

TOWN PLANNING BOARD

Minutes of 429th Meeting of the Metro Planning Committee held at 9:00 a.m. on 29.10.2010

Present

Director of Planning
Mr. Jimmy C.F. Leung

Chairman

Mr. K.Y. Leung

Vice-chairman

Professor C.M. Hui

Ms. Julia M.K. Lau

Mr. Clarence W.C. Leung

Mr. Laurence L.J. Li

Mr. Roger K.H. Luk

Ms. L.P. Yau

Chief Traffic Engineer/Kowloon,
Transport Department
Mr. Albert Lee

Principal Environmental Protection Officer (Strategic Assessment),
Environmental Protection Department
Mr. H.M. Wong

Assistant Director/Kowloon, Lands Department
Ms. Anita K.F. Lam

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

Secretary

Absent with Apologies

Ms. Maggie M.K. Chan

Mr. Raymond Y.M. Chan

Mr. Felix W. Fong

Dr. Winnie S.M. Tang

Professor P.P. Ho

Professor Joseph H.W. Lee

Professor S.C. WONG

Mr. Maurice W.M. Lee

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

In Attendance

Assistant Director of Planning/Board
Mr. Lau Sing

Chief Town Planner/Town Planning Board
Ms. Christine K.C. Tse

Town Planner/Town Planning Board
Miss Hannah H.N. Yick

Agenda Item 1

Confirmation of the Draft Minutes of the 428th MPC Meeting held on 15.10.2010

[Open Meeting]

1. The draft minutes of the 428th MPC meeting held on 15.10.2010 were confirmed without amendments.

Agenda Item 2

Matters Arising

[Open Meeting]

2. The Secretary reported that there were no matters arising from the last meeting.

Tsuen Wan and West Kowloon District

Agenda Item 3

Section 16 Application

[Open Meeting]

A/K1/223 Proposed Residential-cum-Commercial Development
in “Commercial” zone and an area shown as ‘Road’,
114 and 116 Austin Road, Tsim Sha Tsui
(Kowloon Inland Lot No. 8877)
(MPC Paper No. A/K1/223)

3. The Committee noted that the applicant’s representative requested on 15.10.2010 for deferment of the consideration of the application for two months in order to allow time to address the comments raised by relevant Government departments.

4. After deliberation, the Committee decided to defer a decision on the application as requested by the applicant pending the submission of further information from the applicant. The Committee also agreed that the application should be submitted to the Committee for consideration within two months from the date of receipt of further information from the applicant. The Committee also agreed to advise the applicant that two months were allowed for preparation of the submission of further information, and no further deferment would be granted unless under very special circumstances.

Agenda Item 4

Section 16 Application

[Open Meeting]

A/KC/361 Proposed Shop and Services in “Industrial” zone,
16-18 Yip Shing Street, Kwai Chung
(MPC Paper No. A/KC/361)

5. The Committee noted that the applicant’s representative requested on 13.10.2010

for deferment of the consideration of the application for two months in order to allow time to address the comments from Government departments.

6. After deliberation, the Committee decided to defer a decision on the application as requested by the applicant pending the submission of further information from the applicant. The Committee also agreed that the application should be submitted to the Committee for consideration within two months from the date of receipt of further information from the applicant. The Committee also agreed to advise the applicant that two months were allowed for preparation of the submission of further information, and no further deferment would be granted unless under very special circumstances.

