

**Minutes of 859th Meeting of the
Town Planning Board held on 26.5.2006**

Present

Permanent Secretary for Housing, Planning and Lands (Planning and Lands)
Mrs. Rita Lau

Chairperson

Mr. Michael K.C. Lai

Dr. Greg C.Y. Wong

Ms. Carmen K.M. Chan

Mr. Erwin A. Hardy

Professor Nora F.Y. Tam

Mr. Nelson W.Y. Chan

Mr. David W.M. Chan

Mr. Leslie H.C. Chen

Professor David Dudgeon

Professor Peter R. Hills

Mr. Tony C.N. Kan

Dr. C.N. Ng

Dr. Daniel B.M. To

Mr. Stanley Y.F. Wong

Mr. Alfred Donald Yap

Ms. Sylvia S.F. Yau

Mr. B.W. Chan

Mr. Walter K.L. Chan

Ms. Maggie M.K. Chan

Mr. Raymond Y.M. Chan

Mr. Felix W. Fong

Ms. Anna S.Y. Kwong

Professor Paul K.S. Lam

Ms. Starry W.K. Lee

Mr. K.Y. Leung

Assistant Director(2), Home Affairs Department

Ms. Linda Law

Director of Environmental Protection

Dr. Michael Chiu

Director of Lands

Mr. Patrick L.C. Lau

Director of Planning

Mr. Bosco C.K. Fung

Deputy Director of Planning/District

Miss Ophelia Y.S. Wong

Secretary

Absent with Apologies

Dr. Peter K.K. Wong

Dr. Lily Chiang

Mr. Edmund K.H. Leung

Professor N.K. Leung

Professor Bernard Vincent W.F. Lim

Mr. Y.K. Cheng

Dr. James C.W. Lau

Principal Assistant Secretary (Transport)
Environment, Transport and Works Bureau

Ms. Ava Chiu

In Attendance

Assistant Director of Planning/Board
Mr. S. Lau

Chief Town Planner/Town Planning Board
Mr. C.T. Ling

Senior Town Planner/Ordinance Review
Ms. Jacinta K.C. Woo

Agenda Item 1

Confirmation of Minutes of the 858th Meeting held on 12.5.2006

1. The minutes of the 858th meeting held on 12.5.2006 were confirmed without amendments.

Agenda Item 2

Matters Arising

Judicial Review of the Town Planning Board's Decision

with Respect to Objection to the

Draft Quarry Bay Outline Zoning Plan (OZP) No. S/H21/18

2. The Secretary reported that on 9.5.2006, the Fine Tower Associates Ltd. (the Applicant) filed an application for leave for judicial review (JR) of the Board's decision of not upholding its objection to the draft Quarry Bay OZP No. S/H21/18. Leave was granted by the High Court on 15.5.2006.

3. The Secretary said that the case was related to an objection to the OZP lodged by the applicant in 2003. The Applicant objected to the rezoning of two lots at Hoi Yu Street waterfront from "Industrial" and "Government, Institution or Community" to "Other Specified Uses(1)" annotated "Cultural and/or Commercial, Leisure and Tourism Related Uses" and "Open Space". After consideration, the Board decided not to propose any amendment to meet the objection. The Applicant then filed a JR against the Board's decision. The JR was subsequently ruled by the Court that the Board did not act fairly as it failed to disclose to the Applicant the advice on facts and law in the objection hearing procedures. The Board's decision was therefore quashed and the case was remitted to the Board for a re-hearing.

4. The Secretary went on to say that after the re-hearing which was conducted on 10.2.2006, the Board maintained its previous decision of not proposing any amendment to the OZP to meet the objection. The Applicant applied for leave for the current JR on two main grounds:

- (a) the draft OZP amounted to a resumption of land without compensation, and such

resumption, not being deemed resumption under section 4(2) of the Town Planning Ordinance, was ultra vires; and

- (b) the zoning proposed by the OZP amounted to *de facto* expropriation of property, which was not a function of the Board and was contrary to the Basic Law.

The Secretary said that following the usual practice, she would represent the Board in the JR case.

