

**Minutes of 1022<sup>nd</sup> Meeting of the  
Town Planning Board held on 26.10.2012**

**Present**

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

Chairman

Mr. Stanley Y.F. Wong

Vice-chairman

Professor S.C. Wong

Mr. Timothy K.W. Ma

Professor Edwin H.W. Chan

Ms. Bonnie J.Y. Chan

Professor K.C. Chau

Mr. Rock C.N. Chen

Mr. H.W. Cheung

Dr. Wilton W.T. Fok

Mr. Ivan C.S. Fu

Mr. Sunny L.K. Ho

Professor P.P. Ho

Mr. Lincoln L.H. Huang

Professor Eddie C.M. Hui

Ms. Janice W.M. Lai

Mr. Dominic K.K. Lam

Mr. Patrick H.T. Lau

Ms. Julia M.K. Lau

Ms. Christina M. Lee

Mr. Maurice W.M. Lee

Mr. Clarence W.C. Leung

Mr. Laurence L.J. Li

Mr. Roger K.H. Luk

Ms. Anita W.T. Ma

Dr. W.K. Yau

Acting Assistant Director (Environmental Assessment)  
Environmental Protection Department  
Mr. H.M. Wong

Director of Lands  
Ms. Bernadette Linn  
(11:10 a.m. to 4:00 p.m.)

Deputy Director of Lands (General)  
Mr. Jeff Lam  
(9:00 a.m. to 11.10 a.m. and from 5:00 p.m. onwards)

Director of Planning  
Mr. Jimmy Leung

Principal Assistant Secretary (Transport)  
Transport and Housing Bureau  
Miss Winnie Wong

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

Secretary

**Absent with Apologies**

Dr. C.P. Lau

Mr. H.F. Leung

Dr. W.K. Lo

Mr. Stephen H.B. Yau

Assistant Director (2), Home Affairs Department  
Mr. Eric Hui

**In Attendance**

Assistant Director of Planning/Board  
Ms. Christine K.C. Tse

Chief Town Planner/Town Planning Board  
Mr. Edward W.M. Lo (a.m.)  
Miss H.Y. Chu (p.m.)

Senior Town Planner/Town Planning Board  
Mr. Raymond H.F. Au (a.m.)  
Ms. Doris S.Y. Ting (p.m.)

**Agenda Item 1**

[Open Meeting]

Confirmation of Minutes of the 1021<sup>st</sup> Meeting held on 12.10.2012

[The meeting was conducted in Cantonese.]

1. The Secretary proposed that the first sentence in paragraph 115(1)(ix) of the draft minutes of the 1021<sup>st</sup> meeting held on 12.10.2012 should be amended to read:

“in order to meet the prescribed windows requirements and 15m separation between blocks within 30m from the centreline of a street, a possible option was to arrange all the seven single-aspect residential blocks around the site, the so-called “Tulou” design.”

2. Members had no objection to the proposed amendment and agreed that the minutes should be confirmed subject to the incorporation of the proposed amendment.

**Agenda Item 2**

[Open Meeting]

Matters Arising

[The meeting was conducted in Cantonese.]

(i) Proposed Amendment to the Confirmed Minutes  
of the 1020<sup>th</sup> Town Planning Board Meeting held on 28.9.2012

3. The Secretary reported that the draft minutes of the 1020<sup>th</sup> meeting held on 28.9.2012 were confirmed without amendments by the Board on 12.10.2012. Upon further review, it was found that there was a typographical error regarding the number of the draft Central District (Extension) Outline Zoning Plan as stated in paragraph 160 of the minutes, which should read ‘S/H24/7’ instead of ‘S/K24/7’. A copy of the proposed amendment to paragraph 160 of the confirmed minutes had been sent to Members for consideration.

4. After deliberation, the Board agreed to the revised minutes.

[Mr. Ivan C.S. Fu left the meeting temporarily at this point.]

[Mr. Dominic K.K. Lam arrived to join the meeting at this point.]

(ii) Abandonment of Town Planning Appeal

Town Planning Appeal No. 2 of 2011

Proposed Comprehensive Residential and Commercial Development with Provision of Government, Institution or Community Facilities and Public Open Space in “Comprehensive Development Area” zone, 60-66 and 88-90 Staunton Street, 4-6 Chung Wo Lane, 8 and 13 Wa In Fong East, 2-10 and 16 Wa In Fong West, 2-10 and 17-19 Shing Wong Street, 1-12 Wing Lee Street, Bridges Street Market and Refuse Collection Point and Adjoining Government Land, Sheung Wan

(Application No. A/H3/388)

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5. The Secretary reported that an appeal (No. 2/2011) had been abandoned by the appellant on its own accord on 12.10.2012. Town Planning Appeal No. 2/2011 was received by the Appeal Board Panel (Town Planning) on 18.1.2011 against the decision of the Board on 5.11.2010 to reject on review planning application No. A/H3/388 for a proposed comprehensive residential and commercial development with provision of government, institution or community facilities and public open space in “Comprehensive Development Area” zone on the then approved Urban Renewal Authority Staunton Street/Wing Lee Street Development Scheme Plan No. S/H3/URA1/2.

6. On 17.10.2012, the Appeal Board Panel (Town Planning) confirmed that the appeal was abandoned in accordance with Regulation 7(1) of the Town Planning (Appeals) Regulations of the Town Planning Ordinance.

Appeal Statistics

7. The Secretary reported that as at 26.10.2012, 25 appeal cases were yet to be

heard by the Town Planning Appeal Board. Details of the appeal statistics were as follows:

Allowed	: 28
Dismissed	: 124
Abandoned/Withdrawn/Invalid	: 162
Yet to be Heard	: 25
<u>Decision Outstanding</u>	<u>: 1</u>
<b>Total</b>	<b>: 340</b>

### **Tuen Mun and Yuen Long District**

#### **Agenda Item 3**

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/TM-LTY Y/227

Temporary Public Vehicle Park for Private Cars and Light Goods Vehicles for a Period of 3 Years in “Village Type Development” Zone, Lots 33(Part), 1541(Part), 1551(Part), 1552, 1554 (Part), 1555 (Part) and 1556 S.A(Part) in D.D. 130, Tsing Chuen Wai, Tuen Mun (TPB Paper No. 9212)

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[The meeting was conducted in Cantonese.]

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

8. The Chairman informed the meeting that the applicant had indicated that he would not attend the review hearing. The following representative of the Planning Department (PlanD) was invited to the meeting at this point:

Mr. W.W. Chan - District Planning Officer/Tuen Mun & Yuen Long  
(DPO/TMYL), PlanD

9. The Chairman extended a welcome and drew Members’ attention that a replacement page regarding amendments to Plan R-2 of the TPB Paper was tabled at the

meeting. He then invited DPO/TMYL to brief Members on the review application.

10. With the aid of a Powerpoint presentation, Mr. W.W. Chan, DPO/TMYL, presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for a temporary public vehicle park for private cars and light goods vehicles for a period of 3 years at the site zoned “Village Type Development” (“V”) on the approved Lam Tei and Yick Yuen Outline Zoning Plan (OZP) No. S/TM-LTYYY/6 at the time of s.16 application and currently in force;
- (b) the Rural and New Town Planning Committee (RNTPC) rejected the application on 20.4.2012 for the reason that the site was located within a densely developed village cluster and the applicant failed to demonstrate that the temporary development would not have adverse environmental and drainage impacts on the adjacent village type houses/residential dwellings and surrounding area;
- (c) the justifications put forth by the applicant in support of the review application were summarised in paragraph 3 of the Paper, as follows:
  - (i) the temporary vehicle park could serve the parking needs of local villagers;
  - (ii) supplementary planning statement, landscape proposal and drainage proposal were submitted in support of the application;
  - (iii) the existing 2.5m high solid boundary wall along the southern boundary and those proposed solid boundary walls along the eastern and western boundaries could effectively minimise the noise impacts of the vehicle park during the parking of vehicles and starting of engines which were short-lived and insignificant;

- (iv) only private cars would be parked at the site and the vehicle park would have no night-time operation between 11:00 p.m. and 7:00 a.m.;
  - (v) the applicant would carry out appropriate mitigation measures recommended in the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”;
  - (vi) the existing north-south running access within the site would be kept uninterrupted for the usage of both pedestrians and vehicles;
  - (vii) no waste water would be generated from the site as no car washing activity would be carried out;
  - (viii) the technical difficulty related to the proposed drainage works in conflict with the existing underground utilities would be surmountable; and
  - (ix) the planning circumstances of the application were different from those of a similar application No. A/TM-LTY Y/222 rejected by the RNTPC on 7.10.2011;
- (d) the application site, with an area of about 2,350m<sup>2</sup>, was located within a cluster of village type houses and residential dwellings and was currently used for parking of vehicles. There was a north-south running access within the site serving the village type houses/residential dwellings to the north and north-east. Part of the site also provided access to the village type houses to the west;
- (e) there was no previous application at the site. There were eight similar applications for temporary public vehicle park within the “V” zones on the OZP. Five of the similar applications were approved with conditions by the RNTPC/the Board as they were not surrounded by

dense residential dwellings and were served by proper road/access, whilst the other three similar applications were rejected by the RNTPC on grounds that the application sites were located within a densely developed village cluster, and the applicants failed to demonstrate no adverse environmental impacts on the adjacent residential dwellings;

- (f) departmental comments – the departmental comments were summarised in paragraph 5 of the Paper. The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) considered the drainage proposal was acceptable but raised concerns on its feasibility from the construction point of view as the proposed drainage works might be in conflict with the existing underground utilities. Other government departments generally had no adverse comment on the review application;

[Mr. Ivan C.S. Fu returned to join the meeting at this point.]

- (g) public comments – three public comments were received during the planning application stage including two supporting comments without giving reason and one comment expressing concern on whether the landowners had given consent to the application. Three public comments were received during the review stage. They were from a Tuen Mun District Council (TMDC) member, a resident of Tsing Chuen Wai and the registered owners of part of the application site, i.e. Lot 1541 in D.D. 130. The TMDC member supported the application on the grounds that there were insufficient metered parking spaces in the area and more parking spaces were required to serve the residents nearby. The resident of Tsing Chuen Wai worried the blockage of access if approval was granted to the application. The registered owners of Lot 1541 in D.D. 130 objected to the proposal as they intended to construct Small Houses on the lot; and
- (h) PlanD's views – PlanD did not support the review application based on the planning considerations and assessments as set out in paragraph 7 of

the Paper and summarised below:

- (i) the application site was located within a dense cluster of village type houses/residential dwellings. The temporary vehicle park would have adverse environmental impacts on the surrounding residential use and the proposed 2.5m high solid boundary walls would have visual impacts on the adjoining residents. The applicant failed to demonstrate that the development would not generate adverse environmental impacts on the surrounding area;
- (ii) the applicant failed to demonstrate that the development would not cause adverse drainage impacts. CE/MN, DSD raised concern on the feasibility of the proposed drainage works from construction point of view as the proposed works might be in conflict with some underground utilities;
- (iii) the applicant had not demonstrated how the existing east-west running access within the application site could be retained for public passage;
- (iv) similar applications approved were not surrounded by dense residential dwellings and were served by proper road/access;
- (v) similar applications were rejected on similar grounds that the application sites were located within a densely developed village cluster, and the applicants failed to demonstrate that there would be no adverse environmental impacts on the adjacent residential dwellings. Rejecting the current application was consistent with the previous decisions of the RNTPC on similar applications; and
- (vi) there had been no material change in the planning circumstances since the consideration of the planning application by the RNTPC on 20.4.2012.

11. As the presentation from the representative of the PlanD had been completed, the Chairman invited questions from Members.

12. Mr. Jeff Lam, Deputy Director of Lands (General), said that the District Lands Office/Tuen Mun of the Lands Department had received a Small House application at Lot 1541 in D.D. 130 and was processing it.

13. Noting that there was a public comment indicating that the applicant had not obtained the consent of the lot owners, a Member asked whether this would be a relevant consideration for not supporting the application. Another Member said that the owners of one of the lots (i.e. Lot 1541 in D.D. 130) within the application site objected to the application on the grounds that the owners intended to construct Small House on the lot. This Member asked whether the application, if approved, would contravene the Town Planning Ordinance (the Ordinance) or the procedure and practice of the Board. In response to the questions of these two Members, Mr. W.W. Chan said that in accordance with the Ordinance, where an applicant was not the sole “current landowner” of the land/premises to which the application related, the applicant had to indicate in the application whether he/she had within a reasonable period of time before making the application obtained the consent of or notified each and every “current landowner” in respect of the application site. For the instant application, the applicant had complied with the statutory requirement of notifying the landowners. Mr. Chan said that should the Board decide to approve the application, an advisory clause had been proposed under paragraph 8.2 of the Paper to advise the applicant to resolve any land issue relating to the development with the concerned owner(s) of the application site. However, if the owners of Lot 1541 in D.D. 130 did not agree to the application, the temporary vehicle park under application could not be implemented even if planning approval was granted.

14. Noting that the application site was currently used as a vehicle park, a Member asked whether the parking of vehicles was an existing use and how the decision of the Board would affect the current use on the site. Mr. W.W. Chan replied that the application site and a larger site to the north of the application site currently used for the parking of vehicles were unauthorised developments under the Ordinance and had been subject to enforcement action taken by the Planning Authority.

15. The Chairman asked whether the proposed operating hours of the temporary vehicle park from 7:00 a.m. to 11:00 p.m. were practical and implementable. In response, Mr. H.M. Wong, Acting Assistant Director (Environmental Assessment), Environmental Protection Department, said that it was not uncommon for commercial vehicle park operators to limit night-time operation with a view to minimising the potential environmental nuisance on the surrounding area. As the application site was located within a dense village cluster and was proposed only for the parking of private cars, it was likely that the vehicle park would mainly be used by the villagers residing nearby. Mr. Wong said that the applicant had tried to resolve the environmental problem by limiting the operating hours of the vehicle park, the effectiveness of which would depend on the operation of the vehicle park.

16. In response to the question of a Member regarding the land status of the existing north-south running access within the application site, Mr. W.W. Chan said that the said access was on private land including Lot 1541 in D.D. 130. If the concerned private landowner did not agree to the applicant's proposal, the temporary vehicle park would not be able to maintain the north-south running access uninterrupted, as proposed by the applicant. The Chairman supplemented that the consideration of the application site should focus on the land use planning considerations rather than land ownership.

17. As Members had no further question, the Chairman thanked the representative of the PlanD for attending the meeting. Mr. W.W. Chan left the meeting at this point.

#### Deliberation Session

18. A Member said that the applicant had not provided sufficient information to justify that the application would not have adverse environmental impacts. The vehicle park was not compatible with the surrounding from the land use planning point of view as it was located close to existing village houses and residential dwellings. The parking of vehicles on the application site, which was currently subject to enforcement action, should not be encouraged. This Member considered that there was no planning justification to support the application.

19. The Chairman concluded by saying that the site was located within a densely

developed village cluster and the applicant had failed to demonstrate that the temporary vehicle park would not have adverse environmental impacts on the surrounding area, and there were doubts whether the proposed operating hours of the temporary vehicle park from 7:00 a.m. to 11:00 p.m. were practicable and enforceable.

20. After deliberation, the Board decided to reject the application on review. Members then went through the reasons for rejection as stated in paragraph 8.1 of the Paper and considered that they were appropriate. The reasons were:

- (a) the site was located within a densely developed village cluster. The applicant failed to demonstrate that the temporary development would not have adverse environmental, drainage impacts on the adjacent village type houses/residential dwellings and surrounding area; and
- (b) the applicant failed to demonstrate that the temporary development would not affect the existing access to the areas to the north and west of the application site.

21. As the attendees for Agenda Item 4 had not yet arrived, the Chairman suggested that the procedural items, i.e. Agenda Items 9 to 11, should be discussed first. Members agreed.

### **Procedural**

#### **Agenda Item 9**

[Open meeting]

Submission of the draft South West Kowloon Outline Zoning Plan No. S/K20/27A under Section 8 of the Town Planning Ordinance to the Chief Executive in Council for Approval (TPB Paper No. 9215)

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[The meeting was conducted in Cantonese.]

22. Mr. H.M. Wong, Acting Assistant Director (Environmental Assessment),

Environmental Protection Department (EPD), had declared interests in this item as the EPD was undertaking a project at one of the representation sites at Hoi Fai Road in respect of draft South West Kowloon Outline Zoning Plan (OZP) No. S/K20/25.

23. As the item was procedural in nature and no discussion was required, Members agreed that Mr. Wong could stay in the meeting.

24. The Secretary briefly introduced the Paper. She said that since the Chief Executive in Council (CE in C) referred the approved South West Kowloon OZP No. S/K20/24 to the Board for amendments on 2.11.2010, the OZP had been amended three times. After two rounds of amendment, the draft South West Kowloon OZP No. S/K20/27, incorporating mainly amendments to reflect the existing and planned road alignments, adjustments to the boundary of the West Kowloon Cultural District (WKCD) and the “Other Specified Uses” annotated “Western Harbour Crossing Toll Plaza” zone, to tally with the gazetted Tunnel Area Plan for the Western Harbour Crossing, and the inclusion of the existing seawall into the area shown as WKCD, was exhibited for public inspection under section 7 of the Ordinance on 30.3.2012. With the exhibition of the draft WKCD Development Plan (DP) No. S/K20/WKCD/1 on 30.3.2012, the part of South West Kowloon OZP in respect of the WKCD had been replaced by the DP. One representation and one comment were received. After giving consideration to the representation and comment on 28.9.2012, the Board decided not to uphold the representation.

25. As the plan-making process had been completed, the draft South West Kowloon OZP was ready for submission to the CE in C for approval.

26. After deliberation, the Board:

- (a) agreed that the draft South West Kowloon OZP Plan No. S/K20/27A and its Notes were suitable for submission under section 8 of the Ordinance to the CE in C for approval;
- (b) endorsed the updated Explanatory Statement (ES) for the draft South West Kowloon OZP Plan No. S/K20/27A as an expression of the

planning intention and objectives of the Board for the various land-use zonings on the draft OZP and issued under the name of the Board; and

- (c) agreed that the updated ES was suitable for submission to the CE in C together with the draft OZP.

**Agenda Item 10**

[Open meeting]

Submission of the Draft West Kowloon Cultural District Development Plan  
No. S/K20/WKCD/1A under Section 8 of the Town Planning Ordinance  
to the Chief Executive in Council for Approval  
(TPB Paper No. 9216)

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[The meeting was conducted in Cantonese.]

27. The following Members had declared interests in this item:

- |                      |   |                                                                                                                                                       |
|----------------------|---|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| Mr. Roger K.H. Luk   | ] | had business dealings with Wheelock                                                                                                                   |
| Mr. Patrick H.T. Lau | ] | Properties Limited which was one of the                                                                                                               |
| Mr. Ivan C.S. Fu     | ] | companies that formed the Austin Property<br>Management Limited (R1)                                                                                  |
| Mr. Dominic K.K. Lam | - | had business dealings with Wheelock<br>Properties Limited and New World<br>Development Company Limited which were<br>the two companies that formed R1 |
|                      | - | had business dealings with CITIC Pacific<br>Limited, one of the shareholders of the<br>Western Harbour Tunnel Company Limited<br>(R2)                 |
| Dr. Wilton W.T. Fok  | - | co-workers with Mr. Cheung Kwok Pun (R4)<br>and was editor of a book that had                                                                         |

incorporated information from R4's proposal

28. As the item was procedural in nature and no discussion was required, Members agreed that the above Members could stay in the meeting.

29. The Secretary briefly introduced the Paper. On 30.3.2012, the draft West Kowloon Cultural District (WKCD) Development Plan (DP) No. S/K20/WKCD/1 was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). A total of 10 representations and 3 comments were received. On 28.9.2012, the Board considered the representations and comments and decided not to uphold the representations.

30. As the plan-making process had been completed, the draft WKCD DP was ready for submission to the Chief Executive in Council (CE in C) for approval.

31. After deliberation, the Board:

- (a) agreed that the draft WKCD DP No. S/K20/WKCD/1A and its Notes were suitable for submission under section 8 of the Ordinance to the CE in C for approval;
- (b) endorsed the updated Explanatory Statement (ES) for the draft WKCD DP No. S/K20/WKCD/1A as an expression of the planning intention and objectives of the Board for the various land-use zonings on the draft DP and issued under the name of the Board; and
- (c) agreed that the updated ES was suitable for submission to the CE in C together with the draft DP.

### **Agenda Item 11**

[Open meeting]

Submission of the Draft Chai Wan Outline Zoning Plan No. S/H20/20A  
under Section 8 of the Town Planning Ordinance

to the Chief Executive in Council for Approval  
(TPB Paper No. 9207)

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[The meeting was conducted in Cantonese.]

32. The following Members had declared interests in this item:

- |                   |                                                                                                                                                                                     |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Mr. Sunny L.K. Ho | - jointly owned a flat and a car park with his spouse in Heng Fa Chuen                                                                                                              |
| Mr. Ivan C.S. Fu  | - had business dealings with several developers which had nominated representatives in the Executive Committee of the Real Estate Developers Association of Hong Kong (R1)          |
| Professor P.P. Ho | - employee of the Chinese University of Hong Kong, which was the consultant for undertaking the Air Ventilation Assessment for the review of the Chai Wan Outline Zoning Plan (OZP) |

33. As the item was procedural in nature and no discussion was required, Members agreed that the above Members could stay in the meeting.

34. The Secretary briefly introduced the Paper. She said that since the Chief Executive in Council (CE in C) referred the approved Chai Wan OZP No. S/H20/17 to the Board for amendment on 20.6.2006, the OZP had been amended three times. After two rounds of amendment, the draft Chai Wan OZP No. S/H20/20, incorporating amendments mainly relating to the imposition of building height and plot ratio restrictions for various development zones and rezoning proposals to reflect the planning intention or existing developments, was exhibited for public inspection under section 7 of the Ordinance on 20.1.2012. A total of 284 representations and one comment were received. On 27.7.2012, after giving consideration to the representations and comment, the Board

decided not to propose any amendment to the draft OZP to meet the representations.

35. As the plan-making process had been completed, the draft Chai Wan OZP was ready for submission to the CE in C for approval.

36. After deliberation, the Board:

- (a) agreed that the draft Chai Wan OZP No. S/H20/20A and its Notes were suitable for submission under section 8 of the Ordinance to the CE in C for approval;
- (b) endorsed the updated Explanatory Statement (ES) for the draft Chai Wan OZP No. S/H20/20A as an expression of the planning intention and objectives of the Board for the various land-use zonings on the draft OZP and issued under the name of the Board; and
- (c) agreed that the updated ES was suitable for submission to the CE in C together with the draft OZP.

[The meeting was adjourned for a short break of 5 minutes.]

### **Tuen Mun and Yuen Long District**

#### **Agenda Item 4**

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/YL-HT/707

Proposed Filling of Pond for Permitted Agricultural Use in “Agriculture” zone,

Lot No. 399 RP(Part) in D.D. 128, Ha Tsuen, Yuen Long

(TPB Paper No. 9213)

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[The meeting was conducted in Cantonese.]

Declaration of Interest

37. Ms. Janice W.M. Lai had declared interests in this item as her spouse was a shareholder of a company which owned two pieces of land in Ha Tsuen. As the landed interests fell outside and were not affected by the application site, Members agreed that Ms. Lai could stay at the meeting.

#### Presentation and Question Session

38. The following representative of the Planning Department (PlanD) and the applicants' representatives were invited to the meeting at this point:

Mr. W.W. Chan	- District Planning Officer/Tuen Mun & Yuen Long (DPO/TMYL), PlanD
Mr. Tam Kin Tak	] Applicant's Representative
Mr. Tang Ki Sum	] Applicant's Representative

39. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited DPO/TMYL to brief Members on the review application.

[Professor S.C. Wong arrived to join the meeting at this point.]

40. With the aid of a Powerpoint presentation, Mr. W.W. Chan, DPO/TMYL, presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for pond filling for agricultural use at the site zoned "Agriculture" ("AGR") on the approved Ha Tsuen Outline Zoning Plan (OZP) No. S/YL-HT/10 at the time of s.16 application and currently in force;
- (b) the Rural and New Town Planning Committee (RNTPC) rejected the application on 4.1.2011 for the reasons that the applicant failed to demonstrate that the proposed pond filling would not cause adverse drainage and ecological impacts on the surrounding areas, and approval

of the application would set an undesirable precedent and encourage similar applications leading to the degradation of habitats in the Deep Bay area;

- (c) at the first review hearing of the application on 26.8.2011, the Board decided to defer a decision on the application on the grounds that concerned government departments were not given the opportunity to comment on the revised proposal of the applicant submitted at the review hearing mainly relating to the proposed agricultural practices, the depth of pond filling and the fill materials, and there was a need to clarify the changed stance of the commenters as claimed by the applicant. The applicant was requested to provide further information on the revised pond filling proposal and how to address Members' concerns as expressed in the meeting;
- (d) the revised pond filling proposal and justifications submitted by the applicant in support of the review application were summarised in paragraphs 1.3 to 1.8 of the Paper and summarised as follows:
  - (i) the site would be used for agricultural purpose (water planting) and was in line with the planning intention of the "AGR" zone;
  - (ii) the proposed area of pond to be filled up had been revised from 1,709m<sup>2</sup> to 1,163m<sup>2</sup>;
  - (iii) the total amount of fill for pond filling would be about 750m<sup>3</sup> (another 2,000m<sup>3</sup> to fill the land around the site) and the composition of fill materials would be a mixture of yellow sand (37%) and pond soil (63%) with a small amount of wood pellet;
  - (iv) the proposed filling depth of the pond was revised from 1.1m to 0.6m. Two levels of land would be formed around the pond for agricultural use, whilst the centre part of the pond would be used for water planting. The operating hours of the proposed filling

works would be from 8:00 a.m. to 6:00 p.m.;

- (v) a 10m buffer from the government land portion of the pond would be provided to avoid any disturbance to the water body in that portion;
- (vi) a drainage proposal had been submitted to support the application. The proposed works would not have any adverse drainage and ecological impacts on the surrounding environment; and
- (vii) the revised pond filling proposal would not set an undesirable precedent and led to the degradation of habitats in the Deep Bay area;

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

- (e) there were two previous applications covering the application site. A previous application covering a site of about 52 hectares for a temporary racing circuit was rejected by the RNTPC in 2005. Another previous application covering a slightly larger site of about 2,030m<sup>2</sup> submitted by the same applicant for proposed pond filling for agricultural use was rejected by the Board on review in 2010 for the reason that the applicant failed to demonstrate that the proposed pond filling would not cause adverse drainage and ecological impacts on the surrounding areas. There were two similar applications for land/pond filling for agricultural use within the same “AGR” zone, one of which was approved with conditions whilst the other was rejected by the RNTPC;
- (f) departmental comments – the departmental comments on the review application were summarised in paragraph 2 of the Paper. The Director of Agriculture, Fisheries and Conservation (DAFC) had no adverse comment on the application from the nature conservation and agricultural development points of view considering that the proposed pond filling was small in scale while the proposed wet agriculture use

was in line with the planning intention of the “AGR” zone, and might still provide some wetland function in the area. He advised that should the application be approved, approval conditions should be imposed to ensure that the pond filling materials would be arable soils suitable for cultivation purpose. The District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD) had no adverse comment on the application provided that the proposed pond filling works would not affect the adjoining Government land. The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) had no in-principle objection to the application but required the applicant to implement and maintain the proposed drainage system for the proposed development and that no pond filling should be undertaken until the flood relief mitigation measures were implemented. The Commissioner for Transport had no comment on the application provided that the applicant would only use small-scale backhoes but not long vehicles to undertake the proposed filling works. Other government departments generally had no adverse comment on the review application;

- (g) public comments – three public comments were received during the review application. They were from the Hong Kong Bird Watching Society (HKBWS), Designing Hong Kong Limited and a Yuen Long District Council (YLDC) member which objected to review application on ecological grounds and conservation implications of the pond filling proposal. HKBWS and the YLDC member still objected to the revised pond filling proposal of the review application on the same/similar grounds; and
- (h) PlanD’s views – PlanD had no objection to the review application based on the planning considerations and assessments as set out in paragraph 4 of the Paper and summarised below:
  - (i) agricultural use in the “AGR” zone was always permitted but pond filling at the site required planning permission from the Board primarily to ensure that it would not result in adverse drainage and

ecological impacts on the adjacent areas;

- (ii) the applicant had demonstrated that there would not be any adverse drainage and ecological impacts on the surrounding environment;
- (iii) relevant government departments including DAFC, DLO/YL, LandsD and CE/MN, DSD had no objection to/no adverse comment on the application; and
- (iv) three adverse public comments on grounds of nature conservation and adverse ecological impacts were received. In this regard, DAFC had no adverse comment on the revised pond filling proposal.

