

**Minutes of 1176<sup>th</sup> Meeting of the  
Town Planning Board held on 8.6.2018**

**Present**

Permanent Secretary for Development  
(Planning and Lands)  
Ms Bernadette H.H. Linn

Chairperson

Professor S.C. Wong

Vice-Chairperson

Mr Lincoln L.H. Huang

Mr H.W. Cheung

Mr Ivan C.S. Fu

Mr Sunny L.K. Ho

Mr Stephen H.B. Yau

Dr F.C. Chan

Mr David Y.T. Lui

Dr Frankie W.C. Yeung

Mr Peter K.T. Yuen

Dr Lawrence W.C. Poon

Mr Wilson Y.W. Fung

Dr C.H. Hau

Mr Alex T.H. Lai

Mr Stephen L.H. Liu

Professor T.S. Liu

Ms Sandy H.Y. Wong

Mr L.T. Kwok

Mr Daniel K.S. Lau

Ms Lilian S.K. Law

Professor Jonathan W.C. Wong

Deputy Director (1)  
Environmental Protection Department  
Mr Elvis W.K. Au

Director of Lands  
Mr Thomas C.C. Chan

Chief Engineer (Works)  
Home Affairs Department  
Mr Martin W.C. Kwan

Principal Assistant Secretary (Transport) 3  
Transport and Housing Bureau  
Mr Andy S.H. Lam

Director of Planning  
Ms Jacinta K.C. Woo

Deputy Director of Planning/District  
Miss Fiona S.Y. Lung

Secretary

**Absent with Apologies**

Mr Philip S.L. Kan

Mr K.K. Cheung

Mr Thomas O.S. Ho

Dr Lawrence K.C. Li

Miss Winnie W.M. Ng

Mr Franklin Yu

Mr Stanley T.S. Choi

Mr K.W. Leung

Professor John C.Y. Ng

Dr Jeanne C.Y. Ng

Mr Ricky W.Y. Yu

**In Attendance**

Chief Town Planner/Town Planning Board

Ms April K.Y. Kun

Senior Town Planner/Town Planning Board

Mr Raymond H.F. Au

[As the Chairperson had other commitment and not yet arrived at the meeting, the Vice-Chairperson took over the chairmanship at this point.]

### **Agenda Item 1**

#### **Confirmation of Minutes of the 1169<sup>th</sup> Meeting held on 26.4.2018 and 11.5.2018**

[The item was conducted in Cantonese.]

1. The minutes of the 1169<sup>th</sup> Meeting held on 26.4.2018 and 11.5.2018 were confirmed without amendments.

### **Agenda Item 2**

#### **Confirmation of Minutes of the 1174<sup>th</sup> Meeting held on 25.5.2018**

[The item was conducted in Cantonese.]

2. The minutes of the 1174<sup>th</sup> Meeting held on 25.5.2018 were confirmed without amendments.

### **Agenda Item 3**

#### **Matters Arising**

[The item was conducted in Cantonese.]

- (i) **Approval of Draft Outline Zoning Plans**

[Open Meeting]

3. The Secretary reported that on 15.5.2018 and 29.5.2018, the Chief Executive in Council approved the Kai Tak Outline Zoning Plan (OZP)(renumbered as S/K22/6) and the Sha Tin OZP (renumbered as S/ST/34) respectively under section 9(1)(a) of the Town Planning Ordinance. Members noted that the approval of the above two draft OZPs was notified in the Gazette on 25.5.2018 and 8.6.2018 respectively.

(ii) Reference Back of Approved Plan

[Open Meeting]

4. The Secretary reported that on 29.5.2018, the Chief Executive in Council referred the Approved Sai Ying Pun & Sheung Wan Outline Zoning Plan (OZP) No. S/H3/31 to the Town Planning Board for amendment under section 12(1)(b)(ii) of the Town Planning Ordinance. Members noted that the reference back of the said OZP was notified in the Gazette on 8.6.2018.

(iii) New Town Planning Appeal Received

Town Planning Appeal No. 5 of 2018

Proposed Temporary Open Storage of Construction Materials for a Period of 3 Years in “Residential (Group D)” Zone, Lot 139 RP (Part) in D.D.108, Ta Shek Wu, Pat Heung, Yuen Long

(Application No. A/YL-PH/760)

[Open Meeting]

5. The Secretary reported that a Notice of Appeal was received by the Appeal Board Panel (Town Planning) on 13.4.2018 against the decision of the Town Planning Board (the Board) on 23.3.2018 to reject on review an application (No. A/YL-PH/760) for proposed temporary open storage of construction materials for a period of 3 years at Lot 139 RP (Part) in D.D.108, Ta Shek Wu, Pat Heung, Yuen Long within an area zoned “Residential (Group D)” (“R(D)”) on the Pat Heung South Outline Zoning Plan.