5. In response to Mr. Patrick L.C. Lau's query, the Secretary said that the hearing of the JR case had yet to be fixed.

6. The Chairman said that since the legal proceedings had been initiated, the Board should not discuss further on the case. The Secretariat would report on the progress of the case in due course.

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

Agenda Item 3

[Open Meeting. The meeting was conducted in English and Cantonese.]

Proposed Revisions to Town Planning Board Guidelines on
Lapsing of Planning Permission
(TPB Paper No. 7595)

7. The following representative from the Planning Department (PlanD) was invited to the meeting:

Ms. Brenda Au Chief Town Planner/Town Planning Board

8. The Chairperson extended a welcome and invited Ms. Au to present the Paper.

9. With the aid of Powerpoint slides, Ms Au made the following main points as detailed in the Paper:

- (a) in processing an application for massage establishment and commercial bathhouse, the Metro Planning Committee (MPC) raised a query on whether a permission previously

granted for the same use on the same premises was still valid despite that the use had ceased for four months;

(b) the legal advice was that planning permission ran with the land, and any change in owner/tenant/operator should not affect the planning permission. In considering whether a use had been abandoned, the Board should take into account the circumstances of the case and have regard to four criteria:

- the physical conditions of the premises;
- the period of cessation of use;
- whether there had been any other use(s); and
- the intention of the owner;

(c) having considered the legal advice and the circumstances of the case in question, and the fact that the four-month period of cessation of use was short, the MPC decided that the previous permission granted in respect of the premises in question was still valid and no fresh application was necessary;

(d) to provide clearer guidance to the public, the MPC requested some guidelines be prepared on the validity of planning permission and the concept of abandonment;

(e) the proposed revisions were incorporated into paragraphs 3.4 to 3.7 of the draft TPB Guidelines No. 26A as highlighted at Annex IV; and

(f) some technical amendments were also proposed to the Guidelines as highlighted at Annex IV.

[Mr. Michael K.C. Lai, Dr. Daniel B.M. To and Ms Sylvia S.F. Yau arrived to join the meeting at this point.]

10. With respect to the proposed revisions to the Guidelines, Members had the following questions/comments:

(a) it was agreed that planning permission ran with the land but it should be clarified whether 'land' included buildings and premises;

- (b) whether the onus of proof to demonstrate that a use had not been abandoned was on either the owner, tenant or operator or all three of them;
- (c) whether any one of or all four criteria as set out in paragraph 3.4 of the revised Guidelines had to be satisfied;

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

- (d) how to interpret whether a permitted use had been realized;
- (e) under what circumstances would the applicant be required to provide evidence to prove that the previously permitted use had not been abandoned. Where sufficient proof had been provided by the applicant, whether the application would still need to be considered by the Board;
- (f) how to determine whether the premises had fallen into such a state that the originally approved use could not be resumed;
- (g) whether a more specific length of period could be proposed in the Guidelines to assist in determining a “reasonable period of cessation of use”;
- (h) whether the reference to a change in the character of the use would be confusing to the public as it would seem no different from a change of use in the generic term;
and
- (i) if a use were hitherto permitted under a statutory plan, why would there be a change of use if the owner wished to resume the use after a certain period of time.

11. In response to Members’ questions, Ms Au made the following points:

- (a) ‘land’ in legal terms included buildings and premises. However, for the avoidance of doubt, it could be elaborated in the revised Guidelines;
- (b) in establishing whether there had been an abandonment of use, either the owner,

tenant or operator had to provide evidence with regard to all four criteria as set out in paragraph 3.4 of the revised Guidelines;