Hong Kong District

Agenda Item 5

Section 16 Application

[Open Meeting]

A/H5/387 Proposed Hotel in “Residential (Group A)” zone,
17 and 19 Hing Wan Street, Wan Chai
(MPC Paper No. A/H5/387)

7. The Secretary reported that the subject application was submitted by the applicant on 13.4.2010. At the request of the applicant, the Committee agreed to defer a decision on the application on 11.6.2010. On 24.9.2010, the draft Wan Chai Outline Zoning Plan (OZP) No. S/H5/26, incorporating amendments related to, inter alia, the imposition of building height (BH) restriction of 100mPD for the “R(A)” zone covering the site, was exhibited for public inspection for two months under section 5 of the Town Planning Ordinance. According to the Town Planning Board (TPB) Guidelines No. 33 on Deferment of Decision on Representations, Comments, Further Representations and Applications made under the Town Planning Ordinance, a decision on a section 16 application would be deferred if the zoning of the subject site was subject to outstanding adverse representation yet to be submitted to the Chief Executive in Council (CE in C) for consideration. As the exhibition period of the Wan Chai OZP would be expired on 24.11.2010, it was uncertain at this stage whether the site

would be subject to any adverse representation. If there was adverse representation in respect of the site, the application should be deferred until the CE in C had made a decision. As such, Planning Department (PlanD) recommended the Committee to defer a decision on the subject application pending the expiration of the exhibition period of the OZP.

8. The Secretary further reported that a letter was received from the applicant on 28.10.2010 who strongly objected to the deferment of the application. The letter was tabled at the meeting for Members' consideration. She said the applicant opined that the application was submitted on 13.4.2010 but was deferred by the TPB in June 2010 at the request of the applicant as there was a need for the applicant to address government departments' concerns. Further Information was submitted on 10.8.2010, 7.9.2010 and 15.10.2010 and the application had been scheduled to be considered by the Committee on 29.10.2010. The applicant expressed that all planning applications should be considered in accordance with the relevant OZP at the time of the submission of the planning application. In this regard, the subject application should be considered based on the previous version of the OZP. Therefore, TPB Guidelines No. 33 should not be applied to this application. It was unfair, unreasonable, unjust and was a punishment to the applicant if TPB accepted the recommendation of PlanD to defer a decision on the application. The applicant requested that the Committee should consider the application in this meeting.

9. The Chairman asked if there was any precedent case. The Secretary responded that in drawing up the TPB Guidelines No. 33, the relevant stakeholders had been consulted and the matter had also been discussed at the Legislative Council before the promulgation of the Guidelines. TPB had followed the practice laid down in the Guidelines since its promulgation in 2005. There was a recent case concerning a deferment decision in relation to a s.16 application for a development at Yuk Sau Street on which legal advice had been sought. The legal advice had indicated that while the TPB Guidelines No. 33 should be followed, each case should be considered by TPB based on its merits.

10. With reference to TPB Guidelines No. 33, a Member asked whether an application had to be deferred when the subject site was subject to outstanding adverse representation. This Member also enquired about the length of such deferment and whether a representation containing a general remark that the BH restrictions imposed on the whole area covered by the OZP were too lenient might be treated as an adverse representation

related to the application site. The Secretary said that according to para. 3.3(b) of the TPB Guidelines No. 33, a decision on a s.16 application would be deferred if the zoning of the subject site was still subject to outstanding adverse representation yet to be submitted to CE in C for consideration and the substance of the representation was relevant to the subject application. Although there was no representation related to the subject application site up to the present moment, the exhibition period of the OZP for representation had not yet expired. It was uncertain if there would be representation related to the subject site. She further responded that if the subject site was subject to adverse representation, the application would have to be deferred until the submission of the OZP to the CE in C for a final decision on the OZP. According to the Town Planning Ordinance, the OZP together with all representations have to be submitted to the CE in C for a decision within 9 months after the expiration of the exhibition period of the OZP. Regarding the question on the content of the representation, she informed Members that based on DoJ's advice previously sought on the Yuk Sau Street case, whether a general remark on the BH restrictions imposed could be treated as a relevant adverse representation would depend on the content of that specific representation. For the Yuk Sau Street case, DoJ had advised that the representer's comment which suggested more stringent BH restrictions for the whole area was relevant to the zoning restriction on the application site and were proper consideration for the TPB in deciding whether or not to defer the planning application.