6. The application was rejected by the Board for the reasons that (a) the development was not in line with the planning intention of the “R(D)” zone; (b) the application did not comply with the Town Planning Board Guidelines No. 13E for ‘Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance’; (c) the applicant failed to demonstrate that the development would not generate adverse environmental impact on the surrounding areas; and (d) approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within this part of the “R(D)” zone.

7. Members noted that the hearing date of the appeal was yet to be fixed and agreed that the Secretary would act on behalf of the Board in dealing with the appeal in the usual manner.

(iv) Abandonment of Town Planning Appeal

Town Planning Appeal No. 2 of 2018

Temporary Open Storage of Construction Tools, Machinery and Materials for a period of 3 Years in “Agriculture” Zone, Lot 475 in D.D. 113, Kam Tin, Yuen Long  
(Application No. A/YL-KTS/732)

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[Open Meeting]

8. The Secretary reported that an appeal had been abandoned by the appellant of his own accord. Town Planning Appeal No. 2/2018 was received by the Appeal Board Panel (Town Planning) on 5.3.2018 against the decision of the Town Planning Board (the Board) on 15.12.2017 to reject on review an application (No. A/YL-KTS/732) for temporary open storage of construction tools, machinery and materials for a period of 3 years on a site zoned “Agriculture” on the Kam Tin South Outline Zoning Plan.

9. The Appeal was abandoned by the appellant on 18.5.2018. On 23.5.2018, the Appeal Board Panel (Town Planning) formally confirmed that the appeal was abandoned in accordance with Regulation 7(1) of the Town Planning (Appeals) Regulations of the Town Planning Ordinance.

[Ms Sandy H.Y. Wong arrived to join the meeting at this point.]

(v) Updated Appeal Statistics

[Open Meeting]

10. The Secretary reported that as at 7.6.2018, 7 appeals were yet to be heard and six appeal’s decisions were outstanding. Details of the appeal statistics were as follows :

Allowed	36
Dismissed	152

Abandoned/Withdrawn/Invalid	201
Yet to be Heard	7
Decision Outstanding	6
<hr/> Total	<hr/> 402

**Fanling, Sheung Shui & Yuen Long East District**

**Agenda Item 4**

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/KTN/34

Temporary Warehouse of Industrial and Construction Materials and Ancillary Workshop for a Period of 3 Years in “Open Space” and “Other Specified Uses” annotated “Nature Park” Zones and an area shown as ‘Road’, Lots 744 and 749 in D.D. 92 and Adjoining Government Land, Yin Kong, Sheung Shui

(TPB Paper No. 10430)

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[The meeting was conducted in Cantonese.]

11. The Secretary reported that the following Members had declared an interest on the item:

- |                  |   |  |
|------------------|---|--|
| Mr K.K. Cheung   | ] | their firm having current business dealings    |
| Mr Alex T.H. Lai | ] | with the applicant’s representative            |
| Dr C.H. Hau      | - | owning a property in Ho Sheung Heung, Kwu Tung |

12. Members noted that Mr K.K. Cheung had tendered apologies for being unable to attend the meeting. As Mr Alex T.H. Lai had no involvement in the subject application and the property of Dr C.H. Hau did not have a direct view on the application site, their interests were indirect and Members agreed that they could stay in the meeting.

Presentation and Question Sessions

13. Members noted that the applicant and its representative had indicated that they would not attend the meeting.

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

Ms Maggie M.Y. Chin - District Planning Officer/Fanling, Sheung Shui  
& Yuen Long East District (DPO/FS&YLE),  
PlanD

15. The Vice-Chairperson extended a welcome and explained the procedure of the review hearing. She then invited DPO/FSYLE, PlanD to brief Members on the review application.

16. With the aid of a PowerPoint presentation, Ms Maggie M.Y. Chin briefed Members on the background of the review application including the consideration of the application by the Rural and New Town Planning Committee (RNTPC) of the Board, departmental and public comments, and planning considerations and assessments as detailed in TPB Paper No. 10430 (the Paper).

[Mr Lincoln L.H. Huang arrived to join the meeting during the presentation of DPO/FSYLE, PlanD.]

17. The Vice-Chairperson then invited questions from Members.

18. Noting that the application was rejected by the RNTPC on traffic ground at the section 16 stage, a Member asked whether the concerns of the Transport Department (TD) had been addressed. In response, Ms Maggie M.Y. Chin, DPO/FSYLE, PlanD, said that having considered the applicant's written submission at the section 17 review stage, the Commissioner for Transport (C for T) had no comment on the review application.

19. As Members had no further question to raise, the Vice-Chairperson said that the hearing procedure for the review application had been completed. The Board would further

deliberate on the review application. The Vice-Chairperson thanked DPO/FS&YLE, PlanD for attending the meeting. She left the meeting at this point.