- (c) a permitted use, such as a “shop and services” use in an industrial building permitted by way of a planning permission, would be regarded as ‘realized’ once the use had been put in operation;
- (d) since the determination of the case by the MPC in March 2005, PlanD had adopted the four criteria that had been drawn up based on the legal advice in dealing with enquiries on whether a fresh planning application would be required for similar cases. For instance, in case of an application for massage establishment use, the prospective applicant was very often referred by the licensing authority (i.e. the Commissioner of Police) to approach PlanD to check whether planning permission would be required. In such circumstances, PlanD would advise the prospective applicant according to the legal advice. In some cases, even after submission, an application would be returned to the applicant if upon checking, the District Planning Officer of PlanD advised that the previous permission in respect of the premises was still valid. Only if there was disagreement between the applicant and PlanD on whether the permitted use had been abandoned would the case be submitted to the Board for consideration;
- (e) the criterion on physical condition of the premises was drawn up based on a court case ruling in England where it was concluded that a residential use had been abandoned having regard to the fact that the dwelling had fallen into a derelict state such that it could not be put back to residential use. In the context of the Guidelines, the criterion generally referred to the physical conditions of the premises which might not necessarily be in a derelict state;
- (f) whether the period of cessation of use was reasonable was a matter of facts and degree, and would depend on circumstances of individual case. It would not be appropriate or possible to specify a definite period of cessation of use;
- (g) a change in the character of use is subject to legal interpretation. For example, a change of use from a shop selling convenience goods to a shop selling electrical goods might not be considered as a change in the character of the use; and

- (h) based on the previous legal advice, once a use had been abandoned, the resumption of the use would be considered as a change of use.

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

12. After deliberation, and subject to an additional revision as proposed in paragraph 11(a) above, the Board agreed to the proposed revisions to the TPB Guidelines on Lapsing of Planning Permission as shown at Annex IV and to promulgate the revised Guidelines to the public.

13. The Chairperson thanked the representative of PlanD for attending the meeting. Ms Au left the meeting at this point.

Agenda Item 4

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/YL-ST/297

Temporary Sales and Display Centre for Used Light Vehicles,
Tractors and Tractor Parts for a Period of 12 Months in “Other
Specified Uses” annotated “Comprehensive Development to
include Wetland Restoration Area” zone,

Lot 769(Part) in DD 99 and Adjoining Government Land,

San Tin, Yuen Long

(TPB Paper No. 7591)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

14. The following representative of the Planning Department (PlanD) was invited to the meeting at this point:

Mr. Wilson Y.L. So

District Planning Officer/Tuen Mun and Yuen Long

15. The following applicant and his representatives were also invited to the meeting at this point:

Mr. Siu Shu-tong	- Applicant
Mr. Raymond Leung)
Ms. Irene Chan) Applicant's Representatives
Mr. Law Chi-hung)

16. The Chairperson extended a welcome and explained briefly the procedures of the review hearing. The Chairperson then invited Mr. Wilson Y.L. So to brief Members on the background to the application.

17. With the aid of plans shown at the meeting, Mr. Wilson Y.L. So covered the following main aspects as detailed in the Paper:

- (a) the previous applications concerning the site;
- (b) the reasons for the Rural and New Town Planning Committee to reject the subject application on 3.2.2006;
- (c) no written representation had been received from the applicant in support of the review application;
- (d) departmental comments - the Environmental Protection Department and the Agriculture, Fisheries and Conservation Department did not support the application. There were no objections from the Drainage Services Department and the Urban Design and Landscape Section of PlanD on drainage and landscape aspect. The Highways Department considered that the run-in to the site needed to be upgraded;
- (e) one public comment from the planning consultant for the owner of Lot 769 was received on the review application, claiming that the owner had not given consent for the application;
- (f) PlanD's view – the review application was not supported for the reasons detailed in paragraph 6.2 of the Paper; and

- (g) a similar application (Application No. A/YL-ST/253) in the locality was approved by the Town Planning Appeal Board in March 2006 for six months in order to allow time for relocation of the temporary use. This case was different from the subject case as all the planning conditions in the previous approval of the appeal case had been complied with.