11. A Member asked why the Secretariat had issued a letter informing the applicant that the Committee would consider the application on 29.10.2010. The Secretary explained that as the statutory time limit of 2 months for consideration of s.16 planning application would have to be restarted after the further information submitted would not be exempted from publication, the applicant was informed by the Secretariat that the application was scheduled to be considered by the TPB on 29.10.2010. The consideration of an application would include consideration to defer an application. This Member also asked whether the application would have to be deferred according to the TPB Guidelines No. 33 if all the further information was submitted at an earlier date and whether the applicant was aware of the fact that the Wan Chai OZP would be amended. The Secretary responded that the Wan Chai OZP was gazetted on 24.9.2010 and the applicant should have knowledge about it at the present moment. However, at the time of submission of the subject application, the applicant should not be aware that the amendments to the Wan Chai OZP would be gazetted on 24.9.2010.

12. In response to the same Member's further question, the Secretary clarified that if no adverse representation in respect of the BH restriction for the subject site was received by 24.11.2010, the application would be submitted to the Committee for consideration at the next Committee's meeting in early December. If adverse representation related to the BH restriction of the site was received by 24.11.2010, the application would be submitted to the Committee after CE in C had made a final decision on the OZP, which would be around August/September 2011.

13. By referring to para. 3.3(c) of the TPB Guidelines No. 33, a Member said that the committee might consider whether the fact that the exhibition period of the Wan Chai OZP had not expired was a reasonable ground to defer consideration of the application. This Member also asked whether PlanD had completed the planning assessment on the application and if not, whether this could be a reasonable ground to defer consideration of the application. The Chairman said that para. 3.3(b) of the TPB Guidelines No. 33 should have already covered the present situation of the subject application. The Secretary added that the subject application had been published for public comments and was circulated to relevant government departments for comments. PlanD should already have collected sufficient information to make an assessment on the application.

14. In response to the same Member's enquiry, the Secretary said that there was no precedent case which was the same as the subject application when the TPB had deferred consideration of an application based on the reason that the exhibition period of the OZP had yet to be expired. The Chairman said that as there was no precedent case, the Committee may consider seeking legal advice on whether PlanD's suggestion to defer the application was legally proper. The Secretary supplemented that it was prudent to seek legal advice noting that the applicant had submitted a letter expressing its objection to defer consideration of the application.

15. A Member opined that para. 3.3 (a) and (b) of TPB Guidelines No. 33 should be considered first in considering the deferment of an application. If both situations were not appropriate, then the TPB should consider to apply para. 3.3(c) of the Guidelines. This Member supported the suggestion to seek legal advice to clarify how to apply the relevant criteria as stipulated under para. 3.3 of the Guidelines. This Member opined that the approval

of an application would have implication on the OZP when the plan-making process was still on-going.

16. Another Member supported the seeking of legal advice. This Member asked whether the applicant's statement in his letter dated 28.10.2010 that 'all planning applications should be considered in accordance to the relevant OZP valid at the time of submission' was correct and whether there would be any implications on the plan-making process if the application was not deferred. The Secretary explained that in considering whether a planning application to the TPB was necessary, it should be based on the provision of the OZP valid at the time of submission of the application. However, in the consideration of the planning application, the TPB could take into account the latest planning intention and circumstances. For the subject case, the consideration of the application would have to take into account the BH restriction imposed, though that was not present in the version of the OZP at the time of submission of the application. On the second question, the Secretary explained that according to the spirit of para. 3.3(b) of the Guidelines, the approval of an application during the plan-making process would pre-empt the decision of the TPB and the CE in C on the OZP. It might be unfair to the person submitting the representation.

[Ms. Julia M.K. Lau arrived to join the meeting at this point.]