### Deliberation Session

20. Members noted that while the application was rejected by the RNTPC on traffic ground at the section 16 stage, the applicant had submitted information to address TD's concerns at the section 17 stage. In that regard, C for T had no comment on the review application and noted the applicant's intention to adjust the time of loading/unloading schedule to avoid the peak hours. Members also noted that other government departments consulted had no objection to/no adverse comment on the review application, or their comments could be addressed through incorporation of approval conditions.

21. Members then went through the approval conditions as stated in paragraph 7.2 of the Paper and considered that they were appropriate.

22. After deliberation, the Board decided to approve the application on review on a temporary basis for a period of three years until 8.6.2021, on the terms of the application as submitted to the Board and subject to the following conditions :

- “ (a) no operation between 6 p.m. and 8 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and statutory holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) all existing trees on the application site shall be maintained in healthy condition during the planning approval period;
- (d) the submission of a drainage proposal within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 8.9.2018;
- (e) in relation to (d) above, the implementation of the drainage proposal

within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 8.12.2018;

- (f) the submission of fire service installations and water supplies for fire fighting proposal within 3 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 8.9.2018;
- (g) in relation to (f) above, the implementation of fire service installations and water supplies for fire fighting proposal within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 8.12.2018;
- (h) if any of the above planning conditions (a), (b) or (c) is not complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (i) if any of the above planning conditions (d), (e), (f) or (g) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.”

23. The Board also agreed to advise the applicant to note the advisory clauses as set out at Annex G of the Paper.

24. As the applicants and/or their representatives in respect of Agenda Items 5 to 8 had not yet arrived, the Vice-Chairperson suggested that Agenda Items 10 to 12 could be discussed first. Members agreed.

### **Procedural Matters**

#### **Agenda Item 10**

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Representations and  
Comments on the Draft Kwai Chung Outline Zoning Plan No. S/KC/29  
(TPB Paper No. 10432)

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[The meeting was conducted in Cantonese.]

25. The Secretary reported that the representation sites were related to public housing development by the Housing Department (HD) which was the executive arm of the Hong Kong Housing Authority (HKHA). The following Members had declared interests on the item for having affiliation/business dealings with HKHA and/or Ms Mary Mulvihill (R2/C1):

- |   |   |   |
|---|---|---|
| Ms Jacinta K.C. Woo<br>(as Director of Planning)                            | - | being a member of the Strategic Planning Committee (SPC) and Building Committee of HKHA                                     |
| Mr Thomas C.C. Chan<br>(as Director of Lands)                               | - | being a member of HKHA  |
| Mr Martin W.C. Kwan<br>(as Chief Engineer (Works), Home Affairs Department) | - | being an alternate member for the Director of Home Affairs who was a member of SPC and Subsidized Housing Committee of HKHA |
| Mr Ivan C.S. Fu   | ] | having past business dealings with  |
| Mr Franklin Yu  | ] | HKHA  |
| Mr Stephen L.H. Liu   | ] |   |
| Mr Thomas O.S. Ho   | - | having current business dealings with HKHA  |
| Dr C.H. Hau   | - | the institute he served having current business dealings with HKHA  |
| Mr K.K. Cheung  | ] | their firm having current business  |
| Mr Alex T.H. Lai  | ] | dealings with HKHA and hiring Mary  |

Mulvihill on a contract basis from time to time

Mr Daniel K.S. Lau - being Director (Development and Marketing) of Hong Kong Housing Society which was currently in discussion with HD on housing development issues

Dr Lawrence W.C. Poon - his spouse being an employee of HD but not involved in planning work

26. Members noted that Messrs K.K. Cheung, Thomas O.S. Ho and Franklin Yu had tendered apologies for being unable to attend the meeting. As the item was procedural in nature, the other Members could stay in the meeting.

27. The Secretary briefly introduced TPB Paper No. 10432. On 19.1.2018, the draft Kwai Chung Outline Zoning Plan No. S/KC/29 was exhibited for public inspection under section 7 of the Town Planning Ordinance. Two representations and one comment on the representations were received.

28. Since the representations and comment were mainly related to the proposed public housing development, the hearing of representations and comment was suggested to be considered in one group collectively by the Town Planning Board (the Board).

29. To ensure efficiency of the hearing, a maximum of 10 minutes presentation time would be allotted to each representer/commenter in the hearing session. Consideration of the representations by the full Board was tentatively scheduled for July 2018.

30. After deliberation, the Board agreed that :

- (a) the representations/comment should be considered collectively in one group by the Board itself; and

- (b) a 10-minute presentation time would be allotted to each representer/commenter.

**Agenda Item 11**

[Open Meeting]

Submission of the Draft Tai Po Outline Zoning Plan No. S/TP/27A under Section 8 of the Town Planning Ordinance to the Chief Executive in Council for Approval  
(TPB Paper No. 10427)

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[The meeting was conducted in Cantonese.]