41. The Chairman then invited the applicant's representatives to elaborate on the review application. With the aid of the visualiser, Mr. Tam Kin Tak made the following main points:

- (a) the proposed fill materials, comprising a mixture of yellow sand (37%) and pond soil (63%) with a small amount of wood pellet, were suitable for arable use;
- (b) a proposed 525mm-diameter U-channel would be constructed to collect the surface runoff from the surrounding area;

[Mr. Clarence W.C. Leung arrived to join the meeting at this point.]

- (c) small-scale backhoes would be used to carry out the filling works as long vehicles would be difficult to enter Deep Bay Road. The traffic relating to the proposed filling works, which were minor works, would be insignificant and had no adverse traffic impact on Deep Bay Road;
- (d) since the proposed pond filling was for agricultural use, the proposed area of pond filling was small and the proposed wet agricultural use

might still provide some wetland function after the works, there would not be significant adverse ecological impact on the area; and

- (e) the proposed pond filling works would help strengthen the pond bunds along its northern boundary currently providing support to the adjoining Deep Bay Road at a higher site level than the application site.

42. Mr. Tang Ki Sum tabled at meeting an acknowledgement from the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD) relating to a recent complaint by a local villager against the instability of a section of the pond bunds adjoining the application site along Deep Bay Road. Mr. Tang said that the pond bunds were unsafe and unstable during the dry season and were liable to falling aside and hence were potentially causing accidents to visitors, given that the locality was popular for sunset watching and bird watching activities. Mr. Tang also said that it was not reasonable for DLO/YL, LandsD to require the applicant to undertake remedial measures to improve the stability of the concerned pond bunds as the remedial works should be undertaken by Highways Department.

43. As the presentation from the representative of the PlanD and the applicant's representatives had been completed, the Chairman invited questions from Members.

44. In response to the question of a Member, Mr. Tam Kin Tak said that the application site would only be used for agricultural purpose. There would be both dry and wet agricultural practices in the site. Seasonal vegetables would be grown at the site and hence it would be difficult for him to indicate to Members at the meeting the kind of vegetables to be grown.

45. In response to the enquiry of the Chairman, Mr. Tam Kin Tak said that the existing water in the pond would not be pumped away and there would still be water in the adjacent pond at Lot 401 mainly for agricultural use after the completion of the proposed filling works at the application site. The site, i.e. the filled area in the central part of the pond, would be used for wet agricultural practice whilst dry agricultural practice would mainly take place at the formed berths around the pond.

46. A Member asked which government department would be responsible for supervising the proposed pond filling works. In response, Mr. W.W. Chan, DPO/TMYL, said that approval conditions requiring the submission of soil sample of fill materials prior to the proposed filling works to DAFC, and limiting the depth of pond filling to not exceeding 0.6m had been recommended in paragraph 5.3 of the Paper. If the application was approved by the Board, the DAFC and PlanD would be responsible for ascertaining the compliance of the two approval conditions respectively. Mr. Tam Kin Tak said that should the application be approved, the applicant would take the initiative to comply with the approval conditions and an engineering company would be hired to carry out the works. Mr. Tam said that he would also be personally responsible for supervising the proposed works.

47. Another Member asked the applicant's representatives whether any employment opportunities would be created by the agricultural operation and whether the applicant had considered promoting green education and organic farming at the site. In response, Mr. Tam Kin Tak said that the site was not big and the applicant, who was a retired person, only intended to carry out leisure farming on the site by herself at the present stage. Although neighbouring villagers might help manage the future agricultural operation, the farming activities would not generate much employment opportunities. The suggestion of using the site for green education purpose might be reviewed by the applicant at a later stage.

48. A Member asked the applicant's representatives to provide information on the applicant's landholding in the area, the estimated cost of the proposed pond filling works, and the physical condition of the site and the adjoining government land. With the aid of a plan, Mr. Tam Kin Tak said that the applicant was the owner of Lots 399RP and 401 in D.D. 128, and lying between the two lots was government land. The informal track on the government land was constructed by other people. Mr. Tam said that since the applicant only intended to practice leisure farming on the site by herself, the cost-effectiveness of the proposed works was not a major consideration. No estimation on the capital cost for the proposed works had therefore been made at this stage, but quotations would be obtained from contractors upon approval of the subject review application. The same Member commented that the proposed filling works would likely be costly and there might be a legitimate concern on the actual after-use of the site, given

that the proposed agricultural use might not justify the costly investment of the proposed pond filling works. This Member also raised concern that the applicant and his representatives might not have the expertise in cost estimation and project management. In response, Mr. Tam said that he was in engineering-related business but he would not be in a position to answer whether the applicant could afford the proposed filling works financially. However, the applicant had spent a lot of effort in providing the necessary information in supporting the planning application since it was first submitted in 2011. Mr. Tam reaffirmed that the application site would only be used by the applicant for growing vegetables and not any other uses.

49. Mr. Tang Ki Sum said that one of the reasons for filling the pond in Lot 399RP in D.D. 128 was to strengthen its adjacent pond bunds along the adjoining Deep Bay Road currently found to be unstable and prone to accidents. No filling of the pond at the adjacent Lot 401 in D.D. 128 would be undertaken and the water body therein would be retained for providing a source of irrigation water for the agricultural operation at Lot 399RP. Mr. Tang reiterated the intention of the applicant in using her own private land for leisure farming.

50. In response to the question of a Member, Mr. Tam Kin Tak said that fish farming activities were still actively carried out in some larger ponds on the seaward side of Deep Bay Road which were zoned “Coastal Protection Area”.

51. Mr. Tang Ki Sum said that there had been public complaint to DLO/YL, LandsD against the instability of the section of pond bunds adjoining the application site. If the planning application was rejected, the Board would have to hold responsible for any unfortunate incidents subsequently happened such as people falling from the pond bunds into the pond.

52. As Members had no further question, the Chairman thanked the representative of the PlanD and the applicant’s representatives for attending the meeting. They all left the meeting at this point.

Deliberation Session

53. Members generally considered that there were other appropriate measures to improve the safety aspect of Deep Bay Road, instead of relying upon the proposed pond filling works as claimed by the applicant's representatives. The Board should focus on the land use and planning implications of the proposed works under application.

54. A Member supported the review application since the proposed vegetable cultivation at the site was compatible with the agricultural and fish farming activities in the vicinity. This Member suggested adding an advisory clause in the planning permission to ensure that fertilisers used for the farming activity should avoid affecting the fish ponds nearby, should the application be approved. Members agreed.

55. A Member had doubt on the proposed use of the filled pond for growing vegetable as the proposed works, which would likely involve a substantial amount of capital investment, might not be cost-effective and financially sound for the agricultural activities proposed by the applicant. However, noting that any further change of land use at the site, unless it was a Column 1 use and permitted under the OZP, would require planning permission from the Board and that the proposed pond filling would not substantially alter the general character of the area, the Member considered that the application was marginally acceptable.

56. Another Member said that the capital cost of the proposed pond filling might not be substantial given that the applicant, as a local farmer, had her own method of filling. The Member did not consider that there was cost-effectiveness problem and if the pond was in the present condition, there would be a waste of resources. This Member supported the approval of the application.

57. A Member said that the crux of the review application was to ensure sufficient monitoring over the type of soil for filling the ponds and to prevent illegal dumping of construction wastes at the application site. Since the application involved rehabilitation of abandoned fish pond for agricultural purpose, this Member supported the approval of the application.

58. The Chairman remarked that the approval condition (g) stipulating that only soil suitable for crop farming could be used for filling up the pond had been recommended

in paragraph 5.2 of the Paper. On the point of monitoring the type of fill, the Secretary said that there was a clear difference between soil for crop farming and construction wastes and PlanD would be responsible for ascertaining the compliance of the condition. The planning permission would be revoked if a breach of the condition was found. Mr. Jimmy Leung said that the recommended approval condition (h) regarding the submission of soil sample(s) by the applicant prior to the proposed pond filling to the satisfaction of the DAFC or of the Board would provide further safeguard on the control of proper fill materials. A Member agreed and said that yellow sand and pond soil for crop farming could be easily distinguished from construction wastes composing of concrete and steel bars.

59. A Member said that the application site was situated in an area popular for both sunset watching and bird watching activities. As such, pond filling works to be carried out at the site would be subject to surveillance by the general public visiting the area. This Member also said that as part of the fish farming operation, back-hoes would be employed for regular maintenance of the fish ponds nearby. The applicant could therefore liaise with the fish pond operators for hiring their equipment to carry out the pond filling works with a view to minimising the traffic and environmental impacts of the works.

60. A Member said that the size of the application site was not big, the pond adjacent to the application would remain unfilled and there would be adequate control on the proposed pond filling works. This Member supported the application.

61. The Vice-chairman said that the scale of the proposed operation, involving an amount of fill materials of about 750m<sup>3</sup> for pond filling at the application site and about 2,000m<sup>3</sup> for land filling around the site and an associated trip generation of about 1,200 trips by 24-tonne dump trucks, appeared to be out of proportion with the intended leisure agricultural use as claimed by the applicant. On the other hand, he noted that the proposal as submitted by the applicant was for rehabilitation of abandoned farmland and all the relevant government departments had no objection to/no adverse comment on the application. As such, he supported the approval of the application on review.

62. A Member said that given the Deep Bay area was a marshland and the existing

pond soil at the application site would be hard and acidic, it would not be suitable for arable use. The applicant's proposal to use a mixture of yellow sand and pond soil for growing vegetables was therefore reasonable. This Member also said that once the pond had been filled by yellow sand and pond soil, no further filling would be required to sustain the agricultural operation at the site in future.

63. The Chairman concluded that the proposed pond filling works was for permitted agricultural use within the "AGR" zone and all the relevant government departments had no objection to/no adverse comment on the application. Should any breach of approval condition(s) or unlawful act on the site be detected at a later stage, the planning permission could be revoked or appropriate enforcement actions could be instigated by the relevant authorities. There were no strong reasons to reject the application on review.

64. After deliberation, the Board decided to approve the application on review, on the terms of submission as submitted to the Board. The permission should be valid until 26.10.2015, 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) no night-time operation between 6:00 p.m. to 8:00 a.m., as proposed by the applicant, was allowed on the site during the pond-filling period;
- (b) no vehicle exceeding 24 tonnes as defined in the Road Traffic Ordinance, including heavy goods vehicle, as proposed by the applicant, was allowed to transport fill materials/equipment to the site;
- (c) no vehicle over 10m long, including container vehicle/trailer/tractor, was allowed to transport fill materials/equipment to the site;
- (d) no pond filling on the site would be allowed until the following approval conditions (h) and (i) had been satisfactorily complied with;
- (e) no part of the site should be filled to a level of +3.5mPD or a depth

exceeding 0.6m as proposed by the applicant;

- (f) setting back of the boundary of the proposed pond filling by at least 10m from the western boundary of the site as proposed by the applicant;
- (g) soil suitable for crop farming should be used to fill the site as proposed by the applicant;
- (h) in relation to (g) above, the submission of soil sample(s) prior to the proposed pond filling, as proposed by the applicant, to the satisfaction of the Director of Agriculture, Fisheries and Conservation or of the Town Planning Board;
- (i) the implementation of the drainage facilities proposed to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (j) if any of the above planning conditions (a), (b), (c), (d), (e), (f), (g), (h) or (i) was not complied with, the approval hereby given should cease to have effect and should be revoked immediately without further notice.

65. The Board also agreed to advise the applicant on the following:

- (a) to note the comments of District Lands Officer/Yuen Long (DLO/YL) that the site was situated on an Old Scheduled Agricultural Lot granted under the Block Government Lease upon which no structure was allowed to be erected without prior approval from the Government. DLO/YL noted that a converted container would be placed on portion of Lot 399 outside the site for hand tools store and resting corner. Should it constitute a structure under lease, the applicant was required to apply for prior approval. DLO/YL, acting in the capacity as landlord, might approve such applications at his discretion and if such approval was granted, it would be subject to such terms and conditions including the payment of premium or fees, as might be imposed by him. DLO/YL did not guarantee right-of-way or provide maintenance works on the

Government land portion of the access track leading to the site from Deep Bay Road;

- (b) to note the comments of Commissioner for Transport (C for T) that the land status of the road/path/track leading to the site should be checked with the lands authority. The management and maintenance responsibilities of the same road/path/track should be clarified with the relevant lands and maintenance authorities accordingly;
- (c) to refer to the ‘Air Pollution Control (Construction Dust) Regulation’ and the latest ‘Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites’ issued by the Director of Environmental Protection for dust suppression measures appropriate to pond filling activities to minimise any potential dust nuisance;
- (d) to note the comments of the Director of Electrical and Mechanical Services to approach the electricity supplier for the acquisition of cable plans to find out whether there was any underground cable and/or overhead line within or in the vicinity of the site. If there was underground cable and/or overhead line within or in the vicinity of the site, the applicant should carry out the following measures:
  - (i) if the site was within the preferred working corridor of high voltage overhead lines at a transmission voltage of 132kV and above, prior consultation and arrangement with the electricity supplier was necessary; and
  - (ii) 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 the electricity supply lines; and
- (e) to refer to the “Good Agricultural Practice for Crop Production: Code of

Practice 5 on Use of Fertilisers” issued by the Director of Agriculture, Fisheries and Conservation for proper use of fertilisers in the site in order to avoid affecting the fish ponds nearby.

**Kowloon District**

**Agenda Item 5**

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/K18/294

Proposed School (Kindergarten cum Child Care Centre) in “Residential (Group C)1” zone,  
7 Kent Road, Kowloon Tong

(TPB Paper No. 9214)

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[The meeting was conducted in Cantonese.]

**Declaration of Interest**

66. The following Members had declared interests in this item:

Mr. Patrick H.T. Lau	]	had business dealings with the
Mr. Dominic K.K. Lam	]	consultant of the applicant, i.e. MVA
Mr. Ivan C.S. Fu	]	Hong Kong Ltd.

67. Since the above Members had no direct involvement in the subject application, Members considered that the interests of these Members were indirect and agreed that they could stay in the meeting.

**Presentation and Question Session**

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

Miss Fiona Lung - District Planning Officer/Kowloon (DPO/K),

		Planning Department (PlanD)
Ms. S.H. Lin	-	Senior Town Planner/Kowloon (STP/K), PlanD
Mr. Ricky L.Y. Tang	-	Engineer/Kowloon City, Traffic Engineering (Kowloon) Division, Transport Department (E/KC, TE(K)D, TD)
Ms. Ma Ngai Nor	]	
Ms. Wong Yuk Hing	]	
Ms. Cheung Ching Ching	]	Applicant's Representative
Mr. Chan Kam Cheong	]	
Mr. Lee Tak Kuen	]	

69. The Chairman extended a welcome and explained the procedures of the review hearing. The Chairman also drew Members' attention that a replacement page regarding amendments to paragraph 3 of the TPB Paper was tabled at the meeting. He then invited DPO/K to brief Members on the review application.

70. With the aid of a Powerpoint presentation, Miss Fiona Lung, DPO/K, presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for conversion of an existing 2-storey building for a proposed school (kindergarten cum child care centre) at the site zoned "Residential (Group C)1" ("R(C)1") which was subject to a maximum plot ratio (PR) of 0.6 and a building height restriction (BHR) of 3 storeys on the approved Kowloon Tong Outline Zoning Plan (OZP) No. S/K18/16 at the time of s.16 application and currently in force;
- (b) the application was rejected by the Metro Planning Committee (MPC) on 15.6.2012 for reasons that the proposed development sited at the junction of Kent Road and Somerset Road and near Kowloon Tong MTR Station with busy traffic could not comply with the Town Planning Board Guidelines No. 23A (TPB PG-No. 23A) in that adverse traffic impacts were anticipated and no effective traffic mitigation measures were

proposed to mitigate the impacts, six existing trees would be affected by the proposed coach parking spaces, and setting of an undesirable precedent for similar applications and the cumulative effect would aggravate the traffic condition of the Kowloon Tong Garden Estate (KTGE);

(c) the justifications put forth by the applicant in support of the review application were summarised in paragraph 3 of the Paper as follows:

(i) the proposed school would not affect local traffic. The proposed traffic measures and the findings of the traffic impact assessment (TIA) were summarised as follows:

- the vehicular access would be provided at Kent Road approximately 7m north of the existing access;
- parking and loading/unloading spaces would be provided according to the Hong Kong Planning Standards and Guidelines (HKPSG) requirements;
- five dedicated traffic officers would be employed to provide traffic control for the car park within the school during school peak periods;
- vehicles leaving the school would only be allowed to turn right onto Kent Road but not go straight onto Somerset Road;
- an “energy saving scheme” would be developed by the school to encourage students and parents to travel to/from school by either school buses or public transport;
- parents who wished to pick-up/drop-off their children by private cars would need to apply for a permit;

- capacity analysis for the design year 2018 traffic situation showed that the traffic would have insignificant impact on the capacity of the nearby road network. It was proposed to increase the signal cycle time of the Cornwall Street/Kent Road junction to enable the junction to operate with greater reserve capacities;
  - parents travelling in private cars would be asked to arrive only after all school buses had left the car park;
  - pick-up/drop-off would not be undertaken outside the school boundary. Kerbside activities along Kent Road and Somerset Road were expected to remain at levels similar to the existing situation;
  - pedestrian assessment for the footpath of Kent Road concluded that the future level of service for the section of footpath fronting of the application site remained at manageable level during school peak periods; and
  - the TIA concluded that the local road network would be able to support the proposed school without further road/traffic improvement being necessary;
- (ii) the applicant would apply for lease modification and the relevant licences and submit building plans after approval of the application; and
- (iii) all the existing trees on site would be kept;
- (d) the revised TPB PG-No. 23A for “Application for Kindergarten/Child Care Centre in KTGE under Section 16 of the Town Planning Ordinance” promulgated in March 2011 was relevant to this application. To avoid further aggravating the traffic conditions in KTGE, new

requirements had been incorporated in the revised TPB PG-No. 23A requiring applications for kindergarten/child care centre within KTGE to be supported by TIA to examine any possible traffic problems that might be caused by the kindergarten/child care centre and proposed mitigation measures to tackle the problems, if required. Adequate provision of parking and loading/unloading facilities should be provided within the premises;

- (e) the application site, with an area of about 1,395m<sup>2</sup>, was located within the KTGE and currently occupied by a 2-storey hotel building named Romantic Hotel. The site was located close to the junction of Kent Road/Somerset Road, and was in proximity to the Kowloon Tong MTR Station. There were eight trees at the south-eastern corner of the site. Whilst the site was located within a low-rise, low-density residential area in Kowloon Tong, there were non-residential uses including schools, elderly homes and religious institutions in the vicinity, including three sites used for kindergartens/nurseries and two sites used for primary schools along Kent Road;
- (f) the proposed kindergarten cum child care centre had a plot ratio of not more than 0.6 and a BH of 2 storeys which were the same as the existing development, a site coverage of 30%, and 8 classrooms. 5 school bus parking spaces, a private carparking space and a taxi lay-by would be provided at the site. The proposed school times for the morning and afternoon sessions were 8:30 a.m. to 11:50 a.m. and 1:30 p.m. to 4:25 p.m. respectively;
- (g) a previous application for proposed minor relaxation of BHR to allow for one storey of basement for 6 car parking spaces and ancillary plant room use for a proposed residential development at the application site was approved with conditions by the Board in 2011 but no building plans for this proposed development had been received. There were 34 similar applications involving kindergarten within the “R(C)1” zone in the Kowloon Tong area since 2000. 25 of these similar applications were

approved with or without conditions by the MPC/the Board, including two applications approved on temporary basis after promulgation of the revised TPB PG-No. 23A in March 2011, whilst the remaining 9 similar applications were rejected by the MPC/the Board;

- (h) departmental comments – the departmental comments were summarised in paragraph 5 of the Paper. The Commissioner for Transport (C for T) maintained his view of not supporting the application because the proposed school use would create adverse traffic impact on the surrounding road network, the TIA did not reflect the reduction of lane capacities by over-saturation of pick up/drop-off activities at Kent Road, over-estimation of the practical junction performance, a reduction in the junction capacity of Cornwall Street/Kent Road to 7% was undesirable, the proposed increase in traffic signal cycle time might not be feasible and would affect the signal time of the interconnecting junctions, the split of transport mode (i.e. 130 students by school buses, 42 students by public transport and 20 students by private cars) assumed in the TIA could not be guaranteed, the revised run-in/out was undesirable, the adverse traffic impact as a result of the clashing of the proposed school starting time with the morning peak hour of the junction of Kent Road/Somerset Road. C for T also casted doubts on the effectiveness of the proposed “energy saving scheme”. The Commissioner of Police (C of P) maintained objection to the application as there were already five schools along Kent Road and four other schools along Somerset Road. The traffic congestion at school pick-up/drop-off times was already very bad and the capacity of the road could not cope with the operational demand of another new school. The District Lands Officer/Kowloon East, Lands Department considered that the proposed development was in breach of the existing lease condition and a lease modification would be required to effect the proposal should the application be approved. The Director of Environmental Protection considered that a sewerage impact assessment should be carried out by the applicant to assess the impact on the nearby sewerage system. Other government departments generally had no adverse comment on the review application;

- (i) public comments – 719 public comments were received with 710 (from nearby residents, parents and operators of nearby schools/kindergartens, a KCDC Member, some drivers/road users and members of the public) objecting to/making adverse comments on, six supporting/in favour of, and three provided comments on the review application. The major grounds of objection for the 710 adverse public comments were (i) the proposed school use was not in line with the planning intention of the area which was for low-density residential use; (ii) there were more than adequate kindergartens/child care centres in Kowloon Tong to serve the residential neighbourhood; (iii) the traffic congestion along Kent Road was already very serious and the proposed development would aggravate the situation and create a dangerous environment to pedestrians, drivers and residents; (iv) the measures proposed by the school would not have material impact to mitigate the traffic and related problems generated by the proposed school; (v) the proposed development would generate air and noise pollution; and (vi) the approval of the application would affect the special and tranquil character of the residential neighbourhood of the KTGE. The major grounds of the six supporting public comments were that the proposed school could help meet the increasing demand for school places and provided better study environment for students; and the concern on traffic impact could be resolved by encouraging parents to arrive earlier at school. The remaining three public comments suggested adjusting the school hours to avoid overloading the road during peak hours, avoiding the use of private cars for picking-up/dropping-off of students, permitting only school buses to enter/leave the school during peak hours, and liaising with schools along the road with a view to reducing road usage and waiting time of road users; and
- (j) PlanD's views – PlanD did not support the review application based on the planning considerations and assessments as set out in paragraph 7 of the Paper and summarised below:

- (i) the proposed school use was considered not incompatible with the surrounding developments which included schools, religious institutions, elderly homes and government, institution and community uses;
- (ii) the proposed development intensity was in line with the maximum permitted within the “R(C)1” zone;
- (iii) although the applicant has submitted a new TIA in the review application, both C for T and C of P maintained their previous objection to the application. C for T considered that the proposed school would create adverse traffic impact on the surrounding road network. C of P considered that the traffic congestion at school pick-up/drop-off times was already very bad and the capacity of the road could not cope with the operational demand of another new school;
- (iv) the proposed development could not meet the planning criteria as laid down in the revised TPB PG-No. 23A in that the submitted TIA was not to the satisfaction of Transport Department (TD), the proposed use would create adverse traffic impact on the surrounding road network and no effective traffic mitigation measures had been proposed to tackle the problems;
- (v) the Chief Town Planner/Urban Design & Landscape, PlanD had no objection to the application as the applicant had proposed to set back the coach parking spaces to avoid affecting the existing trees on site;
- (vi) since the endorsement of the revised TPB PG-No. 23A in March 2011, only two applications for kindergarten/child care centre uses had been approved, but both were on a temporary basis. Approval of this application would set an undesirable precedent for other similar applications, the cumulative effect of which would

aggravate the traffic congestion of the KTGE; and

- (vii) regarding the public comments on adverse traffic impact, both C for T and C of P had expressed similar concerns.

71. The Chairman then invited the applicant's representatives to elaborate on the review application. With the aid of a Powerpoint presentation, Mr. Lee Tak Kuen, the applicant's representative, made the following main points:

- (a) he was the traffic consultant of the applicant;
- (b) although the existing traffic condition of Kent Road was already busy, the proposed development would only entail minimal traffic impact on the local road network;
- (c) a number of traffic measures, including three new measures to be raised in this meeting, were proposed to alleviate the traffic condition. The applicant was willing to discuss with TD on the feasibility of the new measures, including:
  - (i) all the students would travel to/from school either by school buses or by public transport in order to minimise the traffic generation of the proposed school. Parents were encouraged not to use private cars to drop off/pick up their children;
  - (ii) all the pick-up/drop-off activities by the school buses would be taken place within the school premises so as to avoid kerbside activities along Kent Road; and
  - (iii) the morning school hours would be changed to 9:00 a.m. to 12:35 p.m. so as to avoid clashing with the morning peak hour (i.e. 7:30 a.m. to 8:30 a.m.) of the junction of Kent Road/Somerset Road;
- (d) parking and loading/unloading facilities would be provided according to

the latest HKPSG requirements. There would be five parking spaces for 26-seater school buses, one private carparking space and one taxi lay-by within the school; and

- (e) all the proposed new traffic measures were aimed at minimising the traffic impact of the proposed school on Kent Road during the peak hours. These measures would be further elaborated by the principal of the proposed school at the meeting.