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

19. With the aid of Powerpoint slides, Mr. Raymond Leung made the following main points:

- (a) three applications for similar uses had been approved on the site before and the applicant had fully complied with the conditions imposed by the Board except for the last one on provision of a proper run-in to the site;
- (b) the condition on provision of a proper run-in was not familiar to most operators of container vehicle parks in the area. A proper run-in was not normally required for temporary uses in this section of Castle Peak Road. It therefore took time for the applicant to understand the requirement, to seek expert advice from consultants and then to follow the procedures for obtaining the required Excavation Permit;
- (c) it was unfortunate that the applicant had forgotten to apply for an extension of time for compliance of the condition in the previous approval, resulting in revocation of the approval;
- (d) the owner of Lot 769 owned over five hectares of land of which the applicant only occupied 8,000 ft² (about 740m²). The objection from the owner of Lot 769 was unfair as the applicant had been operating on the site for the past eight years and no objection had been raised before. The applicant had also been paying monthly rent to an agent for the owner as well as all the rates and Government rent over the years. The owner raised his objection only because an enforcement notice had been issued to him;
- (e) before making the application, the applicant had followed the procedures required

under the Town Planning Ordinance to notify the owner. The disputes between the owner and the applicant should not be a ground for not approving the application. There was no other local objection;

- (f) approval of the temporary use would not frustrate the long-term planning intention; and
- (g) under the TPB Guidelines No. 13D, a maximum of two years would be given for non-conforming uses in the Category 4 areas. The applicant was not aware that the previous approval given to him was to allow only one year for him to relocate elsewhere. He hoped that sympathetic consideration could be given to allow him to operate on the site for one more year.

20. In response to the Chairperson's and a Member's queries, Mr. Wilson Y. L. So showed Members a copy of the approval letter in respect of the previous application (Application No. A/YL-ST/278). The letter had included an advisory clause stating that the temporary approval of one year was given to the applicant to allow time for relocation of the use. It was the Board's normal practice that the correspondence with the applicant or his agent would be written in the same language as submitted in the application. In that case, the approval letter was written in English and sent to the applicant's agent by registered post.

21. In response to the Chairperson's and a Member's queries, Mr. Siu Shu-tong said that he could not read the letter that was sent to him. He simply relied on the advice of the previous consultant who had stopped providing the service and returned all documents to him without explaining to him the details in the letter. He was only aware that he was required to comply with the condition on the provision of a run-in and later found out that the approval had been revoked because of non-compliance of this condition.

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

Deliberation Session

23. The Board generally considered that there was no change in planning circumstances and it was clear that the last approval was given to allow time for the applicant to relocate elsewhere. The fact that the applicant was not aware of the Board's intention because of ill advice by his consultant should not warrant the granting of approval for another year.

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

- (a) the development was not in line with the planning intention of the "Other Specified Uses" annotated "Comprehensive Development to include Wetland Restoration Area" zone which was to encourage the phasing out of sporadic open storage and port back-up uses, and to provide incentive for the restoration of degraded wetlands adjoining existing fish ponds;
- (b) the development did not comply with the TPB Guidelines No. 12B for "Application for Developments within Deep Bay Area" in that there was no information in the submission to demonstrate that the development would not have a negative off-site disturbance impact on the ecological integrity and ecological value of the fish ponds within the Wetland Conservation Area in the Deep Bay area; and
- (c) the development was not in line with the TPB Guidelines No. 13D for "Application for Open Storage and Port Back-up Uses" in that there were adverse departmental comments and there was insufficient information in the submission to demonstrate that the development would not have adverse environmental impacts on the surrounding areas.

Agenda Item 5

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/YL-ST/298

Temporary Container Tractor/Trailer Park and Open Storage
of Building Materials for a Period of 12 Months in "Other

Specified Uses” annotated “Comprehensive Development to include Wetland Restoration Area” zone,
Lot 769(Part) in DD 99, San Tin, Yuen Long
(TPB Paper No. 7592)

[The hearing was conducted in Cantonese.]

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

Presentation and Question Session

25. A copy of the letter (with English translation) from Mr. Chaing Tandon Lal, the Chairman of the Lok Ma Chau China-Hong Kong Freight Association was tabled at the meeting.

26. The following representative of the Planning Department (PlanD) was invited to the meeting at this point:

Mr. Wilson Y.L. So District Planning Officer/Tuen Mun and Yuen Long

27. The following applicant’s representatives were also invited to the meeting at this point:

Mr. Wong Wai-keung) Applicant’s Representatives
Mr. Chaing Tandon Lal)
Mr. Ku Kin-pong)
Miss Yip Man-li)
Miss Yeung Tim-hi)

28. The Chairperson extended a welcome and explained briefly the procedures of the review hearing. The Chairperson then invited Mr. Wilson Y.L. So to brief Members on the background to the application.