31. The Secretary reported that one of the amendment items involved a “Government, Institution or Community” site which included a community health centre to be operated by the Hospital Authority (HA). The following Members had declared interests on the item for having affiliation/business dealings with HA, Ms Mary Mulvihill (R2/C2), Masterplan Limited (R3), MTR Corporation Limited (MTRCL)(R29), Henderson Land Development Company Limited (HLD) which was the mother company of Ford Word Development Limited (R30), Institute of Future Cities (i.e. air ventilation assessment consultant commissioned by the Planning Department (PlanD) in relation to Item D), MVA Hong Kong Limited (MVA)(i.e. traffic impact assessment consultant commissioned by the Transport Department in relation to Items A and D), or owning properties in the Tai Po area:

Mr Elvis W.K. Au - his spouse being a consultant of the HA  
(Deputy Director (1)  
Environmental Protection  
Department)

Mr Ivan C.S. Fu - having current business dealings with  
Masterplan Limited, MTRCL, HLD and  
MVA

Mr Thomas O.S. Ho - having current business dealings with

MTRCL and MVA

- Mr. K.K. Cheung ] their firm having current business dealings  
Mr Alex T.H. Lai ] with MTRCL and The Hong Kong and  
China Gas Company Limited, a subsidiary of  
HLD, and hiring Mary Mulvihill on a  
contract basis from time to time
- Professor John C.Y. Ng being the fellow of the Institute of Future  
Cities
- Professor S.C. Wong - being employee of the University of Hong  
(*Vice-Chairperson*) Kong (HKU) which had received donation  
from a family member of the Chairman of  
HLD before, and member of the Advisory  
Committee for Accredited Programme of  
MTR Academy
- Dr C.H. Hau - being an employee of HKU which had  
received donation from a family member of  
the Chairman of HLD before
- Dr Lawrence K.C. Li - being the Treasurer of the Hong Kong  
Polytechnic University which had obtained  
sponsorship from HLD before
- Mr Peter K.T. Yuen - being a member of the Board of Governors  
of the Hong Kong Arts Centre which had  
collaboration with MTRCL on arts projects  
and had received donation from an  
Executive Director of HLD before
- Mr Wilson Y.W. Fung - being a Director of the Hong Kong Business  
Accountants Association which had obtained

sponsorship from HLD before

- Mr Franklin Yu - having past business dealings with MTRCL, HLD and MVA
- Mr Stephen L.H. Liu - having past business dealings with MTRCL and HLD
- Mr H.W. Cheung - owning a flat at Heung Sze Wui Street
- Dr Frankie W.C. Yeung - his company owning a flat at On Chee Road
- Mr Daniel K.S. Lau - co-owning with spouse a flat at Ma Wo Road (near Item D site)

32. Members noted that Dr Lawrence K.C. Li, Messrs K.K. Cheung, Thomas O.S. Ho and Franklin Yu had tendered apologies for being unable to attend the meeting, and that Dr Frankie W.C. Yeung had not yet arrived at the meeting. As the item was procedural in nature, the other Members could stay in the meeting.

33. The Secretary briefly introduced TPB Paper No. 10427 (the Paper). On 4.8.2017, the draft Tai Po Outline Zoning Plan (OZP) No. S/TP/27 was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). A total of 1,303 representations and 15 comments on the representations were received. After giving consideration to the representations and comments on 26.4.2018 and 11.5.2018, the Town Planning Board (the Board) decided not to propose any amendment to the draft OZP to meet the representations.

34. Since the representation consideration process had been completed, the draft OZP was ready for submission to the Chief Executive in Council (CE in C) for approval.

35. After deliberation, the Board:

- (a) agreed that the draft Tai Po OZP No. S/TP/27A and its Notes at Annexes I

and II of the Paper respectively 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 Tai Po OZP No. S/TP/27A at Annex III of the Paper as an expression of the planning intention and objectives of the Board for the various land-use zonings on the draft OZP and issued under the name of the Board; and
- (c) agreed that the updated ES was suitable for submission to the CE in C together with the draft OZP.

### **Agenda Item 12**

[Open Meeting]

Application to the Chief Executive under Section 8(2) of the Town Planning Ordinance for Extension of Time Limit for Submission of the Draft Tseung Kwan O Outline Zoning Plan No. S/TKO/25 to the Chief Executive in Council for Approval  
(TPB Paper No. 10433)

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[The meeting was conducted in Cantonese.]