72. Ms. Wong Yuk Hing, the applicant's representative, then made the following main points:

- (a) she was currently the principal of an existing kindergarten and would be the principal of the proposed school;
- (b) in order to minimise the traffic impact of the proposed school, a number of traffic measures had been proposed in the application. However, the concerned government departments still had grave concerns on the traffic impact generated by the proposed school as stated in the TPB Paper received by the applicant on 22.10.2012. In response, the applicant had further reviewed the situation and proposed three new measures to reduce the traffic impact as follows:

*All Students to Travel on School Buses*

- (i) as a compulsory requirement, all students of the proposed school would be required to travel to/from the school by school buses. Parents would not be allowed to take their children to the school by private cars;
- (ii) such requirement would be spelt out clearly to parents before admission of new students. Based on her experience, parents would be willing to cooperate with the school as parents would endeavour to maintain a good relationship with the school;

- (iii) non-complying parents would be recorded and urged to comply with this requirement by the school;
- (iv) the operation of school buses including bus routes, arrival/departure times and pick-up/drop-off arrangement would be centrally managed and organised by the school and supervised by experienced staffs;
- (v) the measure to require all students to travel by school buses had already been adopted by the German-Swiss International School (Kindergarten) and was proved to be practicable;

*All Pick-up/Drop-off Activities to be Undertaken within School Premises*

- (vi) all the pick-up/drop-off activities of school children would be taken place within the school premises in order to avoid kerbside activities along Kent Road;
- (vii) there would be 192 students for both morning and afternoon school sessions. With the use of 26-seater school buses, eight school buses would be sufficient to carry all the students;
- (viii) there were five school bus parking spaces within the school premises. With proper management and coordination of arrival times, the school buses would be able to load/unload all the students within the school premises in a short period of time;
- (ix) the measure to require pick-up/drop-off activities of school students within the school premises was adopted by the St. Frances Secondary School on Hong Kong Island;

*Re-scheduling of School Hours*

- (x) the morning school hours would be re-scheduled to 9:00 a.m. to 12:35 p.m. in order to avoid overlapping with the school hours of the existing schools along Kent Road and clashing with the morning peak hour (i.e. 7:30 a.m. to 8:30 a.m.) of the junction of Kent Road/Somerset Road; and
  - (xi) all the school buses would arrive at the school after 8:35 a.m. and would enter the school one by one at an interval of about two to three minutes. It was estimated that the drop-off activities for all school children could be completed within 20 minutes; and
- (c) there had been strong aspiration for the applicant to start a school in Kowloon Tong for the following main reasons:
- (i) it was the mission of the proposed school to promote green education and provide a good quality curriculum for the all-round development of young children;
  - (ii) the application site had ample outdoor space. The existing trees within the site would be preserved, and the outdoor space would be used for green farms that could provide a pleasant outdoor environment for the students; and
  - (iii) Kowloon Tong was at a central location, easily accessible to all parts of Hong Kong for students' out-reaching activities such as outdoor exploration activities in the New Territories and theme-study at the Science Museum in Tsim Sha Tsui. The accessible location would enable the saving of travel time and was ideal for schools.

73. As the presentation from the representative of the PlanD and the applicant's representatives had been completed, the Chairman invited questions from Members.

74. The Vice-chairman asked the representative of TD if he had any information and statistics on the traffic-related accidents in the Kowloon Tong area as C of P had indicated that a total of 17 traffic-related complaints had been recorded between 1.7.2012 and 30.9.2012 and one public comment indicated that there were two fatal traffic accidents. In response, Mr. Ricky Tang, E/KC, said that he did not have such information at hand. He understood that the two traffic accidents had been investigated by TD which concluded that they were not related to defective road design. A Member said that one of the traffic accidents occurred at the junction of Lancashire Road/La Salle Road, and not in the vicinity of the application site.

#### *School Bus Operation and Drop-off/Pick Up Arrangements*

75. Noting that the proposed school was a new school, a Member asked whether the applicant's team had any experience in operating schools in Kowloon Tong, in particular the implementability of the proposed traffic measures. In response, Ms. Wong Yuk Hing said that some of the staffs of the proposed school had over 30 years of experience in teaching and school operation. The staffs were familiar with the Kowloon Tong area and in-depth researches on the area had been undertaken to ensure that the proposed school operation could tie in smoothly with the traffic condition of Kowloon Tong.

76. Noting from the car park layout that the manoeuvring space for vehicles within the school was limited, the Chairman asked the applicant's representatives to explain how all the drop-off/pick-up activities could take place within the school site within 20 minutes, so as to ensure no vehicle queuing and waiting along Kent Road. In response, Ms. Wong Yuk Hing said that all the school students would be picked up/dropped off within the school premises for safety reason. There were five school bus parking spaces within the school site and an analysis had been included in the TIA report to demonstrate that the manoeuvring space was sufficient to allow school buses to enter/leave the school site on a head-in/head-out arrangement. She said that the circulation space within the site would be adequate to cater for the pick-up/drop-off activities of up to five school buses concurrently. Assuming that seven minutes were required for each school bus to drop off the students and leave the school, and two to three buses could enter the school

simultaneously to drop off the students, the entire drop-off process of all students should be completed within 20 minutes. Ms. Wong also said that the vehicle circulation space within the site was already larger than that provided in other schools in Kowloon Tong. Mr. Lee Tak Kuen supplemented that a swept path analysis had been provided in the TIA report which demonstrated that the manoeuvring space was sufficient assuming that all parking spaces were occupied and all school buses would enter/leave the site head-in/head-out from/onto Kent Road. The analysis revealed that within a 20-minute period, the proposed parking layout could allow a maximum capacity of pick-up/drop-off activities for 20 school buses which was more than adequate for the eight school buses required for transporting all the 192 students.

77. In response to the question of the Chairman, Mr. Ricky Tang, E/KC, said that the swept paths analysis provided in the TIA report appeared to be feasible, but drivers had to be skilful and gave due care to the safety of the students. Mr. Tang said that according to the proposed school layout, the run-in/out could only cater for one-way traffic. If several school buses arrived at the same time, there might be school buses waiting along Kent Road as they could not enter the school when other school buses were parking within the site. Alternatively, the school buses might circle around the Kowloon Tong area before coming back to the school for drop off, hence generating additional traffic in the area. Mr. Tang said that due to the uncertainty in traffic conditions, the school buses might not arrive at the scheduled time. Any school bus waiting at or blocking the school run-in/out would severely affect the traffic condition along Kent Road as well as the performance of the Kent Road/Somerset Road junction. That might result in much wider traffic impact along the roads and junctions upstream.

78. Ms. Wong Yuk Hing said that the owner of the site at 3 Kent Road to the south of the application site, who was also the owner of the application site, had agreed to provide 4 parking spaces within the site at 3 Kent Road for the use of the proposed school for pick-up/drop-off activities whenever required. In case the school buses could not enter the school if there was traffic congestion along Kent Road, the school buses could enter the site at 3 Kent Road to drop off the students, such that no school buses would be required to wait along Kent Road. Mr. Chan Kam Cheong supplemented that there were 15 carparking spaces within the site at 3 Kent Road and the site owner had agreed to allow four of them for the drop-off of students. The students could then walk to the proposed

school via True Light Lane without having to walk on the footpaths along Kent Road.

79. A Member asked how the applicant could ensure that enough school bus would be provided since there were competing demands from other users such as tourists. It was noted that some schools had been forced to re-schedule their school hours to accord with the availability of school buses. In response, Ms. Wong Yuk Hing said that some of the school buses would be owned by the school and some provided by contracted operators. Ms. Wong said that there would not be a problem in implementing the proposed school bus operation since the school had already lined up with some existing school bus operators for the provision of school bus service.

80. A Member expressed concern over the practicability to control the arrival time of school buses as the road traffic was dynamic and unpredictable. This Member said that the manoeuvring spaces for vehicles within the school premises appeared to be limited. Although five school bus parking spaces would be provided within the site, it would be difficult to conceive a school bus entering the school when another one was dropping off the students or manoeuvring within the site. It might take more than 20 minutes for completion of the whole drop-off process and waiting/queuing of school buses outside the school might be inevitable. This Member asked the applicant's representatives whether any assessment or simulation on the logistics of and time involved in the parking of school buses and dropping off of students had been made in the TIA. In response, Ms. Wong Yuk Hing said that the overall school bus service, including route planning, matching of students with service coverage and operation, would be centrally organised and managed by the school such that the arrival/departure times could be accurately estimated and controlled. The school would appoint a team of experienced staffs to oversee the school bus operation, including a traffic control officer who would be responsible for coordinating the school bus arrivals/departures and giving instructions to the school buses in response to the changing traffic conditions. In case of traffic congestion and unforeseeable incidents that all the school buses arrived at the school at the same time, the situation could be alleviated by making use of the five school bus parking spaces within the school site and the four supplementary parking spaces within the adjoining site at 3 Kent Road. In case of critical situation, the school would ask some of the school buses to circle around the Kowloon Tong area before coming back to the school so as to ensure that no school buses would be waiting along Kent Road.

81. Mr. Lee Tak Kuen supplemented that the estimated time required for the movement of vehicles within individual parking space had been set out in Table 5.6 of the TIA report at Annex E of the TPB Paper. It had been assumed in the TIA that the movement of vehicles within individual parking spaces could occur concurrently, only one vehicle could manoeuvre in the common area of the car park at any one time, and on average a school bus would take 25 seconds to manoeuvre in the common area before successfully park/exit from the parking space. Based on these assumptions, the five school bus parking spaces within the school site could accommodate the movement of a maximum of 20 school buses over a 20-minute period of time. Mr. Lee said that since only eight school buses would be employed by the school which would arrive one by one between 8:35 a.m. and 9:00 a.m., there should not be any school bus queuing or waiting along Kent Road.

82. In response to the question of the Chairman on whether the staff would arrive at the school by school bus or other transport, Ms. Ma Ngai Nor, who said that she was responsible for the management of school buses, said that the school staff would not travel on school bus as they were required to arrive at the school before the arrival of students. Ms. Ma said that based on her 20 years experience in arranging and organising school buses for kindergartens, all the school buses should be able to arrive and drop off the students at the school within 20 to 25 minutes and there would be no waiting of vehicles outside the school. It was because school bus operators and drivers who were familiar with the proposed school bus routes, which covered the Kowloon Tong, Sha Tin and Ho Man Tin area, would be employed and hence the overall travel time and the arrival time at the school could be accurately estimated.

[Ms. Bernadette Linn arrived to join the meeting at this point.]

[Mr. Jeff Lam left the meeting at this point.]

### *School Hours*

83. In response to the question of a Member, Ms. Wong Yuk Hing said that the school hours of the morning and afternoon sessions of the proposed school had been

re-scheduled to 9:00 a.m. to 12:35 p.m. and 1:30 p.m. to 5:00 p.m. respectively in order to avoid overlapping with those of the other schools along Kent Road including the Kentville Kindergarten and the Zenith Kindergarten.

84. A Member asked the applicant's representatives whether the traffic impact of the proposed school from 8:30 a.m. to 9:00 a.m., which was the morning peak hour for works-related travel, had been assessed in the TIA. In response, Mr. Lee Tak Kuen said that traffic analysis had indicated that after the proposed re-scheduling of school hours, the traffic impact of the proposed school on Kent Road would be less significant and the junction performance at the junction of Cornwall Street/Kent Road would be improved with a reserved capacity of over 7% during its morning peak hour between 7:30 a.m. and 8:30 a.m.

85. A Member asked the applicant's representative whether eight school buses would be adequate to pick up the two groups of students for the morning school and afternoon schools between the two school sessions. In response, Ms. Ma Ngai Nor said that two separate fleets each of eight school buses would be employed for the morning and afternoon sessions. The route plan and timetable of the school buses would be designed in accordance with the living places of the students and the pick-up/drop-off times of the two fleets would not overlap with each other.

86. A Member pointed out that some schools nearby, including the two Yew Chung Kindergartens at Kent Road and Somerset Road respectively, and the Tutor Time International Kindergarten at Dorset Crescent, had school starting time at 9:00 a.m. which was the same as that of the proposed school. As such, there would still be a lot of school traffic and drop-off activities in the area during the period between 8:30 a.m. and 9:00 a.m. In response, Ms. Wong Yuk Hing said that the aforesaid kindergartens were located farther away from the application site and would not have an effect on the traffic near the proposed school.

*All Students to be Transported by School Bus*

87. A few Members asked the applicant's representatives whether there were any mechanisms to ensure that all students would travel to/from school by school buses. In

response, Ms. Wong Yuk Hing said that it would be the main philosophy of the proposed school to advocate green education and the school bus arrangement was perceived as one of the teaching elements pertaining to this philosophy. Based on her experience, parents would choose a school for their children only when they agreed with the philosophy of the school. Ms. Wong said that prior to the admission of new students, parents would be requested to sign an agreement with the school on the requirement for their children to travel to/from school by school bus. A staff would monitor the situation at the school entrance and keep record of those parents who used private cars to bring their children to school. Those non-complying parents would be asked to honour their prior agreement with the school. Ms. Wong said that she was confident that a consensus could be built between the school and the parents on the school bus arrangement so as to fulfill the mission of the school as well as the operational requirement.

88. Regarding the applicant's proposal to use eight 26-seater school buses to carry all the students to/from the school, a Member asked what the proposed coverage of the school bus service would be and how to ensure that there would be no more or no less than a multiple of 26 students riding on each route. In response, Ms. Wong Yuk Hing said that the target students would mainly be living in Kowloon City and Sha Tin. She said that during the selection process for new students, a matching between the living places of the students and the coverage of school bus service would be carried out to ensure that the capacity of school buses of each route would not be exceeded, thus enabling smooth operation of the proposed school bus service. In response to the question of the Chairman regarding whether eight school buses would be adequate to carry all 192 students, Ms. Wong Yuk Hing said that it was the intention of the school to keep the number of school buses at eight although in reality one or two additional school buses might be required. However, this should not have any significant impact on the school bus operation and the local road network.

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

89. Noting that the proposed development had included a children care centre providing nursery classes, a Member asked whether there were legal provisions and specific transport requirements governing the carrying of young children on school bus. In response, Ms. Wong Yuk Hing said that the students of the proposed school would

encompass children aged from 2 to 6 years old, and there would be two nursery classes of 20 two years old students each for the morning and afternoon school sessions respectively. Ms. Wong said that there would be at least one helper on each school bus to ensure a safe travelling environment and to take care of the needs of the school children. Ms. Wong said that such arrangement had already been adopted in other kindergartens/nurseries. Ms. Fiona Lung, DPO/K, said that according to the advice from TD Enquiry Hotline, there was no legal provision restricting school buses from carrying 2-year old children.

[Mr. H.W. Cheung left the meeting temporarily at this point.]

### *Traffic Impact*

90. A Member asked the applicant's representatives whether the proposed new measures had been presented to TD before the review hearing. In response, Mr. Lee Tak Kuen said that the new measures were only formulated after the receipt of the TPB paper a few days ago and had not been discussed with TD and the Hong Kong Police Force (HKPF). Mr. Lee said that after the review hearing, the applicant would revise the TIA report for submission to the Board, as well as the relevant departments including TD and HKPF for consideration.

91. A Member asked the representative of TD whether the proposed new measures were considered feasible and effective to minimise the traffic impact of the proposed school. In response, Mr. Ricky Tang, E/KC drew the attention of the Board to the following points: (i) from traffic engineering point of view, the location of the site was not ideal for school development since it was located at the road junction of Kent Road/Somerset Road. Any queuing/waiting or kerbside activities at this location would cause traffic delay to the junction, and could possibly affect a much wider area upstream up to Cornwall Street or even Waterloo Road; (ii) kerbside pick-up/drop-off activities at Kent Road was already high or even over-saturated during school peak hours; and (iii) the proposed changes in school hours and the proposed school bus arrival time from 8:35 a.m. to 9:00 a.m. for drop-off activities would still be in conflict with the morning peak hour for work-related travel. As such, he had reservation on the effectiveness of the proposed measures to reduce the traffic impact on Kent Road as claimed by the applicant.

92. In response to the above, Ms. Wong Yuk Hing said that TD's concern might only be applicable to a situation where the number, type and arrival time of vehicles could not be controlled. In the present case, by implementing the new measures proposed by the applicant, the traffic impact of the proposed school should be less significant because the number and type of vehicles would be limited to eight school buses and they would arrive at school individually within a 20-minute period after 8:35 a.m., closely regulated by the school. Based on the experience of the applicant's team, it would take about seven minutes for a school bus to drop off the students. Assuming that two school buses would undertake drop-off activities at the same time, the 20-minute period allowed was more than sufficient to complete all the drop-off activities. Ms. Wong said that the proposed changes in the morning school time to 9:00 a.m. to 12:35 p.m. could avoid conflict with the school hours of others schools along Kent Road, thus further alleviating the traffic impact on Kent Road. Mr. Lee Tak Kuen supplemented that the current run-in/out of the site was fronting onto the Kent Road/Somerset Road junction which was undesirable. Therefore, the applicant proposed to relocate the run-in/out of the proposed school 7m northwards and vehicles leaving the school site would only be allowed to turn right onto Kent Road and not straight ahead onto Somerset Road in order to avoid direct conflict with the Kent Road/Somerset Road junction.

93. In response to the question of a Member on whether the traffic problem encountered by the school locating at the junction of Kent Road/Somerset Road was insurmountable, Mr. Ricky Tang, E/KC said that the main problems for the subject site were the traffic volume on Kent Road in particular during the morning peak hours, and the kerbside activities along the road. Mr. Tang said that there were other examples where vehicular access was not even allowed for development near a road junction for the reason that any vehicle breakdown thereat would severely affect the traffic flow at that junction. For the subject application, the proposed northward shift of the run-in/out by 7m was only a minor adjustment that could not bring significant improvement to the traffic at the junction because the proposed run-in/out of the school would still be close to the junction of Kent Road/Somerset Road, and worst still, would be closer to the run-in/out and main entrance of Kentville Kindergarten to its immediate north. As such, the relocated run-in/out was still undesirable from traffic point of view in respect of the traffic generation of the proposed school during school peak hours, particularly at morning school peak hour. Mr. Tang said that the traffic along Kent Road and around the Kowloon Tong

MTR Station had increased as a result of the recently completed residential developments nearby and the increase in university students after the implementation of the new Senior Secondary Academic Structure (SSAS). Therefore, any blockage to the run-in/out of the application site would seriously affect the traffic along Kent Road and further upstream.

94. In response to the enquiry of a Member regarding the comparison of traffic impact of the current hotel use and the proposed school use, Mr. Ricky Tang, E/KC, said that since the existing hotel was small in scale, the associated hotel traffic would be relatively insignificant. Moreover, hotel traffic would normally not be concentrated in the peak hours. Mr. Chan Kam Cheong said that the existing hotel with 27 rooms had recently modified its business mode from charging on an hourly basis to the conventional type receiving tours and individual tourists. Therefore, the hotel traffic pattern had been changed and taxi and tour bus would visit the hotel throughout the day including the morning peak hours. Mr. Chan said that the traffic impact of the proposed school, with a controlled traffic pattern, might be less significant than the current hotel use. In response to the question of the same Member, Mr. Ricky Tang said that the traffic impact brought about by the proposed school would be worse than the impact of the current hotel use.

[Dr. W.K. Yau left the meeting at this point.]

[Mr. H.W. Cheung returned to join the meeting at this point.]

95. Another Member said that traffic issue was one of the reasons of rejection by the MPC and had been a focus of the review hearing. This Member asked the representative of TD whether the new measures proposed by the applicant at the meeting would warrant TD to reconsider the application or to change its position. In response, Mr. Ricky Tang said that traffic along Kent Road had been a sensitive issue and even a slight interruption to the traffic flow, e.g. vehicle breakdown or waiting outside the school entrance, would have a wide implication on the traffic upstream. Though a signal cycle length of 120 seconds had been adopted at the junction of Kent Road/Cornwall Street, traffic congestion in the area still existed and complaints were still received. TD still had reservation on the findings of the TIA as the junction performance would be reduced by the heavy kerbside pick-up/drop-off activities along Kent Road. While the TIA mentioned that the performance of the junction of Cornwall Street/Kent Road could be raised by

increasing the cycle time, the road junctions in the area were linked by area traffic control system such that all signal time allocation for all the junction signals were interconnected electronically. The current signal control was a result of conscientious effort by TD in order to maintain smooth traffic in the locality as far as practicable. The proposed increase of cycle time at that junction might not be feasible because such increase would affect the signal time of the interconnecting junctions; and as a result would introduce traffic congestion at the other junctions such as the junction of Waterloo Road/Cornwall Street and junction of Waterloo Road/Junction Road during peak hours.

### *TIA Assumptions and Findings*

#### Design Year

96. Noting that the design year adopted in the TIA was 2018, the Vice-chairman asked the applicant's representatives the estimated commencement date of the proposed school. In response, Ms. Wong Yuk Hing said that the proposed school would commence operation in September 2013. Miss Fiona Lung, DPO/K, said that 2018 was adopted in the TIA as the design year for the purpose of traffic analysis only.

#### Reserve Capacity and Cycle Time

97. At the request of the Chairman, Mr. Ricky Tang elaborated on the definition of several technical terms used in the TIA Report and TD's comments on the corresponding findings. He said that 'reserve capacity' (RC) generally referred to the capacity of a junction to accommodate traffic flows. Generally speaking, a junction with a RC of 5% or more would just enable all vehicles to pass through a junction within one signal cycle. Mr. Tang said that according to the forecast capacities in the TIA, after commissioning of the proposed school, the RC of the junction at Cornwall Street/Kent Road would be reduced to 7% in year 2018. However, the RC of this junction would actually be further reduced since its performance would very likely be adversely affected by the heavy kerbside activities along Kent Road. Such situation was therefore considered undesirable from the traffic point of view.

98. Mr. Ricky Tang, E/KC, then elaborated on the concept of 'cycle time' which

generally referred to the time required for completion of a sequence of traffic light signal directions. As regard the applicant's proposal in the TIA report to increase the cycle time of the junction at Cornwall Street/Kent Road in order to improve the junction performance, Mr. Tang said that according to the Traffic Control Division of TD, a cycle time of 120 seconds had already been adopted for this junction during the morning peak hours. To further increase the cycle length to over 120 seconds would cause blockage to the traffic and was considered undesirable.

99. Mr. Lee Tak Kuen said that in accordance with the data provided by TD, the TIA had assumed a cycle time of 88 seconds for the Cornwall Street/Kent Road junction for the purpose of junction performance assessment and an estimated RC of 7% was resulted. If a cycle time of 120 seconds, which was already adopted by TD at the morning peak, was assumed in the TIA to reassess the capacity of this junction, its RC would be increased to over 7% after the commissioning of the proposed school and hence no further increase to the cycle time of this junction would be necessary. Under such circumstances, all the traffic should be able to pass through this junction within one signal cycle even with kerbside activities along Kent Road.

#### Assumed Growth Rate

100. In respect of the assumed traffic growth rate adopted in the TIA, Mr. Lee Tak Kuen said that the traffic impact for the design year 2018 was projected based on the observed traffic flows in 2012, the population and employment data for the Kowloon Tong district provided by the PlanD and assuming an annual growth rate of 1%. He said that the 1% growth rate assumption was in fact on the conservative side because the estimated population growth from 2012 to 2018 was less than 1% and the estimated employment would decrease.

101. A Member asked whether an annual traffic growth rate of 1% as assumed in the TIA report was considered acceptable by TD taking into account the newly completed residential development along Cornwall Street, the redevelopment and expansion of the Hong Kong Baptist Hospital, the implementation of the new SSAS, the increase in MTR East Rail patronage and the expanding role of Kowloon Tong as a major transport node. In response, Mr. Ricky Tang said that the assumed growth rate of 1% had been adopted in

many TIA exercises. Nevertheless, the assumed growth rate adopted in the TIA for this application should be adjusted in order to have a more accurate assessment of the traffic impact, given the planning circumstances of Kowloon Tong as mentioned. Mr. Lee Tak Kuen said that since the assumed 1% annual growth rate was applied over the period from 2012 to 2018 on a yearly basis, the aforesaid growth factors of Kowloon Tong should have been adequately reflected in the assumption.

*General Traffic Improvement in Kowloon Tong*

102. A Member said that Kent Road was a major thoroughfare in the area providing access to the MTR Kowloon Tong station and the public transport interchange and one of the reasons for traffic congestion along Kent Road was by the drop-off activities of green minibus (GMBs) at undesignated locations. This Member asked the representative of TD whether there were any measures to improve the general traffic condition of Kowloon Tong. In response, Mr. Ricky Tang said that TD had been actively considering restricting pick-up/drop-off activities by GMBs along Kent Road, possibly by imposing relevant conditions on their licences upon renewal.

103. Another Member asked the representative of TD whether there were any planned comprehensive traffic improvements in Kowloon Tong which would make similar school proposals feasible in traffic terms. In response, Mr. Ricky Tang said that the traffic in Kowloon Tong had been subject to on-going monitoring and review by the TD. Mr. Tang said that the traffic signal controls in the area had recently been reviewed to cater for the increased vehicular and pedestrian traffic associated with the increased number of students at the two universities nearby after the implementation of the new SSAS. Mr. Tang said that the no-stopping restrictions along Kent Road had also been fine-tuned recently in order to meet the demand for kerbside activities without adversely affecting the traffic flow. In response to the question of the same Member, Mr. Tang said that under such situation he still had reservations on the effectiveness of the traffic measures as proposed by the applicant.

[Mr. Rock C.N. Chen and Mr. Clarence W.C. Leung left the meeting at this point.]

104. Mr. Chan Kam Cheong said that the proposed school should not necessarily be

perceived as generating adverse traffic impacts. Rather, the measures as proposed by the applicant could set a good example for other schools to follow, and the cumulative effect might help improve the overall traffic condition of the area. He said that the school proposal and the traffic measures were prepared by the applicant with sincerity and the Board could consider giving an opportunity to the applicant, possibly by granting a time-limited approval, to prove the feasibility of the proposed traffic measures.

#### *Need for School in Kowloon Tong*

105. A Member said that there were already a number of kindergartens in the Kowloon Tong area which should have surpassed the demand from local residents. This Member asked the applicant's representatives the reasons for insisting to provide a school in Kowloon Tong and how to ensure sufficient enrolment for the proposed school. In response, Ms. Wong Yuk Hing said that there had been a general lack of outdoor space for kindergartens in Hong Kong but outdoor activities had become an essential part of the kindergarten education. Kowloon Tong was therefore considered as an ideal location for kindergarten as it was characterised by a generally low-rise environment and could offer ample outdoor space, trees and green areas to assist the learning process within the school.

106. A Member commented that whilst there were concerns on the traffic impact generated by the kindergarten, the provision of educational facilities was supported in general.

107. As Members had no further question, the Chairman thanked the representatives of the Government and the applicant's representatives for attending the meeting. They all left the meeting at this point.

[The meeting was adjourned for a short break of 3 minutes.]

[Professor K.C. Chau left the meeting at this point.]

#### Deliberation Session

108. Members generally supported the establishment of schools but expressed grave

concerns on the proposed school in view of the adverse traffic impacts.

109. A Member pointed out that the traffic condition around the application site had been critical given that it was fronting onto a road junction with heavy traffic and located close to the MTR station. Although the applicant had specifically proposed a dedicated school bus operation and management scheme to address the traffic issue and to minimise the traffic impact of the school, there were concerns over the implementability and enforceability of the proposed measures.