29. With the aid of plans shown at the meeting, Mr. Wilson Y.L. So covered the following main aspects as detailed in the Paper:

- (a) the previous applications concerning the site;

- (b) the reasons for the Rural and New Town Planning Committee to reject the subject application on 3.2.2006;
- (c) the applicant had submitted further written representation including site photos to demonstrate that some drainage works had been carried out on site. After consultation with the Drainage Services Department (DSD), a supplementary paper was prepared and issued to Members on 25.5.2006. The DSD had no objection to the application but maintained its previous view that the drainage works had not been completed in accordance with the drainage proposals accepted by DSD under the previous application;
- (d) departmental comments - both the Environmental Protection Department and the Agriculture, Fisheries and Conservation Department maintained their previous views that the application was not supported. The Transport Department maintained its objection as the Traffic Impact Assessment had not been completed and the traffic management scheme had not been implemented. The Urban Design and Landscape Section of PlanD had no objection to the application;
- (e) two public comments were received on the review application. One was from the planning consultant for the owner of Lot 769 claiming that the owner had not given consent for the application, and the other was from the Village Representatives of Mai Po Village alleging that the development on site had created environmental nuisances and traffic problems over the years;
- (f) PlanD's view – the review application was not supported for the reasons detailed in paragraph 6.2 of the Paper; and
- (g) a similar application (Application No. A/YL-ST/253) in the locality was approved by the Town Planning Appeal Board in March 2006 for six months in order to allow time for relocation of the temporary use. This case was different from the subject case as all the planning conditions in the previous approval of the appeal case had been complied with.

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

application.

31. Mr. Wong Wai-keung and Mr. Chaing Tandon Lal made the following main points:
- (a) the site was filled in the 1980s and had since been used as a container vehicle park. The temporary use had been approved before which meant that the use was acceptable to the Board. It was only rezoned from “Residential (Group D)” to “Other Specified Uses” annotated “Comprehensive Development to include Wetland Restoration Area” in 1999 and later included in the Category 4 areas under the TPB Guidelines No. 13D;
 - (b) the applicant was willing to contribute to improve the conditions of the site to meet the Government’s requirements. There had so far been no complaint on the operation of the use on the site;
 - (c) it would not be possible to find suitable sites along the Shenzhen Western Corridor (SWC) which passed through Lau Fau Shan and Ha Tsuen. In fact, diverting the traffic from Lok Ma Chau might not be a good option as it could result in adverse impacts on the residents in Lau Fau Shan and Ha Tsuen;
 - (d) the importance of the container freight industry to the economy of Hong Kong should be recognized and the need of the industry should be accommodated. The application site had been serving as an important container freight transfer station. Closing down the site would seriously affect the industry’s operation; and
 - (e) the Lok Ma Chau China-Hong Kong Freight Association had reflected its view on the appropriate connection to SWC to the Government on various occasions. It was considered that the boundary crossings at Lok Ma Chau, Man Kam To and Sha Tau Kok should be maintained for freight traffic. It had also requested the Shenzhen authority to re-consider whether all freight traffic should be diverted from Huanggang to the SWC. It would be more appropriate to approve the application for another year, allowing time for assessing the traffic impact upon the opening of SWC later this year.
32. As the applicant’s representatives had no further comment to make and Members had no

question to raise, the Chairperson informed the applicant's representatives that the hearing procedures for the review had been completed and the Board would further deliberate on the application in their absence and inform them of the Board's decision in due course. The Chairperson thanked the applicant's representatives and PlanD's representative for attending the meeting. They all left the meeting at this point.

Deliberation Session

33. In response to a Member's query, the Secretary said that if the application were rejected by the Board upon review, the applicant could lodge an appeal within 60 days of being notified of the Board's decision. A hearing would normally be arranged by the Town Planning Appeal Board in about six months' time.

34. A Member was of the view that the location of the subject container trailer/tractor park at the application site was never a planned option. The argument that the setting up of the park there would cut short the journey for transit of containers was unfounded as the containers would still need to be transferred to the Kwai Chung Terminal one way or the other. Even if there was a need for such a transfer station, a site could be identified elsewhere but not in a wetland conservation area.