36. The Secretary reported that the following Members had declared interest on the item for owning properties in the Tseung Kwan O area and/or having affiliation with the Housing Department (HD), which was the executive arm of the Hong Kong Housing Authority (HKHA), Ove Arup & Partners Hong Kong Limited (Arup)(the consultant for the Preliminary Feasibility Study and technical assessments supporting the proposed public housing developments conducted by the Civil Engineering and Development Department), the Conservancy Association (CA)(R62), Mary Mulvilhill (R686), World Wide Fund for Nature Hong Kong (WWF-HK)(R755), Kadoorie Farm and Botanic Garden Corporation (KFBG)(R756), Mass Transit Railway Corporation Ltd. (MTRCL)(R999), Henderson Land Development Company Limited (HLD) which was the mother company of the Hong Kong and China Gas Co Ltd (Towngas)(R1000) and/or the Hong Kong Bird Watching Society (HKBWS)(C2):

- Ms Jacinta K.C. Woo  
*(as Director of Planning)*
- Mr Thomas C.C. Chan
- Mr Martin W.C. Kwan  
*(as Chief Engineer (Works),  
Home Affairs Department)*
- Mr Ivan C.S. Fu
- Mr Thomas O.S. Ho
- Mr K.K. Cheung  
Mr Alex T.H. Lai
- Mr Franklin Yu
- Mr Stephen L.H. Liu
- Professor S.C. Wong  
*(Vice-Chairperson)*
- being a member of the Strategic Planning Committee (SPC) and Building Committee of HKHA
  - being a member of HKHA
  - being an alternate member for the Director of Home Affairs who was a member of SPC and Subsidized Housing Committee of HKHA
  - having current business dealings with Arup, MTRCL, HLD and past business dealings with HKHA
  - having current business dealings with HKHA and MTRCL
  - ] their firm having current business dealings
  - ] with MTRCL, Arup, KFBG, HKHA and Towngas, past business dealings with CA and hiring Mary Mulvihill on a contract basis from time to time
  - having past business dealings with HKHA, Arup, MTRCL and HLD
  - having past business dealings with HKHA, MTRCL and HLD
  - having current business dealings with Arup, and being an employee of the University of Hong Kong (HKU) which had received donation from a family member of the

Chairman of HLD before, and member of the Advisory Committee for Accredited Programme of MTR Academy

Dr C.H. Hau

- the institute he served having current business dealings with HKHA; being an employee of HKU which had received donation from a family member of the Chairman of HLD before; being a life member of the CA and his spouse was the Honorary Secretary of the Board of Director of the CA; being a past member of the Conservation Advisory Committee of WWF-HK; and being an ordinary member of the HKBWS

Dr Lawrence K.C. Li

- being the Treasurer of the Hong Kong Polytechnic University which had obtained sponsorship from HLD before

Mr Peter K.T. Yuen

- being a member of the Board of Governors of the Hong Kong Arts Centre which had collaboration with MTRCL on arts projects and had received donation from an Executive Director of HLD before

Mr Wilson Y.W. Fung

- being a Director of the Hong Kong Business Accountants Association which had obtained sponsorship from HLD before

Mr Daniel K.S. Lau

- being Director (Development and Marketing) of Hong Kong Housing Society which was currently in discussion with HD on housing development issues

- Dr Lawrence W.C. Poon - his spouse being an employee of HD but not involved in planning work
- Professor T.S. Liu - owning and co-owning properties and his spouse owning properties at Tsueng Kwan O

37. Members noted that Dr Lawrence K.C. Li, Messrs K.K. Cheung, Thomas O.S. Ho and Franklin Yu had tendered apologies for being unable to attend the meeting. As the item was procedural in nature, the other Members could stay in the meeting.

38. The Secretary briefly introduced TPB Paper No. 10433. On 11.8.2017, the draft Tseung Kwan O Outline Zoning Plan (OZP) No. S/TKO/25 was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). During the exhibition period, a total of 1,020 valid representations and nine comments were received. On 10.5.2018, the Town Planning Board (the Board) conducted the hearings of the representations and comments and decided to schedule a separate session to deliberate on the representations and comments. According to the statutory time limit, the draft OZP shall be submitted to the Chief Executive in Council (CE in C) for approval on or before 11.7.2018.

39. Due to the Board's tight meeting schedule, the session for deliberation of the representations and comments could only be arranged in June 2018 the earliest, and thus, it was unlikely that the whole plan-making process could be completed within the 9-month statutory time limit for submission of the draft OZP to the CE in C for approval (i.e. before 11.7.2018). There was a need to apply to the CE for an extension of the statutory time limit for six months to allow sufficient time to complete the plan-making process of the draft OZP prior to submission to the CE in C for approval.

40. After deliberation, the Board agreed that the CE's agreement should be sought under section 8(2) of the Town Planning Ordinance to extend the time limit for submission of the draft Tseung Kwan O OZP No. S/TKO/25 to the CE in C for a period of six months from 11.7.2018 to 11.1.2019.

[The meeting was adjourned for a short break of 10 minutes.]

[The Chairperson arrived to join the meeting and resumed the chairmanship at this point.]