110. The Vice-chairman said that school traffic was an issue of grave concern in this area as there were already 5 existing kindergartens/nurseries and primary schools along this section of Kent Road and Somerset Road; and 17 traffic complaints had been recorded during the past three months, i.e. June to August 2012, which was on the high side for a period including the summer holidays. He had strong reservation on the practicality of transporting all students on school buses especially for nursery class students, given that they were so young that parents would likely drive their young children to/from school to ensure their safety. In view of the above, he did not support the application on review.

111. A Member said that since the application site was at a heavily trafficked road junction and there was no practical ways to overcome the traffic problem, it might not be very suitable for school use. This Member did not support the review application.

112. A Member shared the views of the Vice-chairman on the practicability and enforceability of requiring all school students to travel to school by school buses. Furthermore, in view of the limited manoeuvring area within the school site and the safety concerns for school children during drop-off/pick-up, it was probable that a school bus would have to enter the school premises twice, i.e. dropped off the school students in the first time and returned to park on the site in the second time, thus generating further burden on the already busy local road network. This Member said that the noon-time and evening peak hours traffic impacts of the school had not been fully addressed, and the feasibility of the proposed measures had not been tested and therefore the school use under application might not be comparable to other schools such as German Swiss International School given the difference in circumstances. In view of the above, this Member did not support the review application.

113. Another Member said that the requirements of nursery class students had not been fully taken into account and addressed in the TIA and the actual traffic impact might be under-estimated by the applicant. This Member did not support the review application.

114. A Member said that a number of traffic growth factors such as the increase in the number of universities students in the area after the implementation of the SSAS and the newly completed residential developments in Kowloon Tong had not been fully taken into account in the TIA. This Member did not support the review application.

115. A Member said that the safety of school children should be the primary concern for traffic planning in Kowloon Tong given that there was a high concentration of kindergartens and primary schools within a major transport node. This Member said that any future traffic improvement should place more emphasis on pedestrian movement rather than accessibility by vehicles as advocated by conventional TIA exercises. Another Member agreed to this view and also said that as good planning practice, nursery schools would better be provided with outdoor spaces, and as far as practicable be located in close proximity to the living places of children in order to minimise travelling time as well as to ensure the safety of students.

116. After deliberation, the Chairman concluded by summing up that the TIA could not satisfactorily demonstrate that the proposed development would not have adverse traffic impacts on the surrounding road network. The effectiveness and practicability of the proposed traffic mitigation measures, including those new measures proposed by the applicant at this meeting, were doubtful. As such, the proposed school could not meet the planning criteria as laid down in the revised TPB PG-No. 23A.

117. After deliberation, the Board decided to reject the application on review. Members then went through the reasons for rejection as stated in paragraph 8.1 of the Paper and considered that they were appropriate. The reasons were:

- (a) the proposed development sited at the junction of Kent Road and Somerset Road and near Kowloon Tong MTR Station with busy traffic

could not comply with the Town Planning Board Guidelines No. 23A in that adverse traffic impacts were anticipated and no effective traffic mitigation measures were proposed to mitigate the impacts; and

- (b) the approval of the application would set an undesirable precedent for similar applications. The cumulative effect of approving such similar applications would aggravate the traffic condition of the Kowloon Tong Garden Estate.

118. The Board also agreed to convey to TD the suggestions of Members expressed in the meeting urging the adoption of appropriate road improvements and/or traffic management measures with a view to improving the traffic conditions of the Kowloon Tong area.

[Professor P.P. Ho and Mr. Laurence L.J. Li left the meeting at this point.]

### **Sha Tin, Tai Po and North District**

#### **Agenda Item 6**

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/NE-TK/398

Proposed House (New Territories Exempted House – Small House) in “Village Type Development” and “Green Belt” zones, Lots 82 S.C and 28 S.C in D.D. 27, Sha Lan, Tai Po (TPB Paper No. 9210)

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[The meeting was conducted in Cantonese.]

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

119. The Chairman informed the meeting that the applicant had indicated that he would not attend the review hearing. The following representative of the Planning Department (PlanD) was invited to the meeting at this point:

Ms. Jacinta Woo - District Planning Officer/Shia Tin, Tai Po & North  
(DPO/STN), PlanD

120. The Chairman extended a welcome and then invited DPO/STN to brief Members on the review application.

121. With the aid of a Powerpoint presentation, Ms. Jacinto Woo, DPO/STN, presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for development of a proposed house (New Territories Exempted House (NTEH) - Small House) at the site partly zoned "Village Type Development" ("V") and partly zoned "Green Belt" ("GB") on the approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/17 at the time of s.16 application and currently in force;
- (b) the Rural and New Town Planning Committee (RNTPC) rejected the application on 6.7.2012 for the reasons that the proposed development was not in line with the planning intention of the "GB" zoning for the area, the proposed development did not comply with the "Interim Criteria for Consideration of Application for NTEH/Small House in New Territories" (Interim Criteria), and setting of undesirable precedent for other similar applications in the area;
- (c) the applicant had not submitted any information in support of the review application;
- (d) the application site, with an area of about 114.6m<sup>2</sup>, was located in an area partly zoned "V" zone (about 16%) and partly zoned "GB" (about 84%). It was currently vacant and cleared and was served by an existing footpath;
- (e) there was no previous application at the same site. There were three

similar applications within the same “GB” zone since the first promulgation of the Interim Criteria in 2000, one of which was approved with conditions by the RNTPC on consideration that the application met the Interim Criteria whilst the remaining two applications were rejected by the RNTPC /the Board for the reasons of not in line with the planning intention of the “GB” zone, adverse landscape impact and setting of undesirable precedent;

- (f) departmental comments – the departmental comments were summarised in paragraph 4 of the Paper. The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) did not support the application as the application site was located outside the village ‘environs’ (‘VE’) and more than 50% outside the “V” zone. Other government departments generally had no adverse comment on the review application;
- (g) public comments – five public comments were received during the review stage. They were from Kadoorie Farm & Botanic Garden Corporation, Sha Lan Villas Residents Association and three individuals. All the public comments objected to the application for the reasons that the site was zoned “GB” and should be preserved and protected, the green belt area would be further reduced upon approval of the application, the proposed development would affect the traffic, environment and ecology in the surrounding area, and setting of precedent resulting in cumulative impacts on the area; and
- (h) PlanD’s views – PlanD did not support the review application based on the planning considerations and assessments as set out in paragraph 6 of the Paper and summarised below:
  - (i) the application site was located mainly within the “GB” zone. The proposed development was not in line with the planning intention of the “GB” zone which was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive

recreational outlets. There was a general presumption against development within this zone;

- (ii) although there was a general shortage of land available in meeting the future Small House demand of Shuen Wan Chan Uk, Lei Uk, Chim Uk and Sha Lan, the proposed development did not comply with the Interim Criteria as more than 50% of the proposed NTEH/Small House footprint was located outside both the “V” zone and the ‘VE’ of any recognised villages. In this regard, DLO/TP, LandsD did not support the application;
- (iii) approval of the application would set an undesirable precedent for other similar applications in the area. There was no exceptional circumstance or strong justification provided by the applicant that merited sympathetic consideration of the application;
- (iv) the similar application No. A/NE-TK/270 approved had a footprint almost entirely within the “V” zone (99%) and met the Interim Criteria; and
- (v) there had been no material change in the planning circumstances since the consideration of the planning application by the RNTPC on 6.7.2012.

122. As the presentation from the representative of the PlanD had been completed, the Chairman invited questions from Members.

123. As Members had no question, the Chairman thanked the representative of the PlanD for attending the meeting. Ms. Jacinto Woo left the meeting at this point.

#### Deliberation Session

124. Members generally noted the proposed Small House was not in line with the planning intention of the “GB” zone and did not comply with the ‘Interim Criteria’.

There was no change in planning circumstances after rejection of the planning application, and the applicant had not submitted any further information to support a departure from the previous decision of the RNTPC.

125. After deliberation, the Board decided to reject the application on review. Members then went through the reasons for rejection as stated in paragraph 7.1 of the Paper and considered that they were appropriate. The reasons were:

- (a) the proposed development was not in line with the planning intention of the “Green Belt” zoning for the area which was to define the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There was a general presumption against development within this zone;
- (b) the proposed development did not comply with the “Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories” in that more than 50% of the proposed NTEH/Small House footprint was located outside both the “Village Type Development” zone and the village ‘environs’ of any recognized villages; and
- (c) the approval of the application would set an undesirable precedent for other similar applications in the area.

**Agenda Item 7**

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/NE-TK/390

Proposed House (New Territories Exempted House – Small House) in “Agriculture” and “Green Belt” zones, Government Land in D.D. 15, Shan Liu Village, Tai Po

(TPB Paper No. 9211)

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[The meeting was conducted in Cantonese.]

Presentation and Question Session

126. The Chairman informed the meeting that the applicant had indicated that he would not attend the review hearing. The following representative of the Planning Department (PlanD) was invited to the meeting at this point:

Ms. Jacinta Woo - District Planning Officer/Shia Tin, Tai Po & North (DPO/STN), PlanD

127. The Chairman extended a welcome and then invited DPO/STN to brief Members on the review application.

128. With the aid of a Powerpoint presentation, Ms. Jacinta Woo, DPO/STN, presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for development of a proposed house (New Territories Exempted House (NTEH) - Small House) at the site partly zoned "Agriculture" ("AGR") and partly zoned "Green Belt" ("GB") on the approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/17 at the time of s.16 application and currently in force;
- (b) the Rural and New Town Planning Committee (RNTPC) rejected the application on 15.6.2012 for the reasons that the proposed development was not in line with the planning intention of the "GB" zoning for the area, the proposed development did not comply with the "Interim Criteria for Consideration of Application for NTEH/Small House in New Territories" (Interim Criteria), the applicant failed to demonstrate that the proposed development located within lower indirect water gathering ground (WGG) would not cause adverse impact on the water quality in the area, and setting of an undesirable precedent for other similar applications in the area;
- (c) the applicant had not submitted any information in support of the review

application;

- (d) the application site, with an area of about 65.03m<sup>2</sup>, was located in an area partly zoned “AGR” zone (about 41%) and partly zoned “GB” (about 59%). It was located within the lower indirect WGG, adjacent to a local track at the edge of an existing woodland, and was accessible by a local track leading to Shan Liu Road off Ting Kok Road;
- (e) part of the site was the subject of a previous planning application for NTEH/Small House development rejected by the RNTPC in 2010 on grounds of non-compliance with the Interim Criteria, failure to demonstrate that the proposed development would not cause adverse impact on the water quality in the area, and setting of undesirable precedent. There were 46 similar applications located in areas entirely within “AGR” or “GB” zones, or straddling “GB” and “AGR” zones in the vicinity of the application site since the first promulgation of the Interim Criteria in 2000, ten of which were approved with conditions by the RNTPC mainly on considerations that the sites fell within “VE”, there was a shortage of land to meet the Small House demand and the proposed Small Houses could be connected to the planned sewerage system in the area, whilst the remaining 36 similar applications were rejected by the RNTPC/the Board mainly for the reasons of not complying with the Interim Criteria, insufficient information to demonstrate that the proposed development located within the WGG would not cause adverse impact on water quality in the area, adverse landscape impact and setting of undesirable precedent;
- (f) departmental comments – the departmental comments were summarised in paragraph 4 of the Paper. The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) did not support the application as the application site was located outside the village ‘environs’ (‘VE’) and the “V” zone of Shan Liu. The Chief Engineer/Development(2), Water Supplies Department (CE/Development(2), WSD) maintained objection to the application as the site was within the lower indirect WGG and no

information had been submitted by the applicant to demonstrate the connection of the proposed house to the public sewerage system. The Director of Agriculture, Fisheries and Conservation (DAFC) maintained not supporting the application from agricultural point of view as the site had high potential for agricultural rehabilitation. The Chief Town Planner/Urban Design & Landscape (CTP/UD&L), PlanD maintained objection to the application from landscape planning point of view and raised concern that approval of the application would set an undesirable precedent to other similar Small House applications within “GB” zone resulting in urban sprawl and further degradation of landscape quality. Other government departments generally had no adverse comment on the review application;

- (g) public comment – one public comment was received during the review stage. It was from Kadoorie Farm & Botanic Garden Corporation objecting to the application for the reasons that the proposed development was not in line with the planning intention of “GB” and “AGR” zones, polluted surface runoff from the proposed development would cause adverse impact on the water quality in the WGG, some suspected site formation work had been undertaken at the village, and setting of precedent resulting in cumulative impacts on the area;
- (h) PlanD’s views – PlanD did not support the review application based on the planning considerations and assessments as set out in paragraph 6 of the Paper and summarised below:
  - (i) the application site was located mainly within the “GB” zone. The proposed development was not in line with the planning intention of the “GB” zone which was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There was a general presumption against development within this zone;

- (ii) although there was a general shortage of land available in meeting the future Small House demand of Shan Liu Village, the proposed development did not comply with the Interim Criteria as the site was entirely outside both the “V” zone and the ‘VE’ of any recognised villages. In this regard, DLO/TP, LandsD did not support the application;
- (iii) approval of the application would set an undesirable precedent for other similar applications in the area. There was no exceptional circumstance or strong justification provided by the applicant that merited sympathetic consideration of the application;
- (iv) the site was located within the lower indirect WGG and the applicant failed to demonstrate that the connection of the proposed house to the public sewerage system as well as the proposed development would have no adverse impact on the water quality of the area. CE/Development(2), WSD, maintained his objection to the application;
- (v) DAFC did not support the application from agricultural point of view as the site had high potential for agricultural rehabilitation;
- (vi) CTP/UD&L, PlanD maintained objection to the application from landscape planning point of view and raised concern that approval of the application would set an undesirable precedent to other similar Small House applications within “GB” zone resulting in urban sprawl and further degradation of landscape quality;
- (vii) the site was the subject of a previous application No. A/NE-TK/318 for NTEH/Small House development rejected by the RNTPC on 27.8.2010. There was no strong planning justification in the review application to warrant a departure of the RNTPC’s previous decision of rejecting the application; and

(viii) there had been no material change in the planning circumstances since the consideration of the planning application by the RNTPC on 15.6.2012.

129. As the presentation from the representative of the PlanD had been completed, the Chairman invited questions from Members.

130. In response to the question of a Member regarding the zoning and reasons for approval of a similar application No. A/NE-TK/299, Mr. Jacinta Woo replied that the site of application No. A/NE-TK/299 was located mainly within “GB” zone and the application was approved with conditions by the RNTPC on 12.2.2010 on the grounds that the site fell within the ‘VE’ of Shan Liu, there was shortage of land in meeting the Small House demand of Shan Liu, and the proposed Small House could be connected to the planned sewerage system in the area.

131. As Members had no question, the Chairman thanked the representative of the PlanD for attending the meeting. Ms. Jacinto Woo left the meeting at this point.

#### Deliberation Session

132. Members generally noted the proposed Small House was not in line with the planning intention of the “GB” zone and did not comply with the ‘Interim Criteria’. There was no change in planning circumstances after rejection of the planning application, and the applicant had not submitted any further information to support a departure from the previous decision of the RNTPC.

133. After deliberation, the Board decided to reject the application on review. Members then went through the reasons for rejection as stated in paragraph 7.1 of the Paper and considered that they were appropriate. The reasons were:

- (a) the proposed development was not in line with the planning intention of the “Green Belt” zoning for the area which was to define the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets.

There was a general presumption against development within this zone;

- (b) the proposed development did not comply with the “Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories” as the application site was entirely outside the “Village Type Development” zone and the village ‘environs’ of any recognized villages;
- (c) the applicant failed to demonstrate that the proposed development located within the lower indirect water gathering ground would not cause adverse impact on the water quality in the area; and
- (d) the approval of the application would set an undesirable precedent for other similar applications in the area.

134. The meeting was adjourned for lunch break at 12:45 p.m.

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

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

Mr. Thomas Chow

Chairman

Mr. Stanley Y.F. Wong

Vice-chairman

Professor S.C. Wong

Mr. Timothy K.W. Ma

Professor Edwin H.W. Chan

Ms. Bonnie J.Y. Chan

Mr. Lincoln L.H. Huang

Professor Eddie C.M. Hui

Mr. Dominic K.K. Lam

Ms. Janice W.M. Lai

Ms. Julia M.K. Lau

Mr. Roger K.H. Luk

Ms. Anita W.T. Ma

Acting Assistant Director (Environmental Assessment)

Environmental Protection Department

Mr. H.M. Wong

Director of Lands

Ms. Bernadette Linn

(until 4:00 p.m.)

Deputy Director of Lands (General)

Mr. Jeff Lam

(from 5:00 p.m. onwards)

Director of Planning

Mr. Jimmy Leung

Principal Assistant Secretary (Transport)  
Transport and Housing Bureau  
Miss Winnie Wong

**Agenda Item 8**

[Open Meeting (Presentation and Question Session only)]

Consideration of Representations and Comments to  
the Draft Kwai Chung Outline Zoning Plan No. S/KC/26  
(TPB Paper No. 9204)

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[The hearing was conducted in English and Cantonese.]

[Professor Edwin H.W. Chan and Miss Winnie Wong arrived to join the meeting at this point.]

**Group 3**

**R3 to R8 and C1 to C165 and C167 to C1757**

137. The following Members had declared interests in this item:

- |                         |   |                                                                                                                                                    |
|-------------------------|---|----------------------------------------------------------------------------------------------------------------------------------------------------|
| Mr. Patrick H.T. Lau    | - | had business dealings with Ove Arup and Partners Hong Kong Ltd. (OAP) which was the consultant of R8                                               |
| Mr. Ivan C.S. Fu        | - | had business dealings with Cheung Kong (Holdings) Ltd. (CKH) which owned Hutchison Whampoa (HW) and HW was the owner of Omaha Investment Ltd. (C1) |
| Mr. Dominic K.K. Lam    | - | had business dealings with OAP which was the consultant of R8                                                                                      |
| Ms. Janice W.M. Lai     | - | her spouse owned a unit in Wonderland Villas                                                                                                       |
| Mr. Clarence W.C. Leung | - | owned an office in Kwai Chung                                                                                                                      |
| Professor S.C. Wong     | - | Traffic Consultant of OAP which was the                                                                                                            |

consultant of R8

- Director of the Institute of Transport Studies, and some activities of the Institute were sponsored by OAP

Professor P. P. Ho - had business dealings with CKH which owned HW, and HW was the owner of Omaha Investment Ltd. (C1)

Mr. Laurence L.J. Li - had business dealings with one of the representers

138. As the office owned by Mr. Clarence W.C. Leung and the flat owned by the spouse of Ms. Janice W.M. Lai were not the subject of Group 3 representations and were far away from the representation site, Members agreed that the interest of Mr. Leung and Ms. Lai were indirect and they should be allowed to stay in the meeting for this item. Members noted that Mr. Leung had already left the meeting.

139. Members agreed that the interest of Mr. Ivan C.S. Fu, Mr. Patrick H.T. Lau, Professor P.P. Ho and Mr. Laurence L.J. LI were direct and substantial as Mr. Fu, Mr. Lau and Professor Ho had current business dealings with the parent company of C1 and Mr. Li had current business dealing with one of the representers. Members noted that Mr. Fu, Mr. Lau, Professor Ho and Mr. LI had already left the meeting.

140. As Mr. Dominic K.K. Lam and Professor S.C. Wong's business dealings with the consultant of R8 were not related to the subject representations, Members agreed that the interest of Mr. Lam and Professor Wong was indirect and they should be allowed to stay in the meeting for the item.

#### Deliberation Session

141. The Chairman informed Members that before inviting the government representatives, representers, commenters and their representatives to the meeting, the Board had to deliberate how to handle the deferral request submitted by representer R7.

He then invited the Secretary to brief Members on the background of the deferral request.

142. The Secretary said that at the last meeting on 12.10.2012, Members were briefed that the Secretariat of Town Planning Board (the Board) on 20.9.2012 received a letter from the planning consultant of R7 (the Modern Terminals Limited), with a legal advice from Mayer Brown JSM (JSM). A copy of the letter dated 20.9.2012 from the planning consultant of R7 was tabled for Members' easy reference. R7 requested the Board to defer the representation hearing of the Kwai Chung OZP pending the outcome of the decisions from the Court of Appeal (or Court of Final Appeal) in the Kai Tak Mansion (KTM) case. JSM argued that the principles established by the Court of First Instance (CFI)'s judgment to quash the development restrictions imposed on the KTM site was the extant law, but the amendments to the Kwai Chung OZP had not taken into account those principles. JSM further argued that the outcome of the appeals against the CFI judgment might have a direct implication on the Kwai Chung OZP. If the Board proceeded with the hearing, the representers might lodge potential Judicial Reviews (JRs) in respect of the Kwai Chung OZP on similar grounds as those to be decided in the appeals for the KTM case. Hence, adjournment of the hearing would be a practical solution and would save time and cost for concerned parties and avoid more JRs being lodged against the Board's decision.

143. The Chairman said that it was agreed at the last meeting that the deferral request should be considered on the day when the representation was heard by the Board, i.e. at today's meeting. This would allow R7 to present their grounds on the deferral request before the Board, and the other representers and commenters present at the meeting would also have the opportunity to express their views on the deferral request. Besides, the representation paper, which would be prepared by PlanD and provide information on the relevant principles and consideration in proposing the development restriction for the representation site, would be available for Members' consideration on the deferral request. The Chairman suggested following the established practice to handle R7's deferral request first before proceeding with the hearing of the representations and comments to the draft Kwai Chung OZP under Group 3 today or on other days. Members agreed.

Presentation and Question Session

144. The following representatives from the Planning Department, representers, commenters and their representatives were invited to the meeting at this point:

Planning Department (PlanD)

- |                      |   |                                                                |
|----------------------|---|----------------------------------------------------------------|
| Mr. Wilson W.S. Chan | - | District Planning Officer/Tsuen Wan and West Kowloon (DPO/TWK) |
| Ms. M.L. Leung       | - | Senior Town Planner/Special Duties (STP/SD)                    |
| Ms. Ivy C.W. Wong    | - | Town Planner/Special Duties (TP/SD)                            |
| Mr. Calvin Chiu      | - | Air Ventilation Assessment Consultant (AVA Consultant)         |

R3 (Hong Kong Container Terminal Operators Association Ltd.)

- |                         |   |                               |
|-------------------------|---|-------------------------------|
| Mr. Lee Yiu Kwong, Alan | ] | Representer's representatives |
| Mr. Lee Hung Cheong     | ] |                               |

R4 (COSCO-HIT Terminals (Hong Kong) Ltd.)

- |                    |   |                               |
|--------------------|---|-------------------------------|
| Mr. Yuan Hao       | ] | Representer's representatives |
| Mr. Yik Chung Pang | ] |                               |

R5 (Hongkong International Terminals Ltd.)

- |                  |   |                               |
|------------------|---|-------------------------------|
| Mr. John Harries | ] | Representer's representatives |
| Mr. Phill Black  | ] |                               |

R6 (Asia Container Terminals Ltd.)

- |                             |   |                               |
|-----------------------------|---|-------------------------------|
| Ms. Choy Lai Ching, Gloria  | ] | Representer's representatives |
| Mr. Yuen Wai Chung, Francis | ] |                               |

R7 (Modern Terminals Ltd.)

- |              |   |              |
|--------------|---|--------------|
| Mr. K.T. Lee | ] | Representers |
| Mr. Eric Su  | ] |              |

Mr. Clark Lee	]	
Mr. Lam Wing Chiu	]	
Ms. Lolita Wong	]	
Ms. Chan Shuk Hing	]	
Mr. Ian Brownlee	]	Representer's representatives
Ms. Anna Wong	]	
Mr. Robert Lynn	]	
Mr. Alan Yip	]	
Dr. Benny Chow	]	
Mr. Matthew Mak	]	
<u>R8 (CSX World Terminals Hong Kong Ltd.)</u>		
Mr. Rufin Mak	]	Representer
Mr. Steven Chung	]	
Mr. Dennis Ng	]	
Mr. William Fung	]	
Dr. Jonathan Beard	]	Representer's representatives
Ms. Yeung Wing Shan, Theresa	]	
Ms. Leung Ming Yan, Natalie	]	
Mr. Lawrence Yip	]	
Dr. Yan Siu Hang	]	
Dr. Se Mei King, Camby	]	
Mr. James Conway	]	
Ms. Lau Sze Hong	]	
Mr. Brian Chau	]	
<u>C1 (Omaha Investment Ltd.)</u>		
Mr. Phill Black	-	Commenter's representatives
<u>C642 (Leung Pui Shan)</u>		
Mr. Lam Cheung Hung	-	Commenter's representative

C1749 (Asia Container Terminals Ltd.)

Ms. Choy Lai Ching, Gloria ] Commenter's representatives  
Mr. Yuen Wai Chung, Francis ]

C1752 (Mr. Lam Yat Fung)

Mr. Lam Yat Fung - Commenter

C1755 (Ngan Ping Man/CSX World Terminals HKG Ltd.)

Mr. Ngan Ping Man - Commenter

145. The Chairman extended a welcome. He informed the attendees that on 20.9.2012, the Secretariat of the Board received a letter from R7 requesting the Board to defer the hearing of representation to the Kwai Chung OZP. In this regard, the Board would need to deal with the deferral request before proceeding with the hearing of representations and comments. The Chairman then asked R7 and its representatives whether they had any new points to make in addition to those mentioned in its letter dated 20.9.2012.

146. With the aid of a Powerpoint presentation, Mr. Alan Yip, R7's representative, made the following main points:

- (a) recently, the High Court handed down the judgment on four JR cases, namely Turbo Top Limited v Town Planning Board [HCAL 23/2011] in November 2011; Oriental Generation Limited v Town Planning Board [HCAL 62/2011] in May 2012; Lindenford Limited v Town Planning Board [HCAL 59/2011] (Lindenford case) in September 2012, and Hysan Development Company Limited and others v Town Planning Board [HCAL 38/2011, HCAL 57/2011] (Hysan case), in September 2012. As the judgments of the last three JRs were handed down after the consideration of the proposed amendments to the Kwai Chung OZP by the Metro Planning Committee (MPC) on 30.3.2012, the principles established by the CFI's judgment for the KTM case had not been taken

into account;

- (b) it was noted from the judgments of the last three JR cases that the Judge basically agreed that the following three main principles from the CFI judgment on the KTM case (KTM principles) should be followed by the Board in proposing amendments to the OZP:
  - (i) the building height restrictions (BHRs) should not prevent a developer from making full use of plot ratio (PR) and gross floor area (GFA) available to a site;
  - (ii) restrictions had to be justified on their own merits, rather than by reference to the possibility of relaxation in specific cases (through s. 16 application); and
  - (iii) a restriction imposed by the Board on a person's land must be no more than as reasonably necessary to achieve a planning objective and backed up by cogent evidence;
- (c) the CFI's subsequent decisions to basically dismiss the Lindenford case and the Hysan case did not overturn the above principles;
- (d) it was noted from paragraph 4.7(u) of the TPB Paper that the Board had lodged an appeal against the CFI's decision on the KTM case as it did not agree to the CFI's decision that the imposition of BHR, non building area (NBA) and building gaps (BG) restrictions for the KTM site was arbitrary. However, it was not clear whether the Board agreed to the KTM principles as set out in the CFI's judgment. In any case, the imposition of the 2-storey BHR for R7's representation site had prevented R7 from making a full use of PR and GFA entitlement of the site. It had reduced the unused GFA of the site from the 5,800,000m<sup>2</sup> to 950,000m<sup>2</sup>. This was against the KTM principle mentioned in paragraph 12 (b)(i) above;
- (e) as stated in paragraph 3.2.21 of the TPB Paper, the 2-storey BHR was

justified by the addition of an ‘unconditional’ relaxation clause which allowed applications for relaxation beyond minor in scale to cater for the fast-changing requirement of the logistics industry. This was against the principle mentioned in paragraph 12(b)(ii) above;

- (f) the KTM principles was the extant law which had to be complied with by the Board, although the Board did not agree that the imposition of development restrictions for the KTM site was arbitrary and had lodged an appeal against CFI’s judgment;
- (g) the grounds of deferral request for the subject case were somewhat different from the earlier ones submitted by REDA. REDA requested the Board to defer the representation hearing so that the Board would reconsider amendments to the OZP taking into account the KTM principles. However, the main argument for the present deferral request was that should the Board not agree to the KTM principles, the representation hearing should be deferred to await the decisions of the appeals against CFI’s judgment on the KTM site which might have implications on the Kwai Chung OZP;
- (h) for the present case, if the Board agreed to the KTM principles, the Board should demonstrate how and to what extent the principles had been followed in imposing the 2-storey BHR for the R7’s site. On the contrary, if the Board did not agree to the principles, the representation hearing should be adjourned pending decisions by the Court of Appeal (or Court of Final Appeal) as they might have a direct implication on the Kwai Chung OZP. If the Board proceeded with the hearing, the representers might lodge JRs in respect of the OZP on similar grounds as those to be decided in the appeals for the KTM case. Hence, adjournment of the hearing would be a practical solution and would save time and cost for concerned parties, avoid more legal proceedings being lodged against the Board’s decision, and achieving a win-win situation for the Board and the representers.