35. Members generally considered that consideration of the subject case should be similar to the last case (Application No. A/YL-ST/297) considered by the Board. The applicant had been advised to seek alternative site for relocation in the last approval. There was no change in planning circumstances and there was insufficient justification for a departure from the previous decision.

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

- (a) the development was not in line with the planning intention of the "Other Specified Uses" annotated "Comprehensive Development to include Wetland Restoration Area" zone which was to encourage the phasing out of sporadic open storage and port back-up uses, and to provide incentive for the restoration of degraded wetlands adjoining existing fish ponds;
- (b) the development did not comply with the TPB Guidelines No. 12B for "Application for Developments within Deep Bay Area" in that there was no information in the

submission to demonstrate that the development would not have a negative off-site disturbance impact on the ecological integrity and ecological value of the fish ponds within the Wetland Conservation Area in the Deep Bay area; and

- (c) the development was not in line with the TPB Guidelines No. 13D for “Application for Open Storage and Port Back-up Uses” in that there were adverse departmental comments and there was insufficient information in the submission to demonstrate that the development would not have adverse environmental impacts on the surrounding areas.

[Mr. Michael K.C. Lai left the meeting at this point.]

Agenda Item 6

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/YL-NTM/187

Temporary Storage of Durable and Consumer Goods for a
Period of 3 Years in “Comprehensive Development Area” zone,
Various Lots in DD 104 and Adjoining Government Land,
Chuk Yau Road, Ngau Tam Mei, Yuen Long
(TPB Paper No. 7596)

[The hearing was conducted in Cantonese.]

39. A replacement page 9 of the TPB Paper was tabled by the Planning Department (PlanD) and a written representation was tabled by the applicant at the hearing.

Presentation and Question Session

40. The following representative of PlanD was invited to the meeting at this point:

Mr. Wilson Y.L. So District Planning Officer/Tuen Mun and Yuen Long

41. The following applicant and his representatives were also invited to the meeting at this point:

Mr. William K.Y. Lam - Applicant
Mr. Chan Pui-wah) Applicant’s representatives
Mr. Tam Siu-kwan)

42. The Chairperson extended a welcome and explained briefly the procedures of the review hearing. The Chairperson then invited Mr. Wilson Y.L. So to brief Members on the background to the application.

43. With the aid of plans shown at the meeting, Mr. Wilson Y.L. So covered the following main aspects as detailed in the Paper:

- (a) the previous applications concerning the site;
- (b) the reasons for the Rural and New Town Planning Committee (RNTPC) to reject the application on 14.10.2005;
- (c) the justifications put forth by the applicant in support of the review application were summarised in paragraph 3 of the Paper;
- (d) departmental comments - the Environmental Protection Department did not support the application in view of the environmental nuisance, particularly noise generated from loading/unloading activities on the site, to the surrounding residents. In this respect, the Noise Impact Assessment (NIA) submitted by the applicant which was based on general industrial use was not considered acceptable. Two complaints about machine noise nuisance on the site had been received in 2004. The Transport Department maintained its previous view of not supporting the application as there were concerns on the traffic impact on Chuk Yau Road. There were no objections from the Drainage Services Department and the Urban Design and Landscape Section of PlanD on drainage and landscape aspects;
- (e) the District Officer/Yuen Long confirmed that the two objections from San Tin Rural Committee and Yau Tam Mei Tsuen Old Aged and Welfare Association had been withdrawn but there had been complaints from Chuk Yuen Tsuen residents on traffic congestion and noise in Chuk Yau Road;
- (f) three public comments were received concerning drainage facilities, road safety, traffic noise and environmental aspects. However, based on the documents tabled by the applicant at the meeting, two of the comments from the Village Representatives of San Wai Village and a group of villagers respectively had been withdrawn; and
- (g) PlanD's view – the review application was not supported for the reasons detailed in paragraph 6.1 of the Paper.