41. As the applications under Agenda Items 5 and 6 were similar in nature and the application sites were located in close proximity, the Chairperson suggested that the items could be considered together. Members agreed.

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

#### **Agenda Item 5**

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/NE-KLH/537

Proposed House (New Territories Exempted House - Small House) in “Agriculture” Zone, Lots 312 S.B ss.1, 312 S.C RP and 312 S.K in D.D.9, Kau Lung Hang, Tai Po

#### **Agenda Item 6**

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/NE-KLH/538

Proposed House (New Territories Exempted House - Small House) in “Agriculture” Zone, Lots 312 S.C ss.1, 312 S.D RP and 312 S.J in D.D.9, Kau Lung Hang, Tai Po

(TPB Paper No. 10428)

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[The meeting was conducted in Cantonese.]

42. The Secretary reported that the following Members had declared an interest on the items:

Mr K.K. Cheung	]	their firm having current business dealings
Mr Alex T.H. Lai	]	with the applicant of application No. A/NE-KLH/538

43. Members noted that Mr K.K. Cheung had tendered apologies for being unable to attend the meeting. As Mr Alex T.H. Lai had no involvement in the said application, his interest was indirect and Members agreed that he could stay in the meeting.

Presentation and Question Sessions

44. The following representative from the Planning Department (PlanD) and applicants' representatives were invited to the meeting:

Ms Jessica H.F. Chu - District Planning Officer/Sha Tin, Tai Po and  
North (DPO/STN), PlanD

Mr Y. T. Li ] Applicants' representatives

Mr T.Y Pang ]

45. The Chairperson extended a welcome and explained the procedure of the review hearing. She then invited DPO/STN, PlanD to brief Members on the review applications.

46. With the aid of a PowerPoint presentation, Ms Jessica H.F. Chu briefed Members on the background of the review applications including the consideration of the applications by the Rural and New Town Planning Committee (RNTPC) of the Board, departmental and public comments, and planning considerations and assessments as detailed in TPB Paper No. 10428 (the Paper).

47. The Chairperson then invited the applicants' representatives to elaborate on the review applications. Mr T.Y. Pang made the following main points:

- (a) it was hard for the applicants to acquire land within the "Village Type Development" ("V") zone for Small House development as most of the land were owned by tso/tongs. The applicants had no other choices but to buy the application sites (the Sites) to build Small Houses; and
- (b) the applicants were currently living in the United Kingdom and it would not be feasible for them to resume farming on the Sites. The income generated by farming would not be sufficient to support their living.

48. As the presentations of PlanD's representative and the applicants' representatives were completed, the Chairperson invited questions from Members.

49. A Member asked DPO/STN whether planning permission was required for land filling works related to the Small House developments. In response, Ms Jessica H.F. Chu, DPO/STN, PlanD said that should the current applications be approved, no separate planning permission would be required for those site formation works related to the Small House developments.

50. As Members had no further question to raise, the Chairperson said that the hearing procedure for the review applications had been completed. The Board would further deliberate on the review applications and inform the applicants of the Board's decision in due course. The Chairperson thanked DPO/STN, PlanD and the applicants' representatives for attending the meeting. They all left the meeting at this point.

#### Deliberation Session

51. A Member said that while land was still available within the "V" zone, they were mostly owned by tso/tongs which would not be released for Small House developments. The Chairperson said that under the Small House Policy, an indigenous male villager might apply for permission to build a Small House on a suitable site within his own village, which generally referred to the land within the "V" zone and/or the village 'environs'. The onus was on the Small House applicant to acquire a suitable site for development.

52. Regarding the review applications, the Chairperson said that Members should assess whether there were grounds that warranted a departure from the RNTPC's decisions. Members considered that as there was no major change in the planning circumstances and assessments since the consideration of the applications by the RNTPC, there was no strong justification which warranted a departure from the RNTPC's decisions of rejecting the applications.

53. After deliberation, the Board decided to reject the applications on review for the following reasons:

- “ (a) the proposed development is not in line with the planning intention of the “Agriculture” zone, which is primarily to retain and safeguard good

quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention; and

- (b) land is still available within the “Village Type Development” (“V”) zone of Yuen Leng and Kau Lung Hang which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.”

### **Agenda Item 7**

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/NE-LT/623

Proposed House (New Territories Exempted House - Small House) in “Agriculture” Zone, Lot 1525 RP in D.D. 19, Tin Liu Ha Village, Lam Tsuen, Tai Po

(TPB Paper No. 10429)

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[The meeting was conducted in Cantonese.]

54. The Secretary reported that the following Members had declared an interest on the items:

Mr K.K. Cheung	]	their firm having current business dealings
Mr Alex T.H. Lai	]	with the applicant’s representative

55. Members noted that Mr K.K. Cheung had tendered apologies for being unable to attend the meeting. As Mr Alex T.H. Lai had no involvement in the subject application, his interest was indirect and Members agreed that he could stay in the meeting.