147. The Chairman then asked other representers, commenters and their representatives for their views on the request for deferral. None of the representers, commenters or their representatives had any comments or raised any objection to the deferral request submitted by the R7.

148. In response to a Member's query, Mr. Alan Yip clarified that the KTM principles should be followed by the Board in formulating the development restrictions for any OZP. While he could not ascertain whether the Board agreed to these principles or not, it would be prudent to defer the hearing of the representation pending the decision of the appeals as this might have implications on the amendments to the Kwai Chung OZP and unnecessary legal proceedings could be avoided.

149. The same Member said that while the Board would take into account the KTM principles in formulating BHRs, the proposed development restrictions might not be agreed by the representers. Mr. Alan Yip said that under such circumstance, the Board should demonstrate with sufficient evidence that the decision made in the representation hearing had followed the KTM principles. However, he did not see from the justifications and arguments put forth by the Board or by PlanD in the TPB Paper that the Board had complied with the established principles in formulating the BHR for the representation site.

150. The Chairman pointed out that the TPB Paper for consideration of the representation to the Kwai Chung OZP was prepared by the PlanD and the Board had not yet considered and made a decision on the subject representation.

151. The Chairman thanked the representers, commenters and their representatives and invited them to leave the conference room temporarily to enable Members to consider the request for deferral.

[The Government representatives, the representers, commenters and their representatives left the conference room at this point.]

#### Deliberation Session

152. The Chairman said that the Board should consider whether there were

sufficient justifications for the deferral request. The Board had no dispute on the court decision that the imposition of development restrictions on OZPs should not be arbitrary. He further pointed that the imposition of BHR was always based on sound justifications with the support of objective assessments. While there were infinite options in the design of future development, the Board, unless otherwise required for the public good, had all along adopted a principle that the imposition of BHRs would not affect the sites from achieving their maximum permissible GFA of the OZPs. Moreover, the formulation of BHRs for the representation site had taken into account a host of factors including compatibility with surrounding developments, urban design and air ventilation considerations. The provision of the minor relaxation clause was to allow flexibility to cater for any future developments with planning and design merits. He further said that there was no disagreement to the KTM principles which had been closely followed in the formulation of development restrictions for various OZPs in the past.

153. A Member opined that the Board, in making its decision, would consider the KTM principles and whether the decision of the appeals against the CFI judgment for the KTM case were relevant considerations that should be taken into account in the representation hearing procedure of the Kwai Chung OZP.

154. Another Member said that the principles handed down by the court might be subject to different interpretation by the representers and the Board. This Member considered that the deferral request which mainly based on the premise that the Board would not follow the KTM principles in the consideration of the subject representation was unfounded as the Board had not yet conducted the hearing procedure of the representation for the Kwai Chung OZP. He further said that the Board had all along been following the established principles including the KTM principles in the consideration of imposing development restrictions on various OZPs.

155. One Member supplemented that the imposition of BHR for the container terminal site was not arbitrary as the rationale for imposing the relevant BHR and the addition of unconditional relaxation clause to provide sufficient flexibility to cater for the fast-changing development of the logistics trade was thoroughly discussed by the MPC.

156. Another Member said that the subject deferral request was not supported as the

grounds or arguments submitted by the representer were similar to those of other deferral requests previously considered and rejected by the Board. This Member expressed concern on the increasing number of deferral requests made by the representers on various OZPs since the handing down of the CFI judgment for the KTM case, and the grounds and arguments in support of the deferral request were generally the same. This Member wondered if consideration could be given to formulating some streamlined procedures to deal with future deferral requests which put forth similar arguments so as to avoid the abuse of the hearing procedures.

157. The Secretary pointed out that as compared with the previous deferral requests submitted by REDA, the legal advisor of R7 had provided more substantiation in his oral presentation to support the argument in that the Board had not complied with the KTM principles by making reference to the content of the TPB Paper. Besides, one of the grounds of R7's deferral request was based on the premise that the decision of the Board would be arbitrary and would not pay respect to the principles. Members might wish to consider whether this justification was acceptable as the Board had yet to conduct the hearing and make a decision on the subject representation. The Chairman supplemented that it would be rather difficult to assess whether the grounds for deferral requests submitted by the representers were exactly the same.

158. Two Members said that the KTM principles quoted by the R7's representative were incomplete and out-of-context. One Member further said that the Board's disagreement to the CFI's judgment that the imposition of development restrictions for the KTM site was arbitrary should not be taken to mean that the Board did not agree to the KTM principles set out in the CFI's judgment. The Board had all along based on sound planning principles, urban design and air ventilation considerations, reasonable planning assumptions and other relevant planning considerations in formulating the development restrictions imposed in the Kwai Chung OZP, including those on the Kwai Chung Container Terminal (CT) site. Hence the BHRs were not arbitrarily imposed on the CT site. Instead, the BHRs were well justified and there was no need to rely on the relaxation clause as a justification for the BHRs.

159. The Secretary briefed Members that the principle accepted by the Board in imposing the BHR was that the BHRs should be able to accommodate the PR and GFA

permitted under the OZP. Besides, the judgment for the Hysan case also stated clearly that a developer had no legally protected right always to have the best of everything. The wording of the court judgments quoted by R7's representative was incomplete.

[Ms. Bonnie J.Y. Chan arrived to join the meeting at this point.]

160. A Member said that the relevant considerations that had been taken into account by PlanD in recommending the BHRs for the CT site, were stated in paragraphs 3.2.17 to 3.2.21 of the TPB Paper. However, the representative of R7 only quoted paragraph 3.2.21 and argued that the proposed imposition of BHRs with an unconditional relaxation clause was arbitrary. Such argument was incomplete and quoted out of context.

161. Another Member also remarked the recommendations in the TPB Paper was prepared by PlanD and the Board had not considered the representations and made a decision. The R7's representative should not simply base on the recommendation of the TPB Paper and alleged that the Board had not followed the CFI principles.

162. After further deliberation, the Chairman concluded Members' discussion and said that there was no strong justification for the Board to accede to the representer's request to defer consideration of the representations and comments. Members agreed that the Board should continue with the hearing of representations and comments.

163. In response to the Chairman's enquiry on the procedures to deal with the submission of an Air Ventilation Assessment (AVA) report by R7 which was tabled at the meeting, the Secretary said that if the AVA report formed part of the representation, it should be treated as not having been made in accordance with the provision of the Ordinance for the reason that the further information was submitted out-of-time and had not gone through the statutory publication procedures. However, if the technical report was just an elaboration of the representation, the Board might accept it but the meeting might have to be adjourned for seeking comments from relevant government departments.

164. The Chairman said that clarifications would be sought from R7 on the nature of the AVA report submitted prior to the hearing of representations and comments.

[The Government representatives, representers, commenters and their representatives were invited to return to the conference room at this point.]

### Presentation and Question Session

165. The Chairman welcomed the attendees back to the meeting and informed that the Board had considered the views expressed by R7 and decided not to accept the request for deferral. The Board would proceed with the hearing of the representations and comments.

166. The Chairman asked R7 to clarify the nature of the AVA report tabled at the meeting. In response, Mr. Ian Brownlee (R7), advised that the tabled AVA report was related to the presentation and it was a piece of information supplementary to those previously submitted.

167. The Chairman said that sufficient notice had been given to invite other commenters to attend the hearing, but they had either indicated not to attend the hearing or made no reply. As sufficient notice had been given to the commenters, Members agreed to proceed with the hearing in their absence. The Chairman then invited the representatives of PlanD to brief Members on the representations and comments.

[Mr. Timothy K.W. Ma left the meeting temporarily at this point.]

168. With the aid of a Powerpoint presentation, Ms. M.L. Leung, STP/SD, made the following main points as detailed in the Paper:

#### Background

- (a) on 20.4.2012, the draft Kwai Chung Outline Zoning Plan (OZP) No. S/KC/26 (the Plan) incorporating amendments mainly to impose BHRs on various development zones; to designate NBAs and BGs in various zones; and other zoning amendments was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). A total of 13

representations and 1,925 valid comments were received;

- (b) R3 to R8 and C1 to C165, C167 to C1757 were related to a single site (i.e. the Kwai Chung Container Terminal (Kwai Chung CT) which was zoned “Other Specified Uses” annotated “Container Terminal” (“OU(CT)”) on the OZP and stipulated with BHRs, ranging from 25mPD to 110mPD to reflect the existing BH of the terminal buildings/logistics centres, and a BHR of 2 storeys on the open yards and the small-scale buildings within the container terminal (CT);

#### The Representation Site and its BHR

- (c) the Kwai Chung CT, with an extensive area of about 87.9ha, occupied the southwestern waterfront of the Kwai Chung Area. It contained the following five terminals :
  - (i) CTs No. 1, 2 and 5 (about 43 ha) situated at the northernmost of the CT were operated by MTL (R7). A massive warehouse building (BHR of 75mPD) and an administration building (BHR of 25mPD) were situated at the northeastern corner of the site,
  - (ii) CT No. 3 (about 16.7ha) to the south of CTs No. 1, 2 and 5, was operated by CSX World Terminals Hong Kong Limited (R8). The central portion of the site was dominated by ATL Logistics Centre (BHRs of 60/110mPD), which was the tallest building in the Kwai Chung CT;
  - (iii) CT No. 4 (about 28.2ha) occupied the southern end of the Kwai Chung CT and was operated by Hongkong International Terminals Limited (R5). Along its northern boundary abutting the ATL Logistic Centre in CT No. 3 was the Hutchison Logistics Centre (HLC) (BHR of 65mPD);
- (d) according to the findings of PlanD’s Urban Design Appraisal (UDA) and Air Ventilation Assessment (AVA), given that the Kwai Chung CT was

located at the gateway of breezeways and adjacent to the visual corridor of Rambler Channel, the relatively low-rise building profile of developments along the waterfront area should be maintained so as to safeguard the coastal area for visual and air ventilation purposes;

- (e) the BHR for the representation site was thoroughly discussed at the MPC on 30.3.2012. Members generally considered that it would be difficult to predict the changing requirements of the logistics industry and it would be more appropriate to have a comprehensive planning of the Kwai Chung CT in formulating the BHR if the existing BHs were not adopted. A loose BHR might result in piecemeal redevelopment and too much flexibility in BHR might not be appropriate at this stage. After a thorough discussion, the BHRs proposed for the Kwai Chung CT were agreed with addition of an unconditional relaxation clause of BHR (instead of the usual minor relaxation clause) allowing applications for relaxation beyond minor in scale to cater for the fast-changing requirement of the logistics industry;

#### Subject of Representations and Comments

- (f) R3, R4, R5 and R6 (submitted by Hong Kong Container Terminal Operators Association Limited, COSCO-HIT Terminals (Hong Kong) Limited, Hongkong International Terminals Limited and Asia Container Terminals Limited respectively) generally opposed the BHRs imposed on the “OU(CT)” zone;
- (g) R7 and R8 (submitted by Modern Terminals Limited and CSX World Terminals Hong Kong Limited respectively) specifically opposed the BHRs imposed on CTs No. 1, 2 and 5 and CT No. 3 respectively and requested to remove/relax the BHRs;
- (h) R5, R7 and R8 also objected to the relaxation clause of BHRs for “OU(CT)” zone;

- (i) C1 supported R3 and R5 as well as other representations objecting the BHRs imposed on the Kwai Chung CT. C2 to C165, C167 to C1748 and C1749 to 1757 also supported R7 and R8's objection to the BHRs imposed on the "OU(CT)" zone respectively. C1749 agreed with the principles and objectives raised by R8 without giving particular grounds;

Grounds of Representations (R3 to R8) and Representers' Proposals

- (j) the main grounds of representations and the representers' proposals were summarised in paragraphs 4.5 and 4.6 of the Paper and highlighted below:

*Impede Expansion of Container Terminals*

- (i) the Kwai Chung CT was an important part of the trading/logistics industry which was a pillar of Hong Kong's economy. The BHRs imposed on CTs No. 1-5 would affect the operators' ability and flexibility to respond to the changing demands of the industry, resulting in an adverse impact on its development as well as Hong Kong's economy (R3, R4, R6, R7 and R8);
- (ii) imposition of BHRs on the Kwai Chung CT conflicted with the Government's policy to identify more land for the expansion of the trading/logistics industry and contravened the Committee's recognition of flexibility that the industry required (R7 and R8);
- (iii) the BHRs for the Kwai Chung CT had not taken into account the nature and need of the trading/logistics industry as well as the economics and technology for container port operation (R5, R7 and R8);
- (iv) to handle increasing throughput, flexibility was required to develop higher structures to store containers/cargoes, to relocate/consolidate facilities within the CTs, and to meet modern operational needs such

as large building footprint and high ceiling, etc. (R3, R4, R5, R6, R7 and R8);

- (v) the benefit of imposing BHRs in terms of visual and air ventilation was not balanced against relevant factors such as the need of the industry and property rights. Imposition of BHR contravened/jeopardised the planning intention of “OU(CT)” zone which was to cater for the development of the CT (R7 and R8);
- (vi) the need to promote efficient and expanded capacity of port should be given the highest priority (R7);

*Urban Design and Air Ventilation Considerations*

- (vii) due to its specific functions and features, the Kwai Chung CT should be defined as a visual node and the urban design principle of keeping a low-rise coastal area should not apply to this site. The cranes, container stacks and container ships, which were more dominant than the on-site buildings and structures, should be taken as the starting point of the BHR. The BHRs of the “OU(CT)” zone should have been higher if a balance had been reached between the principles of keeping a low-rise coastal area and optimising development intensity provided under the OZP (R7);
- (viii) there was no justification in PlanD’s AVA and UDA that CT No. 3 was required to serve as breathing space and spatial/visual relief (R8);
- (ix) the formulation of BHRs for the CT was not based on the urban design principles. PlanD’s UDA did not demonstrate that a higher BH at the CT would violate such urban design principles or cause adverse impact on the visual corridor of Rambler Channel (R7 and R8). The Notes and Explanatory Statement (ES) of the OZP did

not provide visual and air ventilation justifications for such low BHR (R5);

- (x) the BHRs imposed on the “OU(CT)” zone prevented creativity or innovative architectural design, and forced buildings to become lower and bulkier, which had a direct negative impact on the provision of space around buildings (R7);
  
- (xi) there was no correlation between the findings of PlanD’s AVA and the BHRs imposed on the CT because:
  - (a) the sites were not identified as ‘Good Feature’, ‘Problem Area’ or recommended for further AVA study (R7 and R8);
  - (b) the sites were not located on or blocking any breezeway/air paths to ‘Problem Areas’ (R7 and R8);
  - (c) the sites were located on the downwind side of ‘Problem Areas’ which were far away (R7);
  - (d) there was no recommendation to keep the buildings at the sites at existing heights (R7 and R8);
  - (e) the 2-storey BHR was arbitrary as there were higher buildings nearby of up to 110mPD, 65mPD and 60mPD (R7); and
  - (f) the sea frontage was wide enough to provide adequate wind entrance from the east and west of the CT, and the 2-storey BHR was not necessary (R7);

*Sufficient Development Control under Lease and Buildings Ordinance*

- (xii) the lease conditions governing the CT had worked well and produced efficient terminal operation, as any development/redevelopment of the sites would require to obtain approval from the Director of Lands through the submission of Master Layout Plan and to comply with the Buildings Ordinance (BO) and Sustainable Building Design (SBD) Guidelines. Such procedures would include traffic, noise, glare, AVA and height assessments (R3, R4

and R7). The 2-storey BHR did not recognise that the lease had adequately regulated the terminal operations (R5);

#### *Development Rights*

- (xiii) the 2-storey buildings commonly found in the CTs were gatehouses only while other buildings were much higher, with office and logistics/container storage buildings in the vicinity up to 114m and over 20 storeys. Therefore, the BHRs of the CTs were imposed arbitrarily without considering the existing or future building requirements and entitlements of operators (R3 and R4);
- (xiv) the development potential of the CTs as permitted under the land grant and the BO should not be restricted (R6);
- (xv) development intensity and BH were unrestricted under the leases of CTs No. 1, 2 and 5, except Ext. to KCL 5 RP and Ext. Thereto (the Extension Area) which was subject to a PR of 2.5. The BHRs deprived the right to develop the site to maximum GFA permitted under the OZP, leases and the BO and to distribute the maximum permissible GFA to any part of the site (R7);
- (xvi) the BHRs were unable to accommodate the development potential of CT No. 3 as permitted under lease (i.e. no PR/GFA/BH restriction) and B(P)R (i.e. PR of 15), resulting in potential loss of land value. (R8);

#### *Relaxation Clause*

- (xvii) the planning application procedure for relaxation of BHR under “OU(CT)” zone duplicated the approval procedure for increasing BH under lease (R5). It introduced uncertainty and delayed the development of CT to respond to the fast-changing requirements of

the industry and economic trends (R7 and R8) ;

- (xviii) unlike minor relaxation for other zones, it was unreasonable that no relevant criteria were provided for the consideration of relaxation of BHR under “OU(CT)” zone (R5 and R7);
- (xix) BHR must be justified on its own merits, rather than by reference to the possibility of relaxation in specific cases under section 16 of the Ordinance (R7 and R8);
- (xx) the Board had wrongly relaxed the relaxation process by removing the word ‘minor’ and avoided its ‘plan-making’ function (R7);

*Inconsistent Treatment*

- (xxi) there was no justification to single out “OU(CT)” and “Government, Institution or Community” (“G/IC”) zones from the principle that BHR should not prevent the full use of permissible PR, which applied to “Commercial” (“C”), “Industrial” (“I”) and “OU” annotated “Business” (“OU(B)”) zones. “OU(CT)” zone did not share common features with “G/IC” but was more related to “OU(B)” zone (R7 and R8). There were other areas on the OZP where BHRs were higher than existing BHs to accommodate redevelopment potential (R5);
- (xxii) the BHRs among different CTs were inconsistent and unfair. The proportion of the site area of CTs No. 1, 2 and 5 for buildings of reasonable height and size was only 5%, which was far less than the adjacent CTs where about 60% of the site was covered by large buildings (R7);

*Legal Basis*

- (xxiii) the imposition of BHR on individual site/building was not permitted

by sections 3 and 4 of the Ordinance (R7 and R8) ;

*Sustainable Building Design (SBD) Guidelines*

- (xxiv) SBD Guidelines achieved the same objective as NBA and low BHR in terms of allowing permeation of wind. There was no attempt to incorporate SBD requirements in preparing BHRs for the CT, and they unnecessarily duplicated and conflicted with each other (R7) ;

*Judicial Reviews (JRs) in respect of Kai Tak Mansion (KTM) site*

- (xxv) the BHRs were imposed arbitrarily which failed to follow the KTM principles established in the JR (R7) in that :
- (a) “OU(CT)” zone should not be singled out from the principle that BHRs should be able to accommodate the maximum permissible PR/GFA;
  - (b) BHR must be justified on its own merits, rather than by reference to the possibility of relaxation in specific cases under section 16 of the Ordinance; and
  - (c) no cogent evidence to demonstrate the need for BHRs to achieve a planning objective because both PlanD’s UDA and AVA had been proved irrelevant;

*No Public Consultation*

- (xxvi) the BHRs had been imposed without prior public consultation. There was no opportunity for the logistics and port related industries to be informed of the proposals, and for the industry to explain their intention, the needs and future use of the sites (R7);
- (xxvii) the operational requirements and economic importance were either ignored or not understood by PlanD when proposing the BHR. Consultation with the industry and operators through statutory process after the gazettal of the amendments was not an effective

means of informing the public or seeking a positive input (R7);

[Mr. Timothy K.W. Ma returned to join the meeting at this point.]

Representer's Proposals

*R3, R4 and R5*

(xxviii) to reconsider the blanket low BHRs and to discuss with CT operators with a view that the BHRs imposed could meet their future development needs, without compromising the building entitlement or the stepped height and air ventilation objectives under the OZP;

(xxix) to increase the BHR for the open container yard from 2 storeys to 10 or 20 storeys. This would not undermine the stepped BH intention given the separation and level differences between the CT and upper Kwai Chung valley (R5).

*R7*

(xxx) R7 had submitted an expansion proposal comprising five new warehouse buildings of up to 89mPD to 110mPD along the northern boundary of CT No. 5, and to install new container storage system of 70mPD throughout the open yards of CT Nos. 1, 2 and 5;

(xxxi) proposed to remove the BHR on CTs No. 1, 2 and 5 taking into account the principles established in the KTM court case. Without prejudice to such position, R7 also put forth the following options and proposals:

- (a) a BHR of 180mPD for the whole "OU(CT)" zone to enable design flexibility and achievement of development rights under the lease and a site coverage of 60%; or
- (b) a BHR of 110mPD for the whole "OU(CT)" zone which was

the same as that applied to ATL Logistics Centre at CT No. 3 to enable equal treatment to all CTs and to provide reasonable level of flexibility to respond to changing needs and to plan for future investment; or

- (c) a BHR of 110mPD for the existing and proposed buildings within CTs No. 1, 2 and 5. The remaining area of the site was to be imposed with a BHR of 70mPD so that improved container stack technology could be applied;
- (d) despite the above, the BHR for the whole Extension Area should be 110mPD to align with the proposed new warehouse development (i.e. Phase 3 East Wing) thereat; and
- (e) to allow application for 'minor' relaxation of the above restriction in accordance with suitable criteria which were specifically appropriate for the "OU(CT)" zone.

#### *R8*

- (xxxii) R8 had formulated two indicative schemes for CT No. 3, i.e. Base Scheme with BH up to 230mPD and Alternative Scheme with stepped BH of 222/230/250mPD. Both schemes comprised two blocks of logistics centres with container terminal use on G/F; and
- (xxxiii) proposed to delete the BHRs for CT No. 3 and the relevant clauses in the Notes and the ES of the Plan, or to relax the BHR of the site to 250mPD.