17. A Member also supported the seeking of legal advice. This Member was sympathetic to the applicant as the application was submitted before the gazetting of the current OZP and the applicant had no knowledge on the planning intention of the current OZP at the time when the application was submitted. Moreover, the BH of 93.875mPD of the proposed scheme actually complied with the BH restriction of 100mPD on the extant OZP. The Secretary explained that the BH restriction of 100mPD was yet to be finalized as the plan-making process was still ongoing. It was subject to changes depending on whether there was representation and if there was, the TPB's decision on the representations and the final decision of CE in C on these representations. Therefore, TPB should defer making a decision on such application so as not to pre-empt the final decision of CE in C in considering representations that might be received. It was the spirit behind para. 3.3(b) of the TPB Guidelines No. 33.

18. Another Member considered that though para. 3.3(b) of the TPB Guidelines No. 33 did not cover exactly the present situation, the spirit behind that was a reasonable

consideration for the subject case. According to para. 3.3(c) of the TPB Guidelines No. 33, the Committee could make a decision to defer the application at this meeting even without seeking legal advice. Apart from the above, this Member did not agree to the applicant's view as put forth in para. 2(a) of his letter of 28.10.2010 that the deferment of the subject application was like a punishment to the applicant for not acting quick enough. The applicant should have the responsibility to submit sufficient information to the TPB for consideration and should also accept the fact that the OZP could be amended when there was a need to do so.

19. The Chairman concluded that Members generally agreed to seek legal advice on whether it was proper for the TPB to defer consideration of the application when the exhibition period for receiving representations of the relevant OZP was yet to be expired and it was uncertain at this stage whether the application site would be subject to adverse representation. When legal advice was available, it would be submitted to the Committee for consideration. The Committee agreed that the consideration of the application should be deferred pending the availability of the legal advice.

Agenda Item 6

Section 16 Application

[Open Meeting]

A/H8/406 Proposed Hotel in "Residential (Group A)" zone,
88 Hing Fat Street, North Point
(MPC Paper No. A/H8/406)

20. The Committee noted that the applicant's representative requested on 13.10.2010 for deferment of the consideration of the application for two months in order to allow time to fine-tune the proposed internal transport facilities and hotel layout to meet the requirements of Transport Department.

21. After deliberation, the Committee decided to defer a decision on the application as requested by the applicant pending the submission of further information from the applicant. The Committee also agreed that the application should be submitted to the

Committee for consideration within two months from the date of receipt of further information from the applicant. The Committee also agreed to advise the applicant that two months were allowed for preparation of the submission of further information, and no further deferment would be granted unless under very special circumstances.

Agenda Item 7

Section 16 Application

[Open Meeting]

A/H15/240 Proposed Wholesale Conversion of the Existing Industrial Building
for Office Use in “Industrial” zone,
9 Tin Wan Praya Road, Aberdeen
(MPC Paper No. A/H15/240)

22. The Committee noted that the applicant’s representative requested on 8.10.2010 for deferment of the consideration of the application for two months in order to allow time to address the comments from Transport Department.

23. After deliberation, the Committee decided to defer a decision on the application as requested by the applicant pending the submission of further information from the applicant. The Committee also agreed that the application should be submitted to the Committee for consideration within two months from the date of receipt of further information from the applicant. The Committee also agreed to advise the applicant that two months were allowed for preparation of the submission of further information, and no further deferment would be granted unless under very special circumstances.

Kowloon District

[Ms. Jessica H.F. Chu, Senior Town Planner/Kowloon (STP/K), was invited to the meeting at this point.]

Agenda Item 8

Section 16 Application

[Open Meeting (Presentation and Question Sessions Only)]

A/K10/237 Proposed Flat, Shop and Services in “Residential (Group E)” zone,
18 Chi Kiang Street, Ma Tau Kok
(MPC Paper No. A/K10/237)