Presentation and Question Sessions

56. The following representative from the Planning Department (PlanD) and applicants' representatives were invited to the meeting:

Ms Jessica H.F. Chu - District Planning Officer/Shu Tin, Tai Po and North (DPO/STN), PlanD

Mr W.W. Chung - Applicant's representative

57. The Chairperson extended a welcome and explained the procedure of the review hearing. She then invited DPO/STN, PlanD to brief Members on the review applications.

58. With the aid of a PowerPoint presentation, Ms Jessica H.F. Chu briefed Members on the background of the review application including the consideration of the application by the Rural and New Town Planning Committee (RNTPC) of the Board, departmental and public comments, and planning considerations and assessments as detailed in TPB Paper No. 10429 (the Paper).

59. The Chairperson then invited the applicant's representative to elaborate on the review application. Mr W.W. Chung made the following main points:

- (a) he was the father of the applicant;
- (b) the applicant was unable to acquire land within the "Village Type Development" ("V") zone as most of the land therein was held by outsiders. The application site was the only land available for building Small House by the applicant;
- (c) should the application be approved, the applicant would comply with the approval conditions;
- (d) there was an existing Small House adjoining the application site which also fell outside the "V" zone; and
- (e) the applicant undertook to carry out agricultural rehabilitation on the land

adjoining the application site.

60. As the presentations of PlanD's representative and the applicant's representative were completed, the Chairperson invited questions from Members.

61. The Chairperson and Members raised the following questions to the applicant's representative:

- (a) whether there was any further information on the land ownership of the "V" zone; and
- (b) whether the application site and the adjoining land proposed by the applicant for agricultural rehabilitation were owned by the applicant.

62. In response, Mr W.W. Chung made the following main points:

- (a) as the land within the "V" zone was either owned by private companies or other villagers, the applicant was unable to acquire any land therein. The application site was the only land available for building Small House by the applicant; and
- (b) while the application site was owned by the applicant, the adjoining land was owned by the applicant's father.

63. As Members had no further question to raise, the Chairperson said that the hearing procedure for the review application had been completed. The Board would further deliberate on the review application and inform the applicant of the Board's decision in due course. The Chairperson thanked DPO/STN, PlanD and the applicant's representative for attending the meeting. They all left the meeting at this point.

#### Deliberation Session

64. The Chairperson said that Members should assess whether there were grounds that warranted a departure from the RNTPC's decision. Members considered that as there was no

major change in the planning circumstances and assessments since the consideration of the application by the RNTPC, there was no strong justification which warranted a departure from the RNTPC's decision of rejecting the application.

65. After deliberation, the Board decided to reject the application on review for the following reasons:

- “ (a) the proposed Small House development is not in line with the planning intention of the “Agriculture” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the current submission for a departure from the planning intention;
  
- (b) the proposed Small House development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that there is no general shortage of land in meeting the demand for Small House development in the “Village Type Development” (“V”) zone of Ha Tin Liu Ha, Sheung Tin Liu Ha and Ko Tin Hom; and
  
- (c) land is still available within the “V” zone of Ha Tin Liu Ha, Sheung Tin Liu Ha and Ko Tin Hom which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.”

66. As the applicant in respect of Agenda Item 8 had not yet arrived, the Chairperson suggested that Agenda Item 9 could be discussed first. Members agreed.

**Fanling, Sheung Shui & Yuen Long East District**

**Agenda Item 9**

[Closed Meeting (Deliberation)]

Review of Application No. A/YL-KTS/693

Proposed Flat and House Development in “Other Specified Uses” annotated “Rural Use” Zone, Lots 547 RP (Part), 550 RP and 551 in D.D.106 and Adjoining Government Land, Kam Tin, Yuen Long

(TPB Paper No. 10391)

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[The meeting was conducted in Cantonese.]

**Deliberation Session**

67. The Secretary reported that Albert So Surveyors Limited (Albert So Surveyors), Landes Limited (Landes), Ramboll Environ Hong Kong (Environ) and Driltech Ground Engineering Limited (DGE) were consultants of the applicant. In addition, the application site (the Site) had recently been rezoned for public housing development by the Housing Department (HD) which was the executive arm of the Hong Kong Housing Authority (HKHA). The following Members had declared interests on the item:

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| Ms Jacinta K.C. Woo<br>(as Director of Planning)                            | - being a member of the Strategic Planning Committee (SPC) and Building Committee of HKHA                                     |
| Mr Thomas C.C. Chan<br>(as Director of Lands)                               | - being a member of HKHA  |
| Mr Martin W.C. Kwan<br>(as Chief Engineer (Works), Home Affairs Department) | - being an alternate member for the Director of Home Affairs who was a member of SPC and Subsidized Housing Committee of HKHA |