#### Responses to Grounds of Representations and Proposals

- (k) the responses to the main grounds of representations and their proposals were stated in paragraphs 4.7 and 4.8 of the Paper and highlighted below:

#### *Impede Expansion of Container Terminals*

- (i) PlanD's AVA and UDA pointed out that the CT was located at the

gateway of summer southwesterly wind and adjacent to the visual corridor of Rambler Channel. While the importance of the CT as the core of the trading and logistics industry was recognised, its development had to ensure sustainability in infrastructure terms and no adverse impacts on the surrounding environment. The BHRs of the “OU(CT)” zone had been thoroughly discussed by the MPC and were formulated after balancing all relevant considerations, including the sensitive location, the nature of the logistics industry, the massive area and long sea frontage, the findings and recommendations of the AVA and UDA (R3, R4, R5, R6, R7 and R8);

- (ii) same as the original OZP, there was no PR/GFA/SC restrictions for the “OU(CT)” zone and the Schedule of Uses in the Notes for the zone also remained unchanged. Development/ redevelopment exceeding the BHRs could be allowed through application of relaxation to the Board. The imposition of BHRs did not contradict or affect the planning intention of “OU(CT)” zone (R7 and R8);

*Urban Design and Air Ventilation Considerations*

- (iii) in general, it was pointed out in UDA and AVA and mentioned in the ES of the OZP that maintaining the existing low-rise height profile of the CT along the Kwai Chung coast could help preserve the existing visual corridor of Rambler Channel and allowed the southwesterly sea breeze to enter the hinterland via major breezeways/air paths. The urban design guidelines in HKPSG and the findings and recommendations of the UDA and AVA all constituted part of the material considerations in deriving the BHRs. The BHRs were not deficient in urban design, visual and air ventilation considerations (R7 and R8) and such considerations had been mentioned in the ES of the OZP (R5);
- (iv) it was not the intention to reflect the heights of those non-permanent

and non-built structures such as cranes, container ships, container stacks, etc. within the CT, in the BHRs. A visual node did not necessarily contain tall buildings, particularly noting that the structures and operation of the CT might not be visually pleasing and attractive; (R7)

- (v) the objective of PlanD's UDA was to assess the visual impacts of the BHRs and to examine whether they were acceptable from the urban design and visual perspectives. As regards PlanD's AVA, it was intended to assess the existing wind environment in the Area and made a qualitative evaluation of the likely impact of the developments in accordance with BHRs on the pedestrian wind environment. Both the UDA and AVA were not supposed to, nor practicable to, exhaust all possible BHR options (R7 and R8);
  
- (vi) according to PlanD's AVA, the CT under the BHRs would have no significant air ventilation impact since the wide open container yard allowed penetration of southwesterly sea breeze to the hinterland. The openness and generally low-rise setting of the CT was recognised as a good feature for wind penetration, with the identified breezeways/ air paths across the CT particularly essential for penetration of sea breeze to the Kwai Chung urban core and Lai King area. The AVAs conducted by R7 and R8 failed to point out the facts that the CT was located on the windward side of both the summer southwesterly wind and the problem areas identified in inland Kwai Chung, and that CTs No. 1, 2 and 5 were located on breezeways/air paths. Failing to recognise these facts would disregard the correlation between the CT's location and its BHRs (R5, R7 and R8);
  
- (vii) the BHRs of the "OU(CT)" zone did not preclude the possibility for incorporating building design measures to achieve good quality developments. Besides, there was no direct causal relationship

between the imposition of BHR and bulky building nor would a relaxation of BHR guarantee good building design and quality development. If there was any innovative design for the future development to exceed the BHR, the proposal could be pursued by way of application for relaxation of the BHR (R7);

*Sufficient Development Control under Lease and Buildings Ordinance*

- (viii) lease, BO and OZP were separate development control regimes and served different objectives and functions. The first two were mainly concerned about the condition of a specific site or building itself, while the last took into account the overall BH profile on a wider area from the urban design and air ventilation perspectives. A proposal that complied with the lease conditions and BO did not necessarily represent a desirable planning proposal (R3, R4, R5 and R7);

*Development Rights*

- (ix) the BHR was formulated in a comprehensive manner, having struck a balance between community aspiration for a better living environment and private development rights. As held by the CFI in the Turbo Top case, a landowner took property subject to an implied condition that, for public good, the Government might by regulation (including OZPs) limit the uses to which such land could be put in the future (R3, R4, R6, R7 and R8);
- (x) whether a development/ redevelopment would be pursued was a commercial decision taking into account a host of factors instead of the BHR alone. Even if the BHRs to a certain extent might reduce the number of possible development options, this did not necessarily amount to a material impact on the redevelopment incentives. Also, the need to cater for greater design flexibility and redevelopment

incentives had to be balanced against the community aspirations for a better living environment with more compatible building developments (R7 and R8);

- (xi) the formulation of BHRs for the CT had taken into account a host of relevant factors, including urban design, visual and air ventilation considerations, as well as any known/ committed development proposal to demonstrate functional requirement. Restrictions under the lease was one but not the only factor in formulating the BHR. Although the lease of the Extension Area allowed a PR of 2.5, the site was currently used for open storage of containers with 1-storey ancillary structures scattered around, and there was no known/committed development proposal for the site. Thus, a 2-storey BHR was imposed to be congruous with the nearby open container yard in the CT. If future development was higher than the BHR, there was provision under the OZP for relaxation of the BHR (R7);

*Relaxation Clause*

- (xii) the intention of the relaxation clause for the “OU(CT)” zone was to facilitate development of the logistics industry and to provide flexibility to cater for the fast-changing requirements of the industry. No criterion was prescribed for the consideration of relaxation of BHR so as to make allowance for the unique nature and operational requirement of the CT, and each application was considered on a case-by-case basis. Also, the statutory requirement of TPO to consider s.16 application within two months of the submission of the application would provide a definite time frame for the planning of future development. In addition, the assessment of relaxation of BHR under lease and planning application were two separate development control regimes with different considerations (R5, R7 and R8);

- (xiii) a host of factors such as findings and recommendations of the UDA and AVA had been considered in drawing up the BHRs for the “OU(CT)” zone. The relaxation clause was to provide an added flexibility, which made provision for the Board to consider worthy schemes on individual merits. There was no question of the Board abdicating from its statutory plan-making duties by adding a relaxation clause. (R7 and R8);

*Inconsistent Treatment*

- (xiv) the “C”, “I” and “OU(B)” zones were of different land uses and development intensity, and served different functions in the urban area. Also, “OU(B)” and “OU(CT)” zones were of different planning intentions as the former was meant for general business uses usually taking place in conventional industrial/ office buildings on comparatively small lots, while the latter was specifically for container terminal activities which were land-intensive (R5, R7 and R8);
- (xv) there were specific BHRs for different terminals. R7’s allegation on unfair and inconsistent treatment of BHR among different terminals was not grounded (R7);

*Legal Basis*

- (xvi) according to the Department of Justice (DoJ), sections 3 and 4 of the Ordinance and the scheme of the legislation were intended to give the Board comprehensive powers to control development in any part of Hong Kong. In the five recent JR applications against the Board’s decisions of not upholding the representations, the decisions of the High Court had confirmed that the Board had the power under the Ordinance to impose BHRs, NBAs or building gaps on particular sites. Given the wide coverage of the Area that comprised areas

with varying characteristics including different topography and that there were different planning intentions/objectives to achieve, different restrictions for different sub-areas under the same broad zone were necessary (R7 and R8);

*Sustainable Building Design Guidelines*

- (xvii) the SBD Guidelines and the OZP restrictions were under two separate regimes, i.e. the building and town planning regimes, although they were complementary with each other. The SBD Guidelines, which were administrative measures and were complied on a voluntary basis for the granting of GFA concession/the exemption from GFA calculation under the BO, were generally applicable to all building developments with no reference to specific district characteristics and site circumstances. On the other hand, the OZP restrictions were statutory planning control to achieve planning objectives specific to the district (R7);
  
- (xviii) the SBD Guidelines were not designated to replace mitigation measure for air ventilation at the planning level. It was important to incorporate different air ventilation measures under the OZP through the designation of NBAs and building gaps at strategic locations in order to achieve the necessary inter-connectivity among them. Complementary to air ventilation measures at planning level, the SBD Guidelines focused on how air ventilation might be permeated through a building site so that better dispersion and air mixing could be achieved between the streets on both sides of the site. SBD Guidelines alone could not address the urban air ventilation problem (R7);
  
- (xix) the compliance with the SBD Guidelines involved detailed building design matters which could only be firmed up after a detailed building scheme had been drawn up by the architects. In the

absence of concrete building schemes, it would not be possible for PlanD at the OZP review stage to determine how the SBD Guidelines would impact on the building development and design at individual sites. As it would not be possible, nor appropriate, for PlanD to draw up detailed building schemes for all individual sites in the OZP, the SBD Guidelines could not be taken heed of in the OZP review process. Without any detailed scheme, there is no basis to allege that the BHR and other restrictions would conflict with the SBD Guidelines (R7);

- (xx) SBD Guidelines concerned matters of detailed building design for a specific site and there were infinite varieties of feasible design which a developer might wish to put up on a given site to qualify for concessions within the SBD Guidelines. However, planning involved looking at a district in a broad-brush way and determining what restrictions should be imposed in areas or specific sites for the betterment of the district as a whole. Recently, in its judgment of Hysan case, the CFI upheld the Board's decision not to take into account SBD Guidelines on granting of GFA concessions in deciding whether to impose restrictions on the OZP (R7);

*Judicial Reviews (JRs) in respect of Kai Tak Mansion (KTM) site*

- (xxi) the CFI judgment was now subject to appeals by both the Board and the Applicant (Oriental Generation Ltd). The Board did not agree that the restrictions (BHR, NBA and building gap) imposed on the KTM site were arbitrary (R7);
- (xxii) the development restrictions imposed in the Kwai Chung OZP, including those on the "OU(CT)" zone, were derived based on sound planning principles, urban design considerations, reasonable planning assumptions and other relevant planning considerations, in order to achieve the planning objectives set out for the Area.

Although the “OU(CT)” zone had no stipulation of PR/GFA control, it was not practicable to assume that redevelopment could be up to the level permissible under the B(P)R. CTs, served a specific function of a terminal for distribution of container cargoes which by nature was land extensive. It was never the planning intention to permit development in the CT to build up to B(P)R. Given the location of the CT at the Kwai Chung coast and its vast area extent, uncontrolled intensive development up to B(P)R would result in significant adverse impacts, in terms of visual, air ventilation and infrastructure, on the hinterland (R7);

#### *No Public Consultation*

- (xxiii) it was an established practice that proposed amendments involving BHRs should not be released to public prior to gazetting. The reason was that premature release of such information before exhibition of the amendments might prompt an acceleration of submission of building plans by developers to establish *fait accompli*, hence defeating the purpose of imposing the BHRs (R7);
- (xxiv) all those documents which clearly set out the rationales for the BHRs were available to the public (R7);
- (xxv) amendments to the OZP were exhibited for public inspection for a period of 2 months in accordance with the provisions of the Ordinance. The exhibition process itself was a public consultation and any person could submit representations and comments on the draft OZP. The two-month statutory exhibition period was considered adequate for consultation with the public, while maintaining the efficiency of the process. (R7)

#### Responses to Representatives' Proposals

*R3, R4 and R5*

- (xxvi) the BHRs of the “OU(CT)” zone were formulated after balancing all relevant considerations, including the sensitive location, the nature of the logistics industry, the massive area and long sea frontage, the findings and recommendations of the AVA and UDA. Although there was lease control, the lease and OZP were under separate development control regimes and had different considerations (R3, R4 and R5);
  
- (xxvii) the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD & L, PlanD) advised that the stepped height concept was only one of the factors in formulating the BHR and should not outweigh other urban design, visual and air ventilation concerns. Also, there was no information submitted in the representation to demonstrate a proposed increase in BHR would have no undesirable impact on the visual quality and character of the surrounding area, given the sensitive location of the CT and the extensive area involved (R5);
  
- (xxviii) PlanD’s AVA Consultant advised that it was unable to assess the proposal since there was no layout plan to show the exact location at which the increased BHR is proposed (R5);

*R7*

- (xxix) for the visual and air ventilation aspects, CTP/UD & L, PlanD considered that R7’s expansion proposal and the BHR options would change the visual composition along the waterfront, and no illustrative materials were provided to demonstrate the visual relationship of the proposed developments with the surrounding context. It was considered that R7’s proposed expansion proposal and the BHR options would likely block the current unobstructed

waterfront and had significant adverse impact on the existing breezeways/ air paths across the CT;

- (xxx) the feasibility of R7's expansion proposal/ proposed increase of BHRs had not been substantiated in terms of traffic, visual, air ventilation and environment nor accepted by relevant government departments. It was not appropriate to propose any amendment to the Plan at the present stage;

[Professor Eddie C.M. Hui arrived to join the meeting at this point.]

#### *R8*

- (xxxi) the significant increase of BHR to the proposed 222/230/250mPD under the Base and Alternative Schemes, and the proposed BHR of 250mPD did not pay respect to the principle of 'gradually increasing height bands' and would undermine the integrity of the stepped height profile intended for the Area. Moreover, R8's proposal was not recommended from air ventilation perspective as the proposed BHRs under Base and Alternative Schemes would create large wake area on the leeward side of the summer southwesterly prevailing wind, and might result in adverse air ventilation impact on the wake area at Lai King area including Lai King Estate, Cho Yiu Chuen and pedestrian area along Lai King Hill Road; and
- (xxxii) the feasibility of R8's two indicative schemes and proposed increase of BHR had not been substantiated in terms of traffic, visual, air ventilation and environment, nor supported by any redevelopment proposal for functional and operational requirements. It was not considered appropriate to propose any amendment to the Plan;

- (l) the main grounds of comments and commenters' proposal were detailed in paragraphs 5.1 and 5.2 of the Paper and were highlighted below:

*Impede Expansion of Container Terminals*

- (i) the majority of the commenters considered that the BHRs constrained the development of the CT, reduced its expansion/redevelopment potential and increase investment risk, thus impairing the overall development and competitiveness of the logistics industry and economy of Hong Kong;
- (ii) C1729 to C1745 and C1752 to C1755 remarked the high land and operational cost of the CT, and concerned about the BHR causing a waste of land resource, reduction of employment and business opportunity and adverse impact on the structural safety of buildings due to lack of redevelopment. C8 to C10, C1738 to C1741, C1755 and C1756 commented that imposition of BHRs was against the Government's intention to identify land for logistics and port backup uses;

*Urban Design and Air Ventilation Considerations*

- (iii) C1 alleged that the BHRs of the CT were not justified by air ventilation or visual grounds and there was no evidence that higher BHR would result in adverse air ventilation. C5 commented that existing cranes at the CT were disregarded. C11 to C14 remarked that given the functions and features of the CT, the urban design principles of reserving the waterfront for public enjoyment and low-rise development should not apply to the CT. C1744 also pointed out that the relationship between the buildings at the CT and the coastline should be considered instead of just imposing the 2-storey BHR. C1756 opined that R8's proposed BH of 222/ 230/ 250mPD might not bring adverse air ventilation and visual impacts.

On the other hand, the CT could serve as the landmark of Kwai Tsing district through innovative building design to take advantage of its unique location;

*Sufficient Development Control under Lease*

- (iv) C6 and C7 considered that the lease conditions could effectively control the future development of the CT;

*Development Rights and Redevelopment Incentive*

- (v) C3, C15 to C165 and C167 to C1746 opined that development rights should be respected and C3 added that full utilisation of PR/GFA should be allowed. C1751 and C1756 commented that the BHRs reduced redevelopment incentive of the CT to maximising development potential and efficient use of land. C1 further pointed out that CT No. 4 had no BHR under lease, and the maximum permissible PR was 12.2 despite the current PR being 1.89. Hence, the BHR would affect the owner's property right to utilise the entitled PR/GFA;

*Relaxation Clause*

- (vi) C15 to C165 and C167 to C1748 commented that the criteria for relaxation of BHR were not provided, which would create uncertainties to CT investors and operators;

Commenters' Proposals

- (vii) C1 supported the representers' proposal for a comprehensive review of CT's BHRs and consultation with the operators for the required height to meet future operational changes. Alternatively, a BHR of 110mPD should be imposed for the "OU(CT)" zone and

development/ redevelopment exceeding existing BH should require the Board's approval;

- (viii) C2 proposed to impose the same BHR on all the CTs provided that it would not prevent the full utilisation of PR;
- (ix) C8 to C165, C167 to C265, C1721, C1731, C1739, C1740, C1744 and C1747 supported R7's proposed relaxation of BHRs;
- (x) C1750 proposed to remove the BHRs of CT No. 3;
- (xi) C1751 proposed to reconsider the BHRs of the CT where appropriate;
- (xii) C1752 to C1755 proposed to remove the BHRs of the CT; and
- (xiii) C1756 supported R8's proposal to remove the BHRs or relax the BHR to 250mPD;

#### Response to Grounds of Comments and Commenters' Proposals

- (m) the responses to the main grounds of comments and their proposals were stated in paragraphs 5.2 of the Paper and highlighted below:

#### *Impede Expansion of Container Terminals*

- (i) the response in paragraph 35(k)(i) above was relevant;

#### *Urban Design and Air Ventilation Considerations*

- (ii) the responses in paragraphs 35(k)(iii) to (vii) above were relevant;

#### *Sufficient Development Control under Lease*

- (iii) the response in paragraph 35(k)(viii) above was relevant;

*Development Rights and Redevelopment Incentive*

- (iv) the responses in paragraphs 35(k)(ix) to (xi) above were relevant;

*Relaxation Clause*

- (v) the responses in paragraphs 35(k)(xii) to (xiii) above were relevant;

*Commenters' Proposals*

- (vi) regarding the comments supporting R7 and R8's proposed schemes, responses in paragraphs 35(k)(xxix) to (xxxii) above were relevant. For other suggestions to relax, reconsider or remove the BHRs of the "OU(CT)" zone, it had been pointed out that the BHRs were considered appropriate. Deletion of BHRs or blanket relaxation of BHRs would result in proliferation of high-rise developments along the waterfront, jeopardising the integrity of the stepped BH concept and obstructing wind penetration to the hinterland;

PlanD's Views

- (n) the representations R3 to R8 should not be upheld for the reasons set out in paragraphs 7.4 to 7.8 of the Paper.

169. The Chairman then invited the representers, commenters and their representatives to elaborate their representation and comments.

R3 (Hong Kong Container Terminal Operators Association)

170. With the aid of a Powerpoint presentation, Mr. Alan Lee made the following main points:

- (a) the role of the Hong Kong Container Terminal Operators Association (HKCTOA) was to maintain and enhance the operators' competitiveness by promoting initiatives to enhance productivity and efficiency; and to promote and coordinate the operators' initiatives to maximize the use of container terminal facilities;
- (b) HKCTOA, the Port Development Council and Logistics Council were not consulted on the amendments to the OZP;
- (c) Hong Kong was the world's third largest container terminal in 2011 and the logistics centres in CTs in Hong Kong had an occupancy rate over 90%. To maintain Hong Kong as a regional hub port and a regional logistics centre and to assume the role of an International Maritime Centre (IMC) as proposed by the 12<sup>th</sup> Five Year Plan for the National Economic and Social Development of the Peoples' Republic of China, it was necessary to provide more stacking space to make full use of the existing quay length and more logistics buildings to support the port and logistics industry. The competitive advantages of the CTs in Hong Kong would be lost if the existing land were not fully utilized;
- (d) port and logistics industry was one of the four pillars of Hong Kong's industry, contributing to 4% of Hong Kong's gross domestic productivity (GDP), providing 32,000 jobs, and supporting the trading industries which represented about 20% of Hong Kong's GDP. As the Government was unable to identify additional land in the New Territories for providing logistics centre, the Kwai Chung CT operators would have to provide additional space above their existing container yards for logistics centre use;
- (e) the imposition of BHRs for the Kwai Chung CT would adversely affect the opportunity to increase land and storage facilities within the existing CTs to meet the growing demand. This would result in the loss of competitive edge and jeopardize the position of Hong Kong as an

regional container port/regional development centre and the development as an IMC in future. Moreover, the contribution of the industry to the economy of Hong Kong would be curtailed; and

- (f) the lifting of BHR for the CT site would help the industry as well as the economy of Hong Kong.

R7 (Modern Terminals Limited) (MTL)

171. Mr. Ian Brownlee made the following main points:

- (a) the representation site was an L-shaped site where the first container terminal of Hong Kong was built. The design and facilities of the warehouse building on the site, which did not have vehicular ramp access to the upper floors, was outdated;
- (b) as mentioned in paragraphs 6.1 and 6.2 of the TPB Paper, the Secretary for Transport and Housing (STH) supported the arguments submitted by the logistic industry and had specifically suggested a BHR of 110mPD and 45-50mPD as appropriate for the CT site. However, STH's views and support were ignored by PlanD;
- (c) the CT uses and the logistic uses in the buildings on these CT site were similar to general business-type activities in the "OU(B)" and "I" zones than of the "Government, Institution or Community" zone or other "OU" zones. Full recognition must be given to the development rights of the landowners of the "OU(CT)" zone similar to that given to the "OU(B)" and "I" zones in Kwai Chung;
- (d) the imposition of BHR, in particular the 2-storey restriction had completely disrupted the long-term investment plans of MTL to improve quay facilities, provide new buildings and improve container handling facilities. While the MPC members were concerned about the possible

impact of BHR on the long-term development of the logistics industry, the addition of 'relaxation clause' was not the best or correct solution;

- (e) the representer had submitted building plans for the proposed East Wing and West Wing buildings in June 2012 but they were rejected by the Buildings Department as the proposed developments contravened the 2-storey BHR for the site. Besides, the Extension Area on which the proposed East Wing building was proposed was entitled to a PR of 2.5 under the lease, and MTL had paid a land premium of \$187.7 million in 2006 for it. The development right on this Extension Area would be restricted upon the imposition of the 2-storey BHR;
- (f) the 2-storey BHR was unreasonably restrictive. Overwhelming evidence was required from the PlanD to support a control which was lower than the existing use of the site by cranes and container stacks.

[Ms. Bonnie J.Y. Chan left the meeting temporarily at this point.]

172. With the aid of a Powerpoint presentation, Mr. Eric Su made the following main points:

- (a) as shown in a short video, the modes of operations within the CTs included import, export, transshipment and barge operations;
- (b) internationally, there was a market trend to use larger container vessels with a capacity of greater than 10,000 TEU. Moreover, the throughput contributed by the transshipment operation in the Kwai Chung CT had increased from 23% in 2004 to 40% in 2011;
- (c) to meet the challenges brought about by the using of larger vessels for transshipment, the CT operators needed to purchase additional and larger container cranes, carry out seabed dredging, and strengthen the quay structure in order to enhance its productivity;

- (d) according to the international standard, the land-to-quay ratio for a CT should be 25 ha for a standard berth length of 400m. However, the CTs in Hong Kong had a much lower ratio than all major newly developed CTs in the region which would affect the operation efficiency and handling capacity of the CTs. Hence, the CTs would need to stack higher and to maximize the container density so as to compensate for insufficient land. Although the stacking height of the containers in CTs No. 1, 2 and 5 had increased from three stacks to six stacks in the past few decades, the landside capacity was still lower than the quayside capacity. Hence, a major breakthrough in the stacking technology and other equipment would be required to enhance the efficiency and speed of the operation;
  
- (e) as shown in another short video, a container hangar system was currently used at the Oi Pier in the Port of Tokyo. The container hangar system was a semi-indoor system comprising container storage racks and in-built crane system, which were computerized and could store and retrieve containers efficiently. With this container hangar system, the stacking density within the same land area would be increased, the cargo handling efficiency would be enhanced, and the operation would be more environmental friendly;
  
- (f) the proposed container hangar system to be used on the site would be a 12-storey structure. Each storey with a height of 4.5m would consist of storage racks. Together with the in-built crane system and the roof structure, the proposed container hangar system would have an overall height of 65m or 70mPD. A 12-storey structure was required for the container hangar system in order to balance the quayside and landside capacities and achieve higher cost-efficiency. As Hong Kong was subject to the constraints of typhoons and the operation of the container hangar system was highly automatic, the proposed container hangar system would need to be an enclosed structure to provide better protection. Moreover, the enclosed design could reduce noise and light

pollutions to the surrounding areas and was more energy efficient;

- (g) in view of the fast-changing market and volatile business environment, the operations of the container terminals must respond swiftly to changes. Shorter approval time, flexibility in development and execution would be the key to success for the logistics industry. Moreover, as the industry required large capital investment, minimal uncertainties would give more confidence to the investors;
- (h) according to the survey conducted by his consultant, the vacancy rate for the warehouse facilities in Hong Kong was less than 2% in year 2011 and 2012. The demand for warehouse facilities in Hong Kong was very high but the supply was very limited. More than 50% of warehouse facilities in Hong Kong were located in Kwai Chung and Tsuen Wan, which were preferred locations for warehouse development due to their close proximity to container terminals for sea transport and airport for air cargo consolidation;
- (i) for the CTs No. 1, 2 and 5 site, the existing warehouse building with a total GFA of about 19,000m<sup>2</sup> had only used about 2% of the permitted GFA which was about 6,000,000m<sup>2</sup> (i.e. a PR of 15). To meet the increased demand for more warehouse facilities, MTL had a long-term development plan for the CTs No. 1, 2, and 5 by constructing 16 new hangar systems throughout the open yard of CTs No. 1, 2, and 5, and five new warehouse buildings along the northern boundary of CT No. 5 as an extension of the existing warehouse building. The development plan would be implemented in phases;
- (j) in June 2012, two sets of general building plans were submitted for two new warehouse buildings at CT No. 5. However, they were rejected by the Building Authority in August 2012 due to non compliance with BHRs restriction on the OZP. One of the proposed warehouses would be located at the Extension Area which was bought by the R7 in October

2006 with a land premium of HK \$187.7 million. According to the land grant, the maximum PR for this Extension Area was 2.5. In this regard, a warehouse of 15 storeys was required to be constructed in this Extension Area in order to fully utilize the maximum PR permitted under the lease, taking into account various drainage reserves within the site;

- (k) R7 had proposed the following three alternative BHR options:
- (i) a BHR of 180mPD across the whole “OU(CT)” zone such that the maximum PR permitted under the lease for the CTs No. 1, 2 and 5 could be fully utilized (Option A);
  - (ii) a BHR of 110mPD across the whole “OU(CT)” zone to enable equal treatment among all container terminals (Option B);
  - (iii) a BHR of 110mPD for the existing and proposed building sites and 70mPD for the remaining area within CTs No. 1, 2 and 5 to cater for the medium to long-term development plans (Option C);

Five physical models (including the baseline scenario and two alternative layouts for Option C) were prepared to assist the Board’s understanding of the above three BHR options and sufficient building gaps had been reserved in all the three alternative BHR options to facilitate air ventilation;

- (l) an in-house preliminary visual impact assessment (VIA) had been carried out to assess the visual impacts of the three alternative BHRs options. With reference to the photomontages when viewed from the seven vantage points specified by PlanD, it was considered that the visual impact for Option A was rather substantial while that for Option B was less substantial. He considered that Option C would have minimal visual impact on the surrounding areas when viewed from Tsing Yi Sai Shan and Stonecutter’s Bridge as the view of the proposed new hangar systems at a height of 70mPD would be shielded by the existing cranes

with a height of more than 90mPD at the waterfront; and

- (m) as shown in the photomontages viewed from five additional vantage points near Lai King Estate to the east and the CT No. 9 in Tsing Yi to the west, the Option C of 70/110mPD would have minimal visual impact on the area as existing cranes were already taller than the proposed hangar systems, and the proposed warehouse buildings would be partially blocked by the existing warehouse on the site.

173. With the aid of a Powerpoint presentation, Dr. Benny Chow made the following main points with reference to the AVA report conducted by R7 which had been tabled at the meeting:

- (a) in accordance with the joint Housing, Planning and Lands Bureau and Environment, Transport and Works Bureau Technical Circular No. 1/06 on Air Ventilation Assessment (2006), there were three stages of AVA: Expert Evaluation (EE), Initial Study and Detailed Study;
- (b) EE was a qualitative assessment based on professional judgment, without the support of objective test like wind simulation or wind tunnel test;
- (c) Initial Study gave a general pattern and a rough quantitative estimate of wind performance at the pedestrian level, assessed and calculated the air ventilation performance by wind velocity ratio (VR) of the site, and further refined the understanding of the EE. A Computational Fluid Dynamics (CFD) model was a commonly used approach in carrying out the Initial Study;

[Ms. Bernadette Linn left the meeting at this point.]

- (d) Detailed Study by using wind tunnel test would provide a more accurate and quantitative findings;

- (e) the annual prevailing wind for the Kwai Chung area came from the northeast, east and southeast, whereas the summer prevailing wind were from the southeast to southwest. In this regard, the CT should not cause major impact on the air ventilation of the area for most of the time in a year as it was located at the leeward side of the annual prevailing wind. Only when the summer prevailing wind was coming from the southwest that the CT might affect the air ventilation for the area. However, the frequency of prevailing wind from the southwest only accounted for about 4.5 to 6% of the time in the year and the potential impact on air ventilation could be mitigated through careful design of the layout of the CT;
- (f) PlanD had carried out an AVA based on Expert Evaluation (AVA EE) to assess the air ventilation impact of imposing BHRs on the area and it was noted from the report that the CTs No. 1, 2 and 5 site was far away from the problem areas identified by PlanD;
- (g) he had used the CFD model to provide quantitative data on air ventilation so as to demonstrate the impact of different BHR options of the R7 site on the air ventilation performance by comparing the VR between the baseline scenario and the various scenarios. A total of five scenarios assuming different BHs for the entire R7 site (viz. the baseline scenarios; Scenario A assuming a BHR of 180mPD for the R7 site; Scenario B assuming a BHR of 110mPD; and Scenarios C1 and C2 assuming a BHR of 70/110mPD but with different layouts for the proposed container hangar system) were tested;

[Ms. Julia M.K. Lau left the meeting temporarily at this point.]

- (h) the findings of the AVA based on CFD model (AVA CFD) demonstrated that the air ventilation performance of the existing condition (baseline scenario) and the different scenarios were very similar. Regarding the annual wind condition, the Site VR for the baseline scenario was 0.16

and that for other scenarios ranged from 0.14 to 0.17. The Local VR for baseline scenario was 0.18 and that for other scenarios ranged from 0.17 to 0.19. For the summer wind condition, the Site VR for the baseline scenario was 0.19 and that for other scenarios ranged from 0.17 to 0.21. The Local VR for baseline scenario was 0.18, and that for other scenarios ranged from 0.17 to 0.18. Hence, comparing the baseline scenario against the different scenarios, no significant adverse impact on air ventilation could be identified. Some of the scenarios even demonstrated better air ventilation for the pedestrian wind environment and this might be caused by a wind downwash effect created by the proposed buildings; and

- (i) the findings demonstrated that the imposition of 2-storey BHR might not result in a better air ventilation performance.