Presentation and Question Sessions

24. Ms. Jessica H.F. Chu, STP/K, presented the application and covered the following aspects as detailed in the Paper :

- (a) background to the application;
- (b) the proposed flat, shop and services;
- (c) departmental comments – no objection/adverse comment from concerned government departments was received;
- (d) District Officer (Kowloon City) (DO(KC)) advised that having regard to the findings of the previous local consultations, it was anticipated that the locals concerned might object to the proposal for visual amenity or air ventilation purposes. The Board should take into account all the comments gathered in the consultation exercise in the decision-making process. However, no public comment was received during the statutory publication period; and
- (e) the Planning Department (PlanD)’s views – PlanD had no objection to the application based on the assessment made in paragraph 11 of the Paper. The proposed development was in line with the planning intention of “Residential (Group E)” (“R(E)”) zone as it would encourage phasing out of industrial uses in the area and the redevelopment of obsolete industrial buildings. The proposed development intensity (i.e. domestic plot ratio of

7.5 and non-domestic plot ratio of 1.5) and building height of 99.725mPD also conformed with the restrictions stipulated on the OZP. While the proposed development could not be considered as compatible with the nearby industrial uses in the short term, the Environmental Assessment (EA) undertaken by the applicant had concluded that no unacceptable air quality impact on the proposed development due to industrial and vehicular emissions was anticipated. For traffic noise impact, the applicant has proposed mitigation measures such as building podium, balcony and setback, well gasketed window with a minimum of 6 mm thick glass pane, air conditioning and extended transfer plate structure. An approval condition was recommended to ensure the implementation of the traffic noise mitigation measures identified in the EA. In this regard, Director of Environmental Protection had no objection to the application. Similar applications for residential development in the locality at Nos. 5, 9 and 15 Yuk Yat Street within the same “R(E)” zone had been approved by the Committee before. Appropriate approval conditions regarding provision of transport facilities, and submission and implementation of a landscaping proposal were proposed to address the comments of Transport Department and the Chief Town Planner/Urban Design and Landscape, Planning Department. As regards DO/KC’s comment that there might be local concern/objection to the proposed high-rise development on visual amenity or air ventilation grounds, no public comment on the application had been received during the statutory publication period. Besides, the proposed building height conformed with the building height restriction stipulated on the OZP.

25. Members had no question on the application.

Deliberation Session

26. After deliberation, the Committee decided to approve the application, on the terms of the application as submitted to the Town Planning Board (TPB). The permission should be valid until 29.10.2014, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the

permission was renewed. The permission was subject to the following conditions :

- (a) the submission and implementation of a landscaping proposal to the satisfaction of the Director of Planning or of the TPB;
- (b) the provision of car parking and loading/unloading spaces to the satisfaction of the Commissioner for Transport or of the TPB;
- (c) the implementation of the traffic noise mitigation measures as identified in the Environmental Assessment to the satisfaction of the Director of Environmental Protection or of the TPB; and
- (d) the design and provision of fire service installations to the satisfaction of the Director of Fire Services or of the TPB.

27. The Committee also agreed to advise the applicant to note the comments of :

- (a) the District Lands Officer/Kowloon West, Lands Department that a lease modification application should be submitted for consideration. There was, however, no guarantee that the lease modification be granted which would only be considered upon application;
- (b) the Director of Fire Services that the arrangement of emergency vehicular access should comply with Part VI of the Code of Practice for Means of Access for Firefighting and Rescue;
- (c) the Commissioner for Transport, Transport Department that the car lift for the proposed development should be able to accommodate private cars with a minimum dimension of 2.5m(W) x 5.0m(L) x 2.4m(H);
- (d) the Chief Building Surveyor/Kowloon, Buildings Department that an Authorized Person should be appointed to submit building plans for formal approval;

- (e) the Chief Town Planning/Urban Design and Landscape, Planning Department that a minimum of 20% greenery coverage of the podium garden should be provided in the landscape design. Planting along edges of the podium should be provided in order to enhance screening effect; and
- (f) the Commissioner of Police that during construction stage, the Road Safety Officer (Investigation & Support Division, Traffic Kowloon West) should be consulted on how to ensure the safety of other road-users and to make their own safety arrangement to ensure equipments would be properly secured.

