) upon expiry of the planning permission, the reinstatement of the application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

103. The Board also decided to advise the applicant on the following:

- (a) shorter approval and compliance periods were granted so as to monitor the situation on the site and allow time for relocation of the applied use to another suitable location;
- (b) prior planning permission should have been obtained before commencing the applied use at the application site;
- (c) to resolve any land issues relating to the development with the concerned owners of the site;

- (d) to note DLO/YL's comments that the application site was accessible to Kam Tin Road via a parcel of open Government land without maintenance works to be carried out thereon by his office. His office did not guarantee right-of-way;
- (e) to follow the latest "Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites" issued by DEP to minimise any potential environmental nuisances;
- (f) to note CBS/NTW, BD's comments that the granting of planning approval should not be construed as an acceptance of the unauthorised structures on the site under the Buildings Ordinance. Enforcement action might be taken to effect the removal of all unauthorised works in the future. Authorised Person had to be appointed to coordinate all building works; and
- (g) to note DEMS's comments that the applicant should approach the electricity supplier for the requisition of cable plans to find out whether there was any underground cable (and/or overhead line) within or in the vicinity of the site. Based on the cable plans obtained, if there was underground cable (and/or overhead line) within or in the vicinity of the site, the applicant should carry out the measures including prior consultation and arrangement with the electricity supplier for application site within the preferred working corridor of high voltage overhead lines at transmission voltage level 132kV and above as stipulated in the Hong Kong Planning Standards and Guidelines published by the Planning Department. Besides, prior to establishing any structure within the application site, the applicant and/or his contractors should liaise with the electricity supplier and, if necessary, ask the electricity supplier to divert the underground cable (and/or overhead line) away from the vicinity of the proposed structure. In addition, the "Code of Practice on Working near Electricity Supply Lines" established under the Electricity Supply Lines (Protection) Regulation should be observed by the applicant and his contractors when carrying out works in the vicinity of electricity supply lines.

[Prof. Paul K.S. Lam and Mr. David W.M. Chan left the meeting at this point.]

Agenda Item 8

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/YL-HT/646

Temporary Vehicle Repair Workshop with Ancillary Parking of Tractors/Trailers/Lorries and Storage Facilities for a Period of 3 Years in “Undetermined” zone, Lots No. 1932 (Part), 1933 (Part), 1934 RP (Part), 1936 S.B RP (Part) and 1937 RP (Part) in D.D. 125 and Adjoining Government Land, Ha Tsuen, Yuen Long

(TPB Paper No. 8482)

[The meeting was conducted in Cantonese.]

Presentation and Question Session

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

Ms. Amy Cheung	District Planning Officer/Tuen Mun and Yuen Long, Planning Department (PlanD)
Mr. Lee Chung Nam	Engineer, Civil Engineering and Development Department (CEDD)
Mr. Lam Kun Tak	Senior Engineer/Yuen Long, Drainage Services Department (DSD)
Mr. Eric Fung	Engineer/Yuen Long, DSD
Mr. Hoi Wai Ming	Assistant Divisional Officer, Fire Services Department (FSD)
Mr. Glenn A. Da Silva	Senior Station Officer, FSD
Mr. Sit Kwok Keung	- Applicant's representative

105. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited Ms. Amy Cheung to brief Members on the background of the application.

106. With the aid of a Powerpoint presentation, Ms. Amy Cheung made the

following main points as detailed in the Paper:

- (a) the applicant sought planning permission for temporary vehicle repair workshop with ancillary parking of tractors/trailers/lorries and storage facilities for a period of 3 years at the application site which fell within an area zoned “Undetermined” (“U”) on the Ha Tsuen Outline Zoning Plan (OZP);
- (b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 9.10.2009 for the reasons that the proposed development would be subject to fire risks and would have adverse drainage impacts on the surrounding areas and the submitted information could not demonstrate that the fire risks and the adverse drainage impacts could be mitigated, and the last three planning permissions granted to the applicant under application nos. A/YL-HT/341, A/YL-HT/451, and A/YL-HT/547 were all revoked due to non-compliance with the approval conditions and the applicant had not demonstrated any intention to comply with the approval conditions imposed by the Town Planning Board;
- (c) the further justifications in support of the review submitted by the applicant were set out in paragraph 3 of the Paper. The applicant claimed that a supplementary statement that was submitted was not enclosed with the RNTPC paper. The site was located in a Category 1 area where it was the established practice to favourably consider applications for open storage. The applicant had demonstrated in the supplementary statement that there might be technical difficulties to comply with the approval conditions. FSD no longer had any objection to the car repair operation which would be conducted on the open yard and not within an enclosed workspace. According to advice from FSD’s staff, the installation of fire extinguishers would be adequate. A revised drainage proposal with calculations had been submitted and the site had already been set back to the resumption limit for the Ping Ha Road Widening Project;