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

- (a) the Board should undertake a systematic balancing of all the relevant factors when establishing reasonable planning controls. While it was stated in paragraph 7.1 of the TPB Paper that ‘the formulation of BHRs for the "OU(CT)" zone had considered a host of relevant factors’, PlanD had not assigned weighting to the factors, nor conducted systematic assessment on the impact of the BHR options on each of the factors;
- (b) the assessment made by PlanD was inadequate in that the visual and air ventilation impacts were taken as the dominant factors in the formulation of BHR for the “OU(CT)” site. However, other relevant and more important factors such as ‘the economic importance of the logistics industry’, ‘the facilitation of investment by private sector to optimize land resources’, and ‘allowing flexibility to respond to changing market conditions’, etc. were not taken into account;

- (c) the representer did not agree to PlanD's responses (paragraph 4.7 of the TPB Paper) on the following aspects:

*Background (paragraph 4.7(a))*

- (i) the ongoing government studies in relation to the container and logistic industry as quoted were irrelevant to the optimization of the existing CTs under the existing land grants and the need for more warehouse facilities. Moreover, the issue of quay side to land side ratio of the existing Kwai Chung CTs raised by STH was not addressed;

*Impede expansion of the CTs (paragraphs 4.7 (b) and (c))*

- (ii) the response in paragraph 4.7(b) did not address the issue. The MPC had very little information relating to the logistics industry when it considered and proposed the BHR;
- (iii) although the new controls did not include PR/GFA or SC restrictions, the 2-storey BHR was a major constraint in achieving the planning intention of the zone in a timely manner;

*Urban Design and AVA (paragraphs 4.7 (d) to (h))*

- (iv) the Urban Design Guidelines should not be applicable to the site in view of the nature of the CT. The AVA and UDA were inadequate and even wrong as a basis for setting the BHRs for the site;

[Professor Edwin H.W. Chan left the meeting temporarily at this point.]

- (v) the buildings, ships, cranes and stacks of containers were the visual context of the R7 site which should be accepted. PlanD's approach of not to reflect the heights of these existing features but to take into account those 2-storey buildings as visual marker in the setting of BHR was irrational and inappropriate as these low-rise buildings just could not be seen;

- (vi) the VIA and AVA conducted by PlanD should have considered alternatives of different BHRs so as to provide a reasonable basis for the MPC to make their decision. Further, PlanD did not provide any new information to justify its proposals in response to the representations;
- (vii) the PlanD's AVA did not consider any alternative BH greater than 2 storeys and therefore could not advise the Board of the impact of higher buildings. It also did not explore alternatives of designating BGs or NBAs through the CT. The representer's CFD model had demonstrated other BHR options which were acceptable from an air ventilation point of view;
- (viii) while PlanD suggested that a 2-storey BHR did not create a constraint on building innovative buildings, the representer considered that the 2-storey BHR was in conflict with the leases which required the site to primarily operate as a container port. Moreover, it would prevent the introduction of the innovative container stacking system which had been under active consideration by MTL before the BHRs were imposed;

[Mr. Dominic K.K. Lam left the meeting at this point.]

*Control Under Lease and BO (paragraph 4.7 (i))*

- (ix) PlanD considered that the lease, BO and OZP were separate development control regimes which served different functions and objectives. However, the representer considered PlanD had missed the point that the Board could set broad BHRs that gave certainty to investment, leaving those detailed issues such as traffic impact, etc, to be considered under the lease;

*Development rights (paragraphs 4.7(j) and (k))*

- (x) the BHR would impose an unreasonable restriction on the uses of the site. PlanD had not balanced private development rights with unspecified "community aspiration for a better living

environment” and had not clearly defined public planning gain to be achieved by restricting the BHR to a level lower than the existing container stacks and crane heights;

- (xi) PlanD stated that “although the lease of the Extension Area allowed a PR of 2.5, there was no known or committed development for site.” The representer considered that the Extension Area, with the lease clearly specifying a PR restriction of 2.5 and other detailed requirements relating to user, drainage reserve, loading-unloading and parking requirements, was a special case. The only justification for 2-storey BHR on the Extension Area being that it was currently used for open storage was inadequate and would prohibit development in accordance with the relatively new lease. Its development rights which had been paid for should be respected;

*Relaxation Clause (paragraphs 4.7 (l) and (m))*

- (xii) the MPC did not try to establish a reasonable BHR on the basis of cogent information but relied on the relaxation process. This was particularly true for the 2-storey BHR which related to minor ancillary buildings rather than to the main functional aspects of the CT and the characteristic of the major parts of the site. The information currently submitted should be used as a basis for setting reasonable BHRs for the site;

*Inconsistent Treatment (paragraphs 4.7(n) and (o))*

- (xiii) while PlanD considered that the “OU(B)” and “OU(CT)” zones were of different planning intentions, the representer considered that the intensive building development and the nature of the uses in those buildings in the CT zones were comparable to that of the “OU(B)” zone. The importance was that the existing development rights of those sites within the “OU(B)” zone were given full and proper consideration when setting the BHR while the development rights of the “OU(CT)” zone had been ignored;

- (xiv) the representer considered that the CTs had not been treated in an equal and fair way as the R7 site had only 4% of its area with reasonable BHR for development, while that for other CTs ranged from 25 – 50%;

*SBD Guidelines (paragraphs 4.7(q) to (t))*

- (xv) the proposed expansion of the buildings for the MTL site had taken the SBD Guidelines into account. This would restrict the building mass and require the provision of building gaps between buildings to facilitate air ventilation. The CFD modelling had shown that the provision of BGs would enhance air ventilation; and

*Judicial Reviews on KTM (paragraph 4.7(v))*

- (xvi) as indicated in PlanD's responses in this paragraph, PlanD did not have adequate justifications for the BHRs imposed on the CT site, and this was contrary to the KTM principles established by CFI. There was no statutory basis for PlanD to make a statement that it was never the planning intention to permit developments in the CT up to the maximum development intensity permitted under the B(P)R;

- (d) the representer did not agree to PlanD's responses to his development schemes and proposals as set out in paragraph 4.8(c) to (e) of the TPB Paper. The representer considered that there was a need to clearly distinguish the East Wing building on the Extension Area from the other four buildings because of the nature of the new lease. Moreover, PlanD's comments relating to the air ventilation were outdated in the light of the findings of AVA CFD submitted today, and the detailed technical issues raised regarding EIAO and lease were not matters to be considered in the setting of reasonable BHR. The conclusion reached by PlanD had made no attempt to balance the economic benefit of the proposals, and the social benefits in terms of job creation, etc, with the

minimal impact on visual and AV;

[Ms. Bonnie J.Y. Chan left the meeting at this point.]

- (e) STH, who was the policy secretary of the logistic industry, supported the representations. He stated that flexibility should be allowed and that the BHRs which had not taken into account the operation and future expansion of the port, would affect the competitiveness of the port. STH further suggested BHRs of 110mPD for buildings and structures and 40-50mPD for open yard area which should be given due weight in the consideration;
- (f) apart from the three alternative BHR options as previously proposed, the representer tabled a development scheme to justify a modified version of the originally submitted Option C. The modified option proposed a BHR of 110mPD over the area of the existing and proposed buildings, 70mPD over the yard area for the container hangar system, and 90mPD for the Extension Area to reflect the height requirement for building a development up to a PR of 2.5 as permitted under the lease; and
- (g) the representer concluded that the presentation today intended to provide the Board more information about the operation of the container port and their needs to better utilize the limited land resources and to build new buildings and improved handling facilities to respond quickly to the fast changing environment of the logistics industry. As the MPC might not be aware of these information, there was a need for the Board to reconsider the BHRs for the site taking into consideration these relevant information.

[Professor Edwin H.W. Chan returned to join the meeting at this point.]

R5 (Hong Kong International Terminals Limited) (HIT)

175. With the aid of a Powerpoint presentation, Mr. John Harries made the following main points:

- (a) CT No. 4 was the flagship operation of HIT since 1976, and the company was developing into one of the most successful CTs in the world;
- (b) CT No. 4 had a quay length of about 1,200m, an open yard of about 28 ha, and about four million ft<sup>2</sup> of floor area in the Hutchison Logistics Centre (HLC). It handled the import and export containers and cargoes in South China and other ocean vessel transshipment;

[Mr. Roger K.H. Luk left the meeting at this point.]

- (c) the lease allowed the site to be used for loading/unloading/storage of containers and container cargoes, as well as warehousing activities including godowns for general goods;
- (d) while the representer had the right to build additional logistics warehouse as permitted under both the lease and the OZP, this right had been denied by the imposition of a 2-storey BHR on the open yard. CT No. 4 still had unused PR for future development on the site which would be developed in phases over decades;
- (e) from 1976 to 1990, the operation of CT No. 4 was rather small in scale. It had one-storey container freight station, provided one berth-one ship operation, and served only the import and export of Hong Kong;
- (f) with the rapid expansion of international trade in 1990's, the CT No. 4 had to handle a significant increase of container vessels from shipping line consortia, and a much larger multi-storey logistics warehouse (HLC) was built to cater for the need. The logistics warehouse had substantially increased the efficiency in operation by accommodating both container storage and cargo handling within the same site area;

- (g) in the next several years, it was anticipated that the existing facilities in CT No. 4 would need to be upgraded and expanded with new storage facilities for dense stacking of containers and increased cargo handling volumes;
- (h) the Kwai Chung CT was short of about 40% container storage land to fully service the berth length. Since there was inadequate supply of land in other parts of Hong Kong, maximisation of existing land resources by building upward would be the solution. CT No. 4 proposed to build mixed use warehouses with container terminal yard/container storage at lower floors and logistics facilities accessed by ramp at upper floors;
- (i) there was an annual increase of 3% in the demand for logistics warehouse space in Hong Kong. However, the supply of land for logistics use was very limited;
- (j) with the illustration of a plan, the presenter proposed to build a new logistics centre at the existing open-air stacking yard along the eastern part. It would triple the container stacking capacity on the site area and provide logistics facilities on the upper floors. Moreover, the existing HLC would be expanded southward into part of the existing quay deck area, with the remaining quay deck area reserved for the development of 4-storey buildings for various uses;
- (k) the 2-storey buildings within the site were mainly gate house, workshops, substations and parking offices. The imposition of 2-storey BHR for the site was based on a wrong assumption that all the logistics warehouses on site had been completed and there was only a need for more of these 2-storey buildings;
- (l) there was enough PR for the CT No. 4 to cater for the two new logistics structures. The existing HLC building at 65mPD would be expanded

southward and upward up to 110mPD in order to provide additional space and flexibility for container stacking up to 30m and with more flexibility in operation. The new and expanded logistics buildings would allow flexible and increased storage capacity out of existing land resources;

- (m) the representer proposed a BHR of 110mPD for the new logistics centre along the eastern part of the site as well as for the expanded HLC, 70mPD for the existing administration area, and 4 storeys for the quay deck and open areas;
- (n) the proposed BHR of 110mPD satisfied PlanD's requirements and complied with Urban Design Objectives and STH's recommendations. Moreover, such BHR would not create excessively tall buildings, would not interrupt views from hills, and would not affect air ventilation. It would enable flexible redevelopment of existing buildings to meet the fast changing circumstances. In fact, any building development would also require the approval of the Lands Department subject to thorough assessment; and
- (o) the representer requested the Board to take into consideration that PlanD had erroneously assumed that major building development on the CT No. 4 site had been completed and had not provided any AVA results to support the specific BHR for the site. Moreover, PlanD did not provide any response to STH's concerns and recommendation on the BHR for the CT site. PlanD should discuss the development needs with the CT operators in recommending the BHRs. The Board was invited to visit the Kwai Chung CT to have further understanding of the operation of the logistics industry.

[Mr. Jeff Lam arrived to join the meeting at this point.]

176. With the aid of a Powerpoint presentation, Mr. Phill Black made the following

main points:

- (a) from a planning point of view, he was happy with the Board's decision to continue the representation hearing because the representers would provide the Board with more comprehensive and accurate information relating to the operational requirement and expansion needs of the logistics industry. This would assist the Board to consider the representations;
- (b) the major problem of the logistics industry was the lack of land in the CT to meet the changing and competitive environment of the industry. The only way to increase the storage capacity in the CT was using vertical space in a more efficient manner and this would require more pragmatic BHRs;
- (c) there was no specific reference in PlanD's documents that the existing buildings in Kwai Chung CT would have any visual and air ventilation impact on the area. As shown in the two plans in PlanD's UDA showing the overview of Kwai Chung Area and Kwai Chung East, the existing buildings in the CT with BHRs of 75mPD and 110mPD would not block the views of the Rambler Channel;
- (d) PlanD's AVA did mention that the existing logistics buildings on CTs No. 3 and 4 with BH at 65mPD and 110mPD were not excessively high and did not block the wind entry to Kwai Chung Road and wind availability along Lai King Hill Road. Hence, PlanD should not have any objection to the proposed BHR of 110mPD for the new and expanded logistics centres on the CT No. 4;
- (e) as shown on a concept plan prepared by PlanD which had incorporated the findings of the AVA and UDA, it appeared that the existing and proposed new buildings within CT No. 4 could be designed to avoid affecting the breezeway and visual elements proposed by PlanD;

- (f) for other representation sites in the Kwai Chung Industrial Area, PlanD had prepared detailed development assumptions to ensure that the BHR imposed would not affect the maximum permissible GFA under the OZP. However, no similar development assumptions for the CT sites had been worked out by PlanD. The representer considered that PlanD should work out the development assumptions by making reference to (i) the development scheme with a PR of 2.5 on the Extension Area submitted by R7, and (ii) a recently completed 6-storey logistics development in Kwai Chung with a specific PR of 2.766 stipulated under the lease;
- (g) the Board should take into account STH's comments on the imposition of low BHR as well as the appropriate BHR for the CT in the consideration of the representation notwithstanding that PlanD did not provide any responses to address such concerns; and
- (h) the Board, apart from considering respective development proposals submitted by individual representers, should also assess comprehensively the appropriate BHR for the entire CT zone.

R6 and C1749 (Asia Container Terminal Ltd.) (ACT)

177. With the aid of a Powerpoint presentation, Mr. Francis Yuen made the following main points:

- (a) ACT was one of the operators in Kwai Chung CT. The imposition of BHR on the site would definitely restrict the ability and flexibility of the container terminal operators to cope with the fast changing market and adversely affect the competitiveness of the status of Hong Kong as a regional logistics hub;
- (b) the imposition of BHR would hinder the growth of port and logistics industry and create adverse impact on Hong Kong's economy. This was contrary to the Government's policy of encouraging the growth of

the port and logistics industry; and

- (c) he urged the Board to support the port and logistics industry by removing the unreasonable BHRs at the container terminal site.

[Mr. Stanley Y.F. Wong left the meeting at this point.]

R4 (Cosco-HIT Terminals (Hong Kong) Ltd.) (CHT)

178. With the aid of a Powerpoint presentation, Mr. Yuan Hao made the following main points:

- (a) Hong Kong, as an important regional transshipment hub in South China, was facing intense competitions from other container ports in the region such as Yantian, Namsha, Shekou and Singapore. These competitors generally did not have any constraints on land resources and were provided with modern supporting logistics facilities;
- (b) CHT was one of the operators in the Kwai Chung CT which had been handling great number of businesses transferred from other CT. The imposition of BHR would restrict the expansion and operation capacity of the existing operators, and CHT might not have spare capacity to handle those business overspilled from other operators. This would result in the loss of business for the CTs in Hong Kong;
- (c) to the best of his knowledge, there were no BHR for the CTs and their supporting facilities in other parts of the world; and
- (d) the imposition of BHR for the CTs in Hong Kong, in particular the 2-storey restriction, was unreasonable for the logistics industry which required additional modern logistics facilities to enhance the operational efficiency to cope with the fast-changing requirements of the industry. Such imposition of BHR would restrict the competitive edge of the CT

operators, which would then adversely affect the future development of the logistics industry.

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

R8 (CSX World Terminals Hong Kong Limited)

179. With the aid of a Powerpoint presentation, Dr. Jonathan Beard made the following main points:

- (a) Kwai Chung CT was a global and regional logistics hub providing jobs to many local residents. It was also critical to the smooth functioning of the domestic supply chain in Hong Kong;
- (b) the port and logistics industry played a crucial role in Hong Kong's economy and its success was clearly in the public interest. Both the Hong Kong and Mainland Government had recognized the importance of this trade and expressed clear support to help the logistics industry in providing high value services;
- (c) the logistics industry in Hong Kong was facing intense competition from those in South China and in other parts of the world like Singapore. Hong Kong therefore required the provision of modern logistics facilities at convenient locations to maintain its competitiveness. The development of new modern facilities at CT No. 3 in Kwai Chung could enhance the competitive power;

[Ms. Anita W.T. Ma arrived to join the meeting at this point.]

- (d) according to the information from the Rating and Valuation Department, the vacancy rate for private storage in Hong Kong in 2011 was 3.8% over the territory and 1.9% in Kwai Chung. Assuming a low rate of economic development in Guangdong and Hong Kong, a 100%

occupancy rate of the existing warehouses and no major land was available in the near future for logistics industry, Hong Kong would have a shortage of 0.21 million m<sup>2</sup> of floor space for modern logistics and warehouse facilities in 2015;

- (e) Kwai Chung CT was centrally located with good accessibility to the airport. For cost-effectiveness, there was a need to build modern logistics facilities with large floor plate of at least 100,000 ft<sup>2</sup>. In this regard, additional space could be readily provided in Kwai Chung CT with in-situ expansion of its existing logistics facilities; and
- (f) R8 proposed to build a modern and multi-storey logistics centre on the CT No. 3 site. Its entire ground level with a floor-to-floor height of at least 28.2m would be used for container stacking and operations, and its upper levels (with a floor-to-floor height of 7m) for warehouse use with stacking of goods and distribution. Moreover, the logistics centre would allow the container vehicles to gain access to all floors and with ample parking spaces. It was necessary to provide a modern and efficient logistics centre on the site to support the logistics industry and maintain its competitiveness.

[Mr. Timothy K.W. Ma left the meeting at this point.]

180. With the aid of a Powerpoint presentation, Ms. Theresa Yeung made the following main points:

- (a) CT No. 3 was subject to BHRs of 60mPD and 110mPD which reflected the BH of existing buildings, and a 2-storey BHR for the open yard. R8 considered these BHRs unjustified;
- (b) the CT No. 3 site was entitled to a PR of 15 as permitted under the B(P)R as there was no restrictions in the lease or on the OZP;

- (c) the BHR imposed by PlanD was arbitrary and irrational even based on PlanD's studies for the following reasons:

*AVA*

- (i) the CT No. 3 site was not identified by PlanD's AVA as breathing space, air path/breezeway or problematic area. Moreover, the AVA did not recommend conducting further AVA study for the CT No. 3 site nor demonstrated that a higher BH for the site would lead to adverse air ventilation impact;
- (ii) the results of the qualitative and quantitative AVA CFD carried out by R8 echoed the findings of PlanD's AVA that CT No. 3 was not a required breathing space/airpath/breezeway for the area and the proposed schemes (i.e. at 230mPD or 220/230/250mPD) submitted by R8 would not block the wind entry to Kwai Chung Road and other air corridors. More importantly, the proposed schemes would have similar impact or even slight improvement to the local wind environment as compared with the existing BH for the site, both in the scenarios of assuming the adjacent buildings would be developed up to the height currently proposed by the representers or be maintained at the existing height;

*Visual Impact*

- (iii) CT No. 3 was not required to serve as a spatial/visual relief or located in the visual corridor as identified by PlanD's visual study. Moreover, the visual study did not prove that a higher BH for the CT No. 3 site would cause adverse visual impact;

[Professor Edwin H.W. Chan left the meeting at this point.]

- (iv) the visual study carried out by R8 also echoed the above findings. Moreover, it was demonstrated in the photomontages and model videos that the proposed schemes would not cause

significant adverse visual impacts when viewed from nine relevant vantage points as identified in PlanD's visual study (including Tsuen Wan Waterfront Promenade, Tsing Yi Sai Shan, Lai Chi Kok Park, Tsing Yi Waterfront Promenade, hiking trail along Tsing Yi Sai Shan, Stonecutter's Bridge and footbridge across Kwai Chung Road) and five additional viewpoints at Choi Yiu Chuen and Lai King Estate with short-range views to CT No. 3;

[Ms. Julia M.K. Lau left the meeting at this point.]

*Balancing Rights and Interests*

- (v) the formulation of the BHR for the site did not follow the principles that the restriction imposed must be based on rational justifications, with cogent evidence to demonstrate the BHR was reasonably necessary to achieve a planning objective, and that the BHR must be justified on its own merits rather than relying on the possibility of relaxation under the relaxation clause;
- (vi) the imposed BHR did not take into account the expansion need of the port and logistics industry and its contribution to the Hong Kong's economy which was largely in the public interest. Moreover, the BHR on the CT No. 3 site had failed to apply the accepted principle that the BHR imposed should not prevent the owner of private land from making full use of the potential PR and GFA available for the site, and had ignored the need to protect private property rights;

*Blanket Height Restrictions*

- (vii) the principle that the BHR imposed should not prevent the landowners from making full use of the permissible PR and GFA was applied to the "C", "I" and "OU(B)" zones, but not to the "OU(CT)" zone including the CT No. 3 site. There was no justification for PlanD to adopt an inconsistent approach;

- (viii) the currently imposed BHR would restrict R8 from maximizing the unrestricted PR and GFA of the site and would pose severe constraints to the future development of the port and logistics industry; and

*Relaxation Clause*

- (ix) the imposition of BHR, even with a relaxation clause, would create uncertainty and affect the flexibility of R8 to react to the fast-changing requirements of the logistics industry. Moreover, the need to obtain planning permission even for very minor increase in BH would increase the uncertainty, delays, discourage investments, and hinder the competitiveness of Hong Kong's port and logistics industry;
- (d) R8 appealed to the Board for supporting the port and logistics industry by relaxing the BHR for the CT No. 3 site to 250mPD in order to respect the full use of the permitted development potential for the site and to maintain a minimum floor-to-floor height to suit the needs of the modern and efficient logistics facilities; and
- (e) R8 made the following responses to the TPB Paper:
  - (x) STH supported the proposal of relaxing the BHR for the CT No. 3 to 250mPD. He further expressed concern on the shortage of land in the Kwai Tsing CT and the need for more yard area to maintain the efficient operation of the CT (*paragraphs 6.1 and 6.2*). Moreover, three elected Kwai Tsing District Councillors (*viz. Mr. Wong Yiu-chung, Ms. Tam Wai-chun, and Ms. Poon Siu-ping*) also opposed the BHR on CT No. 3 mainly on the grounds that such control would restrict the development of terminal and affect the employment opportunity and Hong Kong's economy (*Appendix II*);
  - (xi) although PlanD was aware of the Government's commitment to

strengthen Hong Kong's role as the regional transport and logistics hub (*paragraph 4.7(a)*), the imposition of BHR for the site was contradictory to the Government's policy and had paid no respect to the economic factors. The BHR imposed was arbitrary, irrational and unbalanced;

- (xii) PlanD did not provide any justifications for adopting an inconsistent approach in imposing BHR for the "OU(CT)" zone and for other "C"/ "I" / "OU(B)" zones, in that the landowners of other "C", "I" and "OU(B)" zones were allowed to develop up to the maximum permissible PR/GFA without the need to submit redevelopment scheme (*paragraphs 4.7(n) and 7.8(g)*);
- (xiii) the relaxation clause for BHR would create uncertainty and should not be relied on as an justification for imposing a BHR for the site (*paragraphs 4.7(c) and (l)*);
- (xiv) regarding PlanD's argument that it was not practicable to assume that redevelopment could be up to the level permissible under the B(P)R, the representer considered that the BHR imposed were arbitrary, irrational and inconsistent, and should not deprive CT NO. 3 from achieving the maximum permissible PR/GFA (*paragraph 4.7(v)*);
- (xv) PlanD considered maintaining the existing low-rise height profile of the CT could help preserve the existing visual corridor of Rambler Channel. However, the proposed new logistics centre on the CT No. 3 site was not located on the visual corridor of Rambler Channel as identified by PlanD (*paragraph 4.7(d)*);
- (xvi) regarding PlanD's argument that the BHR of 250mPD proposed by the representer would undermine the integrity of the stepped height profile intended for the Area, the representer considered that the proposed scheme adhered to the stepped BH profile when viewed from Tsing Yi Sai Shan ,which was one of the key

vantage points identified by PlanD (*paragraphs 4.8(g)(1)*); and

- (xvii) PlanD's AVA had identified breezeway/air paths across the CT (Breezeways 3 and 5 and Air Path A on *Plan H-1c*), the proposed logistics centre on the CT No. 3 site was not located on these breezeways/air path. PlanD's AVA also did not prove that a higher BH would cause adverse air ventilation impact. Further, the additional quantitative AVA had demonstrated similar or improved local wind environment for the proposed development scheme as compared with the existing context (*paragraph 4.7(g)*).

181. With the aid of a Powerpoint presentation, Mr. Rufin Mak made the following main points:

- (a) the BHR imposed on the CT No. 3 site was arbitrary. It would prevent the terminal operators from responding quickly and flexibly to the fast-changing business environment of the logistics industry, and this would adversely affect the economy and employment market of Hong Kong;
- (b) the imposed BHR would result in a tremendous loss of GFA/PR of the terminal operators and the relaxation clause would create uncertainty and deter investments in the industry;
- (c) the proposed development scheme of 250mPD submitted by R8 would not have major adverse visual and air ventilation impact, but some slight improvements in air ventilation performance as revealed by the visual and air ventilation assessments undertaken by R8;
- (d) with a view to facilitating mutual cooperation between the industry stakeholders and the Government, the representer (R8), together with two other representatives, R5 and R7, jointly submitted a letter dated 19.10.2012 to the Secretary of the Board, putting forward a revised proposal of a

BHR of 110mPD for the entire “OU(CT)” site (joint proposal) for the consideration of the Board at this meeting. However, the joint proposal was submitted for the purpose of this meeting only and would not prejudice the Board to consider the individual proposal previously submitted and presented by these representers;

- (e) R8 urged the Board to give favourable consideration to the joint proposal submitted by the representers which was a compromised proposal that would result in a significant reduction in the development intensity of their sites.

182. With the aid of a Powerpoint presentation, Ms. Theresa Yeung continued to make the following main points:

- (a) the joint proposal should be supported by STH as demonstrated in his comments in the TPB Paper that the BHRs of the CTs should be at least 110mPD for buildings/structures and at least 45mPD for the open container yard;
- (b) as the CT No. 3 site already had two existing buildings with respective BH of 60mPD and 110mPD, the visual and air ventilation impacts of the joint proposal would be similar to the impact of the existing buildings. The photomontages prepared by R8 also showed that when viewed from Tsuen Wan Waterfront Promenade, Tsing Yi Sai Shan and Lai Chi Kok Park, there was no difference between the visual impact of the joint proposal and that of the existing buildings on site; and
- (c) the representer sincerely hoped the Board would give favourable consideration to the proposal.

C1 (Omada Investment Limited)

183. Mr. Phill Black, C1’s representative, confirmed that he had nothing to add to

the points that had already been covered in the presentation of R5.