- Mr Ivan C.S. Fu - having current business dealings with Landes and Environ, and past business dealings with HKHA
- Mr K.K. Cheung ] their firm having current business dealings  
Mr Alex T.H. Lai ] with HKHA and DGE
- Dr C.H. Hau - the institute he served having current business dealings with HKHA
- Mr Thomas O.S. Ho - having current business dealings with HKHA and past business dealings with Albert So Surveyors
- Dr Lawrence W.C. Poon - his spouse being a civil servant of HD but not involved in planning work
- Mr Stephen L.H. Liu ] having past business dealings with HKHA  
Mr Franklin Yu ]
- Mr Daniel K.S. Lau - being Director (Development and Marketing) of Hong Kong Housing Society which was currently in discussion with HD on housing development issues

68. Members noted that Messrs K.K. Cheung, Thomas O.S. Ho and Franklin Yu had tendered apologies for being unable to attend the meeting. As the interests of Ms Jacinta K.C. Woo, Mr Thomas C.C. Chan and Mr Martin W.C. Kwan with HKHA are direct, they should be invited to leave the meeting temporarily for this item.

[Ms Jacinta K.C. Woo, Messrs Thomas C.C. Chan, Martin W.C. Kwan and Lawrence W.C. Poon left the meeting temporarily at this point.]

69. As Mr Ivan C.S. Fu, Mr Alex T.H. Lai, Dr C.H. Hau and Mr Daniel K.S. Lau had no direct involvement in the application or the subject public housing development; and the interests of Mr Stephen L.H. Liu were not direct, they were allowed to stay at the meeting.

[Dr Frankie W.C. Yeung and Mr David Y.T. Lui arrived to join the meeting at this point.]

70. The Secretary said that as the item was a continuation of the deliberation session of the subject review application, those Members who did not join the review hearing held on 11.5.2018 might wish to refrain from discussion.

71. The Secretary reported that the court/town planning appeal decisions cited by the applicant at the review hearing on 11.5.2018 had been distributed to Members prior to the meeting. She then recapitulated the background of the review application and summarised the relevant previous legal advice and court/town planning appeal decisions as follows:

#### Background

- (a) on 11.5.2018, the application for review of the Rural and New Town Planning Committee (RNTPC)'s decision to reject the subject application for proposed flat and house development was considered by the Town Planning Board (the Board). Members were generally supportive of RNTPC's decision to reject the application, on the premise that it was appropriate for the Board to consider the latest planning intention in addition to the provisions of the approved Outline Zoning Plan (OZP) in force when the application was submitted. In this regard, Members noted the latest planning intention of the application site was for public housing development and the proposed development under application might not materialise regardless of the Board's decision on the application, as the land exchange involving a large portion of government land would unlikely be approved;
- (b) since the applicant had cited two previous Court of Appeal (CA) and Town Planning Appeal Board (TPAB) decisions, the Chairperson requested the Secretariat to provide the relevant court/appeal decisions and previous legal

advice for Members' reference before making a decision on the application. As such, the Board decided to defer a decision on the review application;

#### Previous Legal Advice

- (c) legal advice was previously sought regarding consideration of a review application, for which the zoning of the application site was changed in the amended OZP after the application was rejected by the RNTPC. At the section 17 review, the Board was advised that whilst the application should be considered on the basis of the same OZP under the provisions of which the section 16 application was made, it was legally proper for the Board in its review under section 17 to take into account, among other material considerations, the provisions of the draft amended OZP;

#### Court/Appeal Cases cited by the Applicant

##### *Court of Appeal case - International Trader Limited (ITL Case)*

- (d) the ITL case was an appeal lodged by the Board to the CA on 21.12.2007 against the Court of First Instance (CFI)'s judgment on a judicial review (JR) regarding TPAB's decisions on two appeals in respect of planning applications for relaxation of plot ratio (PR) and building height (BH) restrictions of the "Residential (Group C)7" ("R(C)7") to facilitate a residential development;
- (e) the subject site was zoned "Residential (Group A)" ("R(A)") and "R(C)7" on the approved Mid-levels West OZP No. S/H11/13 when the two planning applications, town planning appeals and JR were considered. Under the approved OZP, there was no restriction on the development intensity for the "R(A)" zone, but the "R(C)7" zone, which covered a stepped street area without direct vehicular access, was subject to a maximum PR of 5 and a maximum BH of 12 storeys. The Explanatory Statement (ES) of the approved OZP stated that development restrictions were imposed on the "R(C)7" sub-area 'due to the inadequate access for servicing and fire

fighting’ and ‘notwithstanding the above restrictions, comprehensive development/redevelopment of the “R(C)7” sub-area can still be pursued with amalgamation of sites’;

- (f) the two applications were rejected by the Board on review in