- (d) departmental comments – the departmental comments were summarized in paragraph 5 of the Paper. The Director of Drainage Services (DDS) considered the revised drainage proposal submitted for the s.17 review to be unacceptable. The revised proposal was in fact the same as that submitted for application no. A/YL-HT/451 and the previous comments and amendments suggested by DSD had not been incorporated. The Director of Fire Services also considered the applicant's proposal to install four fire extinguishers on the site to be unacceptable. Given the design and nature of the structures on-site, fire service installations (FSIs) were required and a layout plan incorporating FSIs should be submitted for approval. The Director of Civil Engineering and Development also maintained his views that the site should be set back as there was still a slight encroachment onto the resumption limit for the Ping Ha Road Widening Project;
- (e) public comments – during the statutory publication period of the review application, no public comment was received; and
- (f) PlanD's views – PlanD did not support the review application based on the assessment as stated in paragraph 7 of the Paper. Although the application site was located within Category 1 area under TPB Guidelines 13E where favourable consideration would normally be given, the applicant still had to demonstrate that the concerns of the departments would be addressed through the implementation of the approval conditions. As the applicant had repeatedly failed to comply with the approval conditions imposed by the Board, there was serious doubt as to whether the potential fire safety and drainage impacts arising from the application would be addressed. In granting the last approval (A/YL-HT/547), the applicant had already been warned that no further approval would be granted if the planning permission was revoked again. Although the applicant claimed that there were technical difficulties to comply with the approval conditions, they never submitted any application for review of the approval conditions.

107. The Chairman then invited the applicant's representative to elaborate on the application and, with the aid of some photos, Mr. Sit Kwok Keung made the following main points:

- (a) the application had been changed from 'temporary vehicle repairing workshop' to 'temporary vehicle repairing use'. The car repairing operation would be carried out in an open area underneath a shed 5m in height. As there was no permanent structure on site, there was no need for fire services installations. The applicant had enquired with FSD who advised that the provision of fire extinguishers would be adequate;
- (b) on the drainage aspect, the applicant would provide an open channel which would be connected to the public drain recently completed at the entrance to the application site. The open channel to be provided along one side of the site would serve to collect rain water within the site;
- (c) the boundary of the site fronting Ping Ha Road had already been set back by 1-2m and was already landscaped as required. There was no need to further set back the site and it was unreasonable for Government to require the applicant to do so. Should more land be required for the road widening scheme, Government could always resume the land under the Lands Resumption Ordinance;
- (d) the previous requirement under application no. A/YL-HT/341 for the applicant to provide drainage connections was not practical nor feasible as the required connections would pass through land owned by a third party. Besides, the required point of connection was on higher ground which would cause water to flow back onto the site;
- (e) the requirement for the applicant to provide a run-in/run-out was not feasible as the required location was on Government land which was reserved for the road widening project. Had the applicant complied with that requirement, the run-in/run-out would still need to be demolished to

make way for the road widening project;

- (f) the applicant cast doubt on the way his application was handled by PlanD as the supplementary information provided by the applicant was not attached to the RNTPC Paper for consideration by the Committee. Besides, the justifications provided by the applicant had been over-simplified or misinterpreted in the RNTPC Paper. The Paper did not mention that the application had been changed from 'Temporary Vehicle Repairing Workshop' to 'Temporary Vehicle Repairing Use'. Moreover, the paper claimed that the applicant had failed to provide connections to the public channel but did not set out the applicant's explanation that the public channel was not yet in place;

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

- (g) the applicant's site had been zoned "U" for over 20 years. He had been unfairly deprived of the right to properly develop his land as planning permission was required for all uses under the "U" zone. With West Rail already completed, there was no longer any reason to retain the "U" zone and PlanD should have properly rezoned the site years ago;
- (h) the applicant did not agree that the site would be subject to 'high fire risk' and it was unreasonable for that to be a reason for rejection;
- (i) the drainage requirements were not met because the public drain was not yet in place when the last planning permission was granted. Now that the public drain was in place, the applicant would provide the connections to comply with the approval condition;
- (j) on the landscaping requirements, only 17 trees were required and the applicant had planted 19 trees, even though one of the trees died afterwards. It was unreasonable for PlanD to claim that the approval condition on landscaping requirements were not yet met; and

- (k) the applicant was concerned that the approval conditions required the re-submission of drainage and other proposals which were already provided by the applicant as part of the s.16 application. These approval conditions were repetitive and he considered that no re-submissions were required.