C642 (Mr. Lam Cheung Hung)

184. Mr. Lam Cheung Hung made the following main points:

- (a) he was a retired employee of MTL (R7) who had worked in the company for more than 30 years;
- (b) he had witnessed significant changes in the operations of the company in the past three decades. In the 1970's, the company's operation was small in scale and the containers were up to two stacks only. Then came the construction of taller, multi-storey warehouse building which could provide additional container stacking capacity and improved facilities to enhance the operation efficiency of the company;
- (c) as compared with other container terminals in the Mainland of China which occupied extensive area with many modern facilities, the MTL was short of space and modern supporting facilities. This would render the company less competitive in the logistics industry;
- (d) prior to his retirement, he learned that the company had a proposal to upgrade the existing facilities of the CT by building taller modern logistics centre. However, the plan was now hampered by the recent imposition of BHR on the site. With the imposed BHR, the logistics industry could not respond swiftly to the fast-changing environment and would adversely affect the economy and employment opportunity of Hong Kong; and
- (e) he sincerely hoped the Board would help the logistic industry in Hong Kong.

C1752 (Mr. Lam Yat Fung)

185. With the aid of Powerpoint presentation, Mr. Lam Yat Fung made the following main points:

- (a) he was an employer of Shing Kee Logistics Yard (SKLY) which was a client of the warehouse building in CT No. 3;
- (b) he strongly supported R8's objection against the imposition of BHR for the site as the imposed BHR would affect the effective operation and future expansion of the terminals. It would also incur additional operating costs which would then be transferred to those users of the warehouse facilities;
- (c) he also supported R8's proposal to develop modern logistics facilities with minimum floor-to-floor height of 7m. Such headroom would allow the optimization of storage space and enhance the operational efficiency of the logistics industry;
- (d) the removal of BHR would enhance the logistics industry which was one of the four pillars of Hong Kong's industry, and would contribute to the continuous growth of the Hong Kong's economy and the provision of job opportunities; and
- (e) the Government was urged to support the development of logistics industry.

C1755 (Mr. Ngan Ping Man/ CSX World Terminals Hong Kong Limited))

186. With the aid of a Powerpoint presentation, Mr. Ngan Ping Man made the following main points:

- (a) he was engaged in the logistics industry and had been working in Kwai Chung CT for many years;

- (b) he considered that the BHR would restrict the expansion of the Kwai Chung CT, reduce its competitiveness and increase the risk of investment in the port and logistics industry. The BHR would also reduce the flexibility of the operators to respond to the fast changing market, and increase the operational costs of operators;
- (c) the BHR would reduce the competitiveness of Hong Kong as a regional logistics hub, and in turn would affect the employment of 10,000 to 15,000 staff at CT No. 3; and
- (d) removal of BHR on the Kwai Chung CT would provide certainty and flexibility in the development and expansion of Hong Kong's logistics industry, allow the development of modern logistics centres, maintain Hong Kong's role as a regional logistics hub, create/maintain job opportunities for local people and sustain Hong Kong's economic growth.

187. As the representers, commenters and their representatives had finished their presentation, the Chairman invited questions from Members.

*Joint proposal submitted on 19.10.2012*

188. The Chairman said that in their letter of 19.10.2012, R5, R7 and R8 jointly submitted a proposal of setting a BHR of 110mPD for the entire "OU(CT)" zone (the joint proposal). However, it was noted that this joint proposal differed from the proposed BHRs which were previously submitted and presented in the hearing by R5, R7 and R8 for their individual sites.

189. Mr. Rufin Mak (R8), referred to the letter dated 19.10.2012 which was tabled at the meeting and clarified that the joint proposal was an open proposal jointly submitted by R5, R7 and R8 for the Board's consideration at this particular meeting only. If the proposal was accepted by the Board in full, R5, R7 and R8 would consider that such amendment to the OZP could meet their representations. Otherwise, this joint proposal

would no longer be valid after the current meeting. Moreover, he reiterated that this joint proposal was submitted without prejudice to the specific proposals submitted by respective representers.

190. While confirming his support of the joint proposal, Mr. Eric Su (R7) supplemented that this joint proposal was actually one of the three alternative BHR option submitted by R7. However, noting that a BH of 90mPD would be able to accommodate the modern logistics facility in the Extension Area, R7 had proposed at the meeting another modified BHR proposal which was slightly different from the original Option C previously submitted. The modified proposal recommended adopting BHRs of 110mPD for the existing and proposed buildings in CTs No. 1, 2 and 5, 90mPD for the proposed development at the Extension Area, and 70mPD for the open yard in CT 1, 2 and 5 to cater for the proposed container hangar system. Mr. Eric Su further said that the submission of the joint proposal would not prejudice the Board in considering the original proposals submitted by R7.

191. Mr. John Harries (R5) also said that the joint proposal was a compromise and was supported by R5. He hoped that the Board would give favourable consideration to this proposal.

192. Mr. Ian Brownlee (R7) said that the joint proposal of 110mPD was consistent with Option B previously submitted by R7. He further said that while STH had proposed a BHR of 45mPD for the open stacking area in the CT, he considered that it would be more appropriate to adopt a BHR of 70mPD for the open yard to cater for the development of 12-storey container hangar system.

193. In response to the Chairman's enquiry, other representers (R3, R4 and R6) and commenters (C642, 1749, 1752 and 1755) indicated their agreement to the joint proposal.

#### *Proposed Logistics Centres and Container Hangar System*

194. In response to the Chairman's enquiry, Mr. Eric Su (R7) said that the proposed container hangar system would have to be 12 storeys in height in order to balance the quay side and land side capacity of the CT sites and to be more cost-effective. Mr. Su also said

that currently the containers were densely packed and stacked up in the open yards of the site. With the use of the proposed container hangar system, air ventilation in the surrounding area would be improved as separations between these container hangar systems would be provided.

195. Noting that container stacks and crane structures of the CT would not be subject to BHR on the OZP, a Member asked whether the container hangar system proposed by R7 would be subject to BHR. Mr. Wilson Chan, DPO/TWK, replied that as container stacks and crane structures were movable and not permanent in nature, they could be exempted from the BHR. However, the proposed container hangar system which was considered as a structure by the Buildings Department (BD) might need to comply with the BHRs on the OZP.

196. Mr. Eric Su (R7) also confirmed that the proposed container hangar system was a structure which required the submission of building plans to BD for approval. He also pointed out that the proposed container hangar system would be an enclosed structure which could protect its automation equipment and would minimize adverse lighting and noise impacts on the surrounding areas.

197. In response to the same Member's enquiry on how long it would take to build a large-scale modern logistics centre, Mr. Rufin Mak (R8) said that according to his experience of the existing logistics centre in CT No. 3, it would take about seven to eight months to complete the construction of the lower floors of a logistics centre. To meet operational need and achieve cost-effectiveness, the CT operators would commence operation in these lower floors while the construction works of the upper floors was still going on. He further said that the relaxation clause would create uncertainty and discourage investments of the logistics industry. This would also affect the ability of the CT operators to respond swiftly and reduce the competitive edge of Kwai Chung CTs as compared with other CTs in South China and Singapore.

198. The Chairman noted that R7 proposed to have a BHR of 70mPD for the open yard area of its site for accommodating the proposed container hangar systems. However, according to the joint proposal, the proposed BHR for the open yard area of the R7 site would be 110mPD. He enquired whether there was any justification for a higher BHR of

110mPD for the open yard area when the container hangar system only required a BH of 70mPD.

199. Mr. Eric Su responded that the proposed BHR of 110mPD was not to cater for the proposed container hangar system. The BHR of 110mPD for the entire CT site was one of the three BHR options originally submitted for the Board's consideration. This option was put forward to ensure that the R7 site would have equal treatment as CT No. 3 which was given a BHR of 110mPD on the OZP. He reconfirmed that the three original BHR options submitted in R7's written submission had never been withdrawn.

#### *Traffic Implications of the Representatives' Proposals*

200. In response to the Chairman's question, Mr. Wilson Chan said that the indicative development schemes submitted by R7 and R8 had not been accepted by concerned government departments. This was mainly due to the reason that these indicative schemes, which would involve significant increase in GFA, were not backed up by relevant technical assessments. For example, Transport Department had reservation on the submitted proposals because no Traffic Impact Assessment was submitted by the representatives. Environmental Protection Department also pointed out that the representatives had not provided assessments to demonstrate the environmental acceptability of the expansion proposal/indicative schemes. Besides, the results of the AVA CFD conducted by R7 and R8 and presented in the meeting were new information which might need to be further assessed. Mr. Wilson Chan also said that the acceptance of the joint proposal would mean that the entire CT site could be built up to 110mPD.

201. Mr. Rufin Mak (R8) said that the joint proposal was a compromised proposal put forth by the representatives, with a view to facilitating the cooperation between the industry stakeholders and the Government and achieving a win-win situation. He further said that had the Board accepted the joint proposal, any future development on the site would still need to comply with other prevailing government legislation/regulations and other technical requirements as imposed by concerned departments. According to the B(P)R, any development on this CT site would be subject to a maximum site coverage of 60%. Hence, it would not be possible to develop the entire site to a maximum BH of 110mPD as mentioned by DPO/TWK.

202. Mr. Phill Black (R5) said that the subject matter under consideration was related to the imposition of appropriate BHR for the CT site which should be assessed based on urban design and air ventilation considerations. Any future development/redevelopment proposal within the CT site, which involved the utilization of GFA, would require prior approval from the Director of Lands through the submission of Master Layout Plan as required under the lease. Such approval procedures would also require the submission of technical assessments such as TIA to the satisfaction of concerned departments where appropriate, and the approval system had been operating effectively since 1986.

203. The Chairman said that the Board was operating under the Town Planning Ordinance whereas the lease and BO were separate development control regimes serving different objectives and functions.

204. Mr. Ian Brownlee (R7) said that if the traffic issue was one of the considerations to be taken into account in formulating the appropriate BHRs for the CT site, strong justifications should be provided. Moreover, the representers should be informed accordingly at an early stage so that they could conduct relevant assessments to address the traffic concern. He considered that it was unfair to the representers if the traffic issue, which was newly brought up, was a potential reason for not accepting the relaxation of BHR for the CT site.

205. Mr. Eric Su (R7) also said that the expansion proposal presented by R7 was a long-term development plan which would be implemented over a long period of time. Due to the increase in transshipment operations handled by the Kwai Chung CT during the past years, the traffic flow generated by the container vehicles had been decreased. Notwithstanding, it would not be appropriate for them to conduct a full TIA for the long-term proposal, in particular when they only proposed to construct two new warehouse buildings at this point in time.

206. Mr. Rufin Mak (R8) shared the above views. He said that the business environment of the logistics industry was very dynamic and it would be difficult to predict the future operational requirements in the CT. Hence, it was not practical to carry out a

full TIA for the CT site at this stage without knowing the medium and long-term operational requirements and hence development proposals on the site.

207. The Chairman requested views from PlanD and the representers on the relevancy of traffic impact in the formulation of BHR.

208. Mr. Wilson Chan replied that in formulating BHR for the Kwai Chung area, a host of relevant factors had been considered. Concerned departments were also consulted to ensure that the BHR imposed was reasonable, realistic and would not overstrain the traffic and infrastructure capacity. He opined that traffic impact would be one of the considerations in certain situations.

209. Mr. Phill Black (R5) said that the issue under discussion was relating to the imposition of BHR for the Kwai Chung CT site. The key consideration for BHR would be urban design and air ventilation. It would not be necessary to carry out a TIA for the CT No. 4 site should the redevelopment of the existing buildings to taller ones up to 110mPD did not involve any change in the existing GFA. He considered that traffic impact would only be a valid consideration if the Board intended to exercise control in the development intensity of the site.

210. Ms. Theresa Yeung (R8) shared the views of Mr. Phill Black regarding the relevancy of traffic impact with the BHR. She further said that according to the TPB Paper and the Explanatory Statement of the OZP, it was understood that the reasons for the imposition of such BHRs for the Kwai Chung CT site were mainly relating to urban design and air ventilation considerations. There was no previous indication in any document that traffic impact was a concern in the formulation of BHR for the Kwai Chung CT site and she could not understand the relationship between traffic impact and the BHR. Ms. Yeung also said that if the traffic impact was considered a relevant consideration in BHR, the representers should be provided with information on traffic impact assessments to demonstrate that the proposals submitted by the representers would cause adverse traffic impact on the surrounding areas.

211. Mr. Wilson Chan pointed out that the development proposals originally submitted by R7 and R8 and the joint proposal would involve an increase in GFA as

compared to the current situation. A TIA was therefore required to assess the potential traffic impact resulting from the increase in GFA.

212. Mr. Ian Brownlee (R7) supplemented that the imposition of a PR of 2.5 for the Extension Area under the lease was imposed by the Lands Department in 2006 without any input from the Board. Such imposition of development restriction might relate to traffic impact. In this regard, there was no need for the Board to duplicate the effort of LandsD.

*AVA and Visual Impact of Joint Proposal*

213. A Member remarked that while the expansion need for the CTs was fully understood, the Board should also take into account the public aspirations on developments along the waterfront. Noting that the consultants of R7 and R8 had conducted a second stage of AVA by using the CFD model, this Member enquired whether there were any prescribed procedures and standard requirements on data calibration and validation of the quantitative assessment.

214. In response, Dr. Benny Chow (R7) said that the principles and approach in conducting various stages of AVA including CFD were clearly set out in the Feasibility Study for Establishment of AVA and the Technical Guide for AVA for Development in Hong Kong prepared by PlanD, and the international guidelines COST Action C14, as set out on page 36 of the R7's AVA report tabled at the meeting. He said that the CFD AVA study commissioned by R7 had followed the relevant guidelines and standards. With a view to further enhancing the accuracy of the data, the consultant had conducted an extensive on-site survey in the past six months in order to have a better understanding of the wind environment of the CT site.

215. Dr. Yan Siu Hang, the AVA consultant of R8, also said that the approach and methodology in conducting the AVA CFD had closely followed the requirements as set out in the various technical circulars and international guidelines as mentioned by Dr. Benny Chow. Moreover, the software used in conducting the CFD was very popular in the AVA regime. Besides, the AVA consultant of R8 was very experienced in conducting CFD AVA and the methodology of these studies was well accepted by PlanD's AVA expert in the past. Hence, there should not be any great problem in the accuracy of their study data

and findings.

216. The same Member noted that the representers had carried out AVA to justify their proposed relaxation of BHR for their individual site. This Member asked whether the AVA consultants of the representers had conducted any preliminary assessment on the air ventilation performance of the area based on a scenario that the entire CT site was extensively developed up to 110mPD as currently proposed in the joint proposal.

217. In response, Dr. Yan Siu Hang (R8) said that a preliminary assessment of the air ventilation performance of the area, based on an assumption that the R8 site would be developed to a BH of 250mPD and the remaining part of the CT site would be developed to BH of 140 to 150mPD, had been conducted. The results of this preliminary assessment revealed that the Site VR and Local VR were in the range of around 0.2 which was similar to the baseline scenario and was comparable to the air ventilation performance in Sha Tin. Dr. Benny Chow (R7) said that the AVA EE conducted by PlanD was a qualitative assessment which was a more subjective approach relying on the expert evaluation whereas the CFD was a scientific approach supported by quantitative assessment with more objective results. Dr. Benny Chow (R7) said that the proposal of BHR of 110mPD was equivalent to Scenario B in the AVA which assumed a BHR of 110mPD for the R7 site. According to the results of the AVA CFD for Scenario B undertaken by R7, which assumed a BHR of 110mPD for the entire site of R7, a slight improvement in air ventilation performance was noted when compared with the baseline scenario of the existing context. Such improvement might be due to the downwash effect created by tall buildings within the CT.

218. Mr. Calvin Chiu, the AVA consultant of PlanD, said that the AVAs conducted by the consultants of R7 and R8 had not carried out any data calibration and validation. The relevant technical guidelines and international standard were commonly referenced by the AVA consultants in Hong Kong. The software used for the assessments by the consultants of R7 and R8 were also commonly used in Hong Kong. Mr. Chiu held a different view regarding the air ventilation performance of the CT site if a BHR of 110mPD was adopted for the entire site. He said that the CT site had an extensive sea frontage of more than 1,000m and the existing breezeways and air paths across the site were essential for wind penetration into the Kwai Chung urban core area. These existing

breezeways and air paths would be blocked by high-rise buildings on the CT site, in particular on the existing open yards, if the entire site was developed up to a BH of 110mPD. This would have adverse ventilation impact on the area. Mr. Chiu said that downwash effect could be a reason to explain why the air ventilation performance of the site with a BHR of 110mPD would be similar or even better than that of the existing context of the site (with the majority of the existing buildings less than 110mPD in BH). However, he said that the downwash effect would only occur in a localised area.

219. Mr. Chiu also said that as observed from the results of the AVA CFD conducted by R8, when compared to its existing context, the CT site as a whole would have a significantly higher Site VR based on an assumption that the BHR of CT No. 3 was 250mPD while the BH of other buildings in adjacent areas remained the same.

220. In response to Mr. Chiu's observation, Dr. Yan Siu Hang (R8) said that the significant difference in the Site VR for the CT site was mainly due to the downwash effect of the site as previously explained. Dr. Benny Chow (R7) expressed his agreement and said that similar results were obtained from the AVA independently conducted by R7. Dr. Benny Chow (R7) continued to say that the entire CT site could never be developed up to 100% SC. The maximum permissible SC for the site as stipulated under the B(P)R was only 60% which would therefore allow the provision of 40% open area within the site. Moreover, the berthing of a fully loaded large container vessel of about 400m in length at the quay side of the CT, which might have a height of more than 110mPD, would have already substantially changed the wind environment of the site. Hence, it was important to carry out on-site survey in order to better understand the circumstances.

221. In response to the Chairman's enquiry on whether any results of AVA simulating the scenario of BHR of 110mPD for the entire site were available, Dr. Yan Siu Hang (R8) said that a preliminary assessment of a scenario with BHR of 140 to 150mPD for the entire site had been carried out. The assessment findings showed that the CT site would have a VR of about 0.2. Given that the scenario of 110mPD for the entire site would have a lower BH than the 140-150mPD scenario, it might have a better air ventilation performance.

222. Mr. Rufin Mak (R8) said that the AVA result of the scenario of 140/150mPD

as presented by the R8 consultant had already provided a very good indication on the air ventilation performance for the scenario of 110mPD for the entire site. He further said that the wind environment of the CT was very dynamic in that the air ventilation performance of the site might become worse when the berthing spaces of the CT were fully occupied by large container vessels, and this happened three to four times a week. In view of the above, he anticipated that the air ventilation performance for the joint proposal should not have significant adverse impact on the area. Mr. Mak also said that in view of the industrial developments adjacent to the Kwai Chung CT, he considered that the visual amenity of the CT was acceptable. He also added that the joint proposal, which the representers proposed as a compromised solution to resolve the issue, had already incurred a loss of tens of millions ft<sup>2</sup> of business capacity.

223. Mr. Phill Black (R5) pointed out that as stated in paragraph 3.3.39 of the AVA EE Report prepared by PlanD (*Appendix Ic* of the TPB Paper), the existing ATL Logistics Centre and HLC buildings located at CTs 3 and 4 at a BH of 60mPD, 65mPD and 110mPD were not excessively high and would not affect the wind entry to Kwai Chung Road, Lai King Hill Road. Hence, the development of buildings up to 110mPD at the CT No. 4 site would not adversely affect the air ventilation of the area. To combine the above finding and the results of the AVA conducted by R7 on the scenario of 110mPD for the R7 site which occupied CTs No. 1, 2 and 5, it was anticipated that the scenario of 110mPD for the entire CT site would not have any significant impact on the air ventilation of the area.

224. Mr. Ian Brownlee (R7) said that the consultants of R7 had conducted AVA for the five development options which included the scenario of BHR of 110mPD for the R7 site (Scenario B). Moreover, five physical models showing the five scenarios for the AVA had been prepared and were tabled at the meeting. The physical model of Scenario B featured the BH of the proposed developments on CTs No. 1, 2 and 5 up to 110mPD and the BH of the existing developments on CTs No. 3 and 4 remained the same at 60, 65 and 110mPD. He considered that the air ventilation performance of Scenario B would be a good reference to that of the scenario of a BHR of 110mPD for the entire site as put forward in the joint proposal. Similarly, based on the preliminary VIA carried out by R7 which assumed a BHR of 110mPD for its own site, it was also anticipated that the cumulative visual impact for the joint proposal should also be acceptable.

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

*BHR Restrictions for the CT Site*

225. In response to a Member's enquiry, Mr. Wilson Chan elaborated the rationale for imposing a 2-storey BHR for the CT site as detailed on pages 9 and 10 of the TPB Paper. He said that according to the UDA and AVA undertaken by PlanD, Kwai Chung CT was located at the gateway of breezeways and adjacent to the visual corridor of Rambler Channel. The relatively low-rise building profile of the waterfront area should be maintained for visual and air ventilation purposes. The BHR imposed for the site was mainly to reflect the existing heights of the relatively taller buildings in terms of mPD and the predominant BH of 2 storeys for the existing 1 to 2 storeys small-scale buildings/structures in the open yard area. The imposition of an appropriate BHR for the Kwai Chung CT site was thoroughly discussed at the MPC meeting on 30.3.2012. While acknowledging the importance of the logistics industry to Hong Kong's economy and appreciating the unique nature, operational requirement and increasing demand of land for development of the CT, Members generally agreed that certain degree of flexibility in BH should be allowed to cater for the future CT expansion. Considering that the minor relaxation clause as normally imposed might not allow sufficient flexibility and the submission of s.12A application would involve a relatively lengthy plan-making process, the MPC decided to incorporate an unconditional relaxation clause. The BHR imposed was a balanced decision, taking into account the need for future CT expansion and the need to safeguard the visual and air ventilation for the area.

226. Mr. Wilson Chan said that the relaxation clause had only been incorporated into three statutory plans to cater for unique circumstances of the areas covered by these plans. While the relaxation clause incorporated in the Tsim Sha Tsui OZP and West Kowloon Cultural District Development Plan were subject to a set of criteria in relation to planning and design merits, the relaxation clause imposed on the Kwai Chung OZP for the CT site was unconditional providing the maximum flexibility for the operators to justify their BH based on individual merits. Moreover, a s.16 application would only take two months to process.

227. Mr. Rufin Mak (R8) reiterated that the representers had already taken a

balanced approach in proposing an alternative option of a BHR of 110mPD for the entire site with a view to resolving the matter and achieving a win-win situation. Mr. Mak further stated that the joint proposal represented a loss of more than 50% of maximum permissible development intensity for the CT site. While appreciating the goodwill of MPC to allow sufficient flexibility for the operation of the CT through the introduction of the special relaxation clause, the need to obtain approval from the Board would create business uncertainty which would hinder the growth of the logistics industry.

228. Mr. Ian Brownlee (R7) said that the 2-storey BHR for the CT site was imposed irrationally by making reference to those low-rise ancillary buildings on the open yard which had no functional relationship with the operation of CT. The imposition of 2-storey BHR should be based on reasonable justification rather than relying on the imposition of relaxation clause. He said that the relaxation clause for the Tsim Sha Tsui OZP, which was introduced to sites with BHRs of 80 to 120mPD formulated on reasonable grounds, was not comparable to that of the Kwai Chung OZP.

229. As Members had no further question to raise, the Chairman said that the hearing procedures had been completed and the Board would deliberate on the representations in the absence of the Government representatives, representers, commenters and their representatives. They would be informed of the Board's decision in due course. The Chairman thanked the representers and commenter's representatives and PlanD's representatives and AVA Consultant for attending the hearing. They all left the meeting at this point.

[The meeting was adjourned for a short break of 5 minutes.]

#### Deliberation Session

230. The Chairman clarified that the amendments to the OZP regarding the imposition of BHRs on the CT site should mainly be assessed on the visual and air ventilation perspectives, rather than from the traffic impact perspective.

231. Members noted that the representers had not conducted any VIA or AVA for the joint proposal. Without these technical assessments to demonstrate the cumulative

visual and air ventilation impacts of the joint proposal on the surrounding environment, the Board would not be able to decide whether these proposed developments were acceptable in terms of visual and air ventilation aspects. The Chairman asked Members if they would consider to defer the consideration of the representations and request PlanD, in consultation with the representers, to conduct further visual and air ventilation assessments to demonstrate if the proposed schemes submitted by the representers were considered acceptable.

232. In response to a Member's enquiry, the Chairman said that as claimed by R7, its originally proposed Option B had a BHR of 110mPD for the entire CT site. However, as gathered from R7's presentation and the physical models tabled by R7, the VIA and AVA conducted by R7 were based on the assumption that the whole R7 site, i.e. CTs No. 1, 2, and 5 would be developed up to 110mPD, while the CTs No. 3 and 4 would not have expansion proposals and the BH of the existing buildings would be maintained.

233. Another Member considered that apart from conducting technical assessments for the joint proposal of BHR of 110mPD for the entire site submitted by the representers, consideration should also be given to assess alternative BHR scenarios so that the Board could consider the BHRs for the CT site in a more comprehensive manner.

234. The Secretary pointed out that while R5, R7 and R8 had submitted a joint proposal, R5, R7 and R8 had separately submitted specific development schemes proposing different BHRs for their individual sites, and these specific development schemes were not withdrawn. There might be a need to also carry out further assessments on these specific development schemes taking into account the prevailing requirements under the BO and the relevant lease restriction.

235. A Member supported to defer the consideration of the representations given that the information submitted by the representers at this meeting was required to be taken into account in the further assessments to be carried out. Without the support of technical assessments to justify the appropriate BHR for the site, the decision of the Board would be arbitrary.

236. By referring to paragraph 4.7(k) of the TPB Paper which stated that there was

no known/committed development proposal for the Extension Area, Mr. Jeff Lam said that R7 had submitted a set of building plans for the development of a 15-storey warehouse building at the Extension Area in June 2012.

237. In response to a Member's concern on the imposition of 2-storey BHR for the CT site in the light of the representer's proposal to construct container hangar system on the open yard area, the Secretary clarified that it was the original intention to exempt the existing container stacks and crane structures within the CT site from the 2-storey BHR. However, as the representers had submitted information relating to the development of the enclosed container hangar systems which might not be exempted from the BHR, further consideration would be given to reviewing the BHRs taking into account such information.

238. The Chairman summed up that the Board fully recognized the importance of the logistics industry to the economy and employment of Hong Kong. In view of the scarce land resources available for CT operation, there was a need to allow sufficient flexibility in the utilization of the existing site to cater for the future development of the logistics industry and to enhance its competitiveness. However, given the absence of technical assessments to demonstrate the visual and air ventilation impacts of the joint proposal, and the need to assess the information relating to the proposed container hangar system submitted by R7, it would be more appropriate for the Board to defer consideration of the representations and to request PlanD to liaise with the representers regarding their expansion proposals and carry out further technical assessments to assess the cumulative impacts of the proposals submitted by representers. The findings of these technical assessments would be submitted to the Board for further consideration. Members agreed.

239. After further deliberation, the Board decided to defer a decision on the representations R3 to R8, pending the carrying out of further assessments by PlanD on the joint proposal and other alternative schemes, as appropriate, in consultation with the representers.

### **Agenda Item 10**

[Open Meeting]

Any Other Business

[The meeting was conducted in Cantonese.]

240.           There being no other business, the meeting closed at 8:20 p.m.