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

45. Mr. Tam Siu-kwan made the following main points:

- (a) the application site was surrounded by open storage and workshop uses. There was only one residential unit in the vicinity, and other residential developments were a few kilometres away;
- (b) the applicant had good relationship with his neighbours. There had not been any complaints about noise generated from the site. The objections from San Wai Village Representatives and nearby villagers had been withdrawn;
- (c) if the application were approved by the Board, the applicant would observe the restrictions on operation hours and provide paving if required to reduce the noise nuisance. The applicant would also attend to any complaints immediately;
- (d) only about 10 container vehicles would be going in and out of the site each day. The Traffic Impact Assessment submitted with the previous application had proved that the traffic impact on the surrounding area would be acceptable. Since the operation of the use on the site in 2003, no complaint on traffic had been received;
- (e) the applicant was willing to give up the land affected by the Northern Link if and when required by the Government; and
- (f) the applicant was willing to accept one-year approval with conditions should the Board consider that a three-year approval would not be favourable.

46. Mr. William K. Y. Lam supplemented the following points:

- (a) the company was first set up by him in late 1970s/early 1980s on another site. The company had gone through ups and downs over the years. When it was at its full steam, there were over 50 employees;
- (b) the operation of the company was then subject to enforcement action taken by the Planning Authority and the continuous prosecution action led to closure of the company in 1999;

- (c) the company was then re-established under a different name and moved to the subject site in 2003. He was now 50 years old and could not afford to lose the company again. Besides, if the company were closed down, the livelihood of his employees would also be affected; and
- (d) it was noted that there were still open storage and workshop uses on the site previously occupied by his company and such uses were not subject to enforcement and prosecution action. It was unfair to him that he was forced to move to the subject site and despite several attempts he was still unable to obtain approval from the Board.

47. In response to the Chairperson's and two Members' comments/queries, Mr. William K.Y. Lam and Mr. Chan Pui-wah clarified the following points:

- (a) the site was used for storage of large-scale machineries which could not be accommodated in a conventional warehouse. There used to be storage of durable and consumer goods on the site but the portion of such goods had reduced since the business of the company had changed over the years;
- (b) there were three warehouses on the site. Except for the one shown in the site photos taken by PlanD, the other two were used for storage of large-scale machineries;
- (c) it was mentioned in the Planning Statement submitted with the section 16 application that the site could be used for storage of electronic equipment;
- (d) it could be seen from Photo No. 8 in the Paper that there were containers on the site. The TIA submitted with the previous application had been based on the assumption that the site was used for transshipment of containers; and
- (e) as regards the three houses shown on Photos No. 11 to 13 in the Paper, one was previously used as a warehouse but was now vacant. An old lady living in the house shown on Photo No. 12 objected to the container vehicle park before in 2003 but did not object to the subject application. There was no objection from the remaining resident living in the house shown on Photo No. 11.

48. In response to the same queries, Mr. Wilson Y.L. So made the following points:

- (a) the assessment of the application was based on the proposed use as stated in the application form, which was temporary storage of durable and consumer good;
- (b) during site inspection, some containers were found on the site and some packaged goods were stored in the warehouse as shown in the site photos included in the Paper; and
- (c) the locations of nearby residential structures were marked on Plan R-2 and Photos No. 11 to 13 showed those structures that were in close proximity to the site.

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

Deliberation Session

50. The Chairperson remarked that the application had to be assessed based on the information as submitted in the application form and the supporting documents. It seemed that the applicant had now a different use in mind, which could not be considered by the Board. The applicant should be advised that the Board could not approve a use that was different from what was stated in the application form and the supporting documents. Members generally concurred with the Chairperson's view. Whilst Members were sympathetic to the applicant's situation, it was considered that there was no change in planning circumstances and there was insufficient justification for a departure from the RNTPC's decision.

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

- (a) the proposed development was not compatible with the residential dwellings and

village settlements in the surrounding area; and

- (b) there was insufficient information in the submission to demonstrate that the proposed development would not have adverse environmental, traffic and drainage impacts on the surrounding area. The submitted Noise Impact Assessment was considered not acceptable.

Agenda Item 8

Any Other Business

- 58. There being no other business, the meeting was closed at 11:20 a.m.