108. In response to Mrs. Ava S.Y. Ng's enquiry, Ms. Amy Cheung explained that it was the practice of the Secretariat of the Town Planning Board that documents submitted by the applicant would not be sent back to the applicant as part of the RNTPC Paper. The supplementary information mentioned by the applicant was attached to the RNTPC Paper issued to Members and, according to the Minutes of the RNTPC meeting held on 9.10.2009, the supplementary statement was referred to during the discussion of the application.

109. A Member asked whether the provision of drains on one side of the site as proposed by the applicant was acceptable to DSD. Mr. Lam Kun Tak of DSD explained that as the applicant did not provide any site formation levels in his submission, it was not possible for DSD to determine whether the provision of drains on one side would be acceptable. Without any site details, DSD would require drains to be provided along the perimeter to ensure that water within the application site would not spill over to the adjacent land. As regards the public drain, since DSD was not the maintenance agent, they would therefore require the applicant to submit details such as the site levels and sand trap locations to enable detailed checking from the drainage perspective. In response to the Member's further enquiry, Mr. Lam confirmed that they were aware of the existence of the public drain.

110. The same Member asked whether the provision of fire extinguishers on site was adequate and Mr. Hoi Wai Ming of FSD replied that the information provided by the applicant was inadequate for FSD to determine if the proposal was acceptable. Mr. Hoi indicated that based on the sketchy information submitted, a 2-stacked container structure and a paint spraying operation were identified on the site showing that there was a certain degree of fire risk. As the information provided was not adequate, FSD could only provide a general comment on the FSI requirements.

111. A Member enquired whether the applicant could provide the information

required by DSD and FSD to facilitate the departments to assess the application. Mr. Sit Kwok Keung indicated that it was not reasonable for DSD and FSD to request such detailed information from the applicant, since the application was only for temporary use of the site for a period of 3 years. He also doubted whether the detailed information was necessary as the site situation, as presented in the photos, had already demonstrated that the fire risk was low and that the drainage proposals would be adequate.

112. The same Member pointed out to the applicant that it was his responsibility to provide sufficient information for the Board's consideration of the application. Mr. Sit Kwok Keung said that it should be the responsibility of DSD rather than the applicant to find out the details of the public drain. He was also not sure what other information would be required by FSD. He suggested that the Board could approve the application and the applicant would subsequently provide the further information requested.

113. Mr. Lam Kun Tak supplemented that the applicant should at least submit the site levels of the application site and the levels of the open channel proposed by the applicant before DSD could consider whether the proposal was feasible. In response, Mr. Sit Kwok Keung reiterated that the gradients were already provided in the plan they submitted to DSD.

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

Deliberation Session

115. A Member commented that the applicant should provide the information required by Government departments, particularly as potential fire safety and drainage impacts were involved. The Board would not be able to consider the application in the absence of such information. Another Member said that the application could not be approved as the concerns of relevant Government departments remained to be addressed.

116. The Chairman concluded that Members agreed to reject the application as the technical information required by relevant Government departments was not made available by the applicant to demonstrate that the fire risks and adverse drainage impacts could be mitigated. Members then went through the reasons for rejection suggested by PlanD and considered that they were appropriate.

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

- (a) the development would be subject to fire risks and would have adverse drainage impacts on the surrounding areas, and the information submitted by the applicant could not demonstrate that the fire risks and adverse drainage impacts could be mitigated; and
- (b) the last 3 planning permissions granted to the applicant under application nos. A/YL-HT/342, A/YL-HT/451 and A/YL-HT/547 were all revoked due to non-compliance with approval conditions, and the applicant failed to convince the Board that he would comply with approval conditions imposed by the Board/Committee.

Remarks

118. The Chairman said that Agenda Item 9 would not be open for public viewing since it was in respect of review of a section 16 planning application submitted before the commencement of the Town Planning (Amendment) Ordinance 2004.

[Open Meeting]

Any Other Business

[The meeting was conducted in Cantonese.]

127. There being no other business, the meeting was closed at 4:35 p.m.