[The Chairman thanked Ms. Jessica H.F. Chu, STP/K, for her attendance to answer Members' enquiries. She left the meeting at this point.]

[Mr. Silas K.M. Liu, STP/K, was invited to the meeting at this point.]

Agenda Item 9

Section 16 Application

[Open Meeting (Presentation and Question Sessions Only)]

A/K15/101 Proposed Eating Place (Restaurant)
 in "Village Type Development" zone,
 48 Lei Yue Mun Praya Road, Lei Yue Mun
 (MPC Paper No. A/K15/101)

Presentation and Question Sessions

28. Mr. Silas K.M. Liu, STP/K, presented the application and covered the following aspects as detailed in the Paper :

- (a) background to the application;
- (b) the proposed eating place (restaurant);

- (c) departmental comments – no objection/adverse comment from concerned government departments was received. Director of Environmental Protection (DEP) and Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD) advised that foul or polluted water generated from the application site should be properly discharged to public sewer laid along Lei Yue Mun Praya Road near the proposed restaurant. Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) advised that no significant visual and landscape impact would be anticipated. However, there were weeds, shrubs and a heavy standard *Bauhinia blakeana* within the site. Approval condition requiring the submission and implementation of a landscape and tree preservation proposal was thus recommended;

- (d) during the statutory publication period, three public comments were received. The first comment was from a group of residents living near the site who had expressed worries about the application, such as noise nuisance from its customers and air-conditioners, far-reaching effects on hygiene and environment, blocking of view, slowing down the ventilation, light pollution, deterioration of security, and more fire risks. The second and third comments were both from the Designing Hong Kong Limited who supported the application but had concerns about sewage treatment and effluent discharge. No local objection was received by District Officer (Kwun Tong); and

- (e) the Planning Department (PlanD)'s views – PlanD had no objection to the application based on the assessment made in paragraph 10 of the Paper. The application site was located along Lei Yue Mun Praya Road where shop and services or restaurant uses were found. The proposed development was considered compatible with the commercial development such as shop and services or restaurant uses in the neighbourhood to serve the local community and visitors to Lei Yue Mun. Moreover, the proposed building height of 2 storeys (7m) was also compatible with the 2 to 3 storeys village houses in the vicinity. There was a public foul sewer laid along Lei Yue Mun Praya Road near the proposed restaurant. As the

proposed restaurant would have its own drainage system and connect to the public sewer, the public comment on sewage treatment and effluent discharge and EPD's and DSD's concern could be addressed. A planning condition to ensure proper sewer connection from the application site to the public sewer was proposed. Regarding the other public comments/concerns, they could be suitably dealt with by relevant legislation, licence and other government requirements, as might be applicable. In this regard, departments consulted had either no comment on or no objection to the application.

29. Members had no question on the application.

Deliberation Session

30. After deliberation, the Committee decided to approve the application, on the terms of the application as submitted to the Town Planning Board (TPB). The permission should be valid until 29.10.2014, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The permission was subject to the following conditions :

- (a) the submission and implementation of a landscape and tree preservation proposal to the satisfaction of the Director of Planning or of the TPB;
- (b) the submission of fire service installations and water supplies for firefighting being provided to the satisfaction of the Director of Fire Services or of the TPB; and
- (c) the submission and implementation of sewer connection from the application site to the existing public sewer laid along Lei Yue Mun Praya Road to the satisfaction of the Director of Drainage Services or of the TPB.

31. The Committee also agreed to advise the applicant to note the comments of the Director of Fire Services that the arrangement of emergency vehicular access should comply with Part VI of the Code of Practice for Means of Access for Firefighting and Rescue which

was administered by the Buildings Department.

[The Chairman thanked Mr. Silas K.M. Liu, STP/K, for his attendance to answer Members' enquiries. He left the meeting at this point.]

Agenda Item 10

Any Other Business

32. There being no other business, the meeting closed at 10:05 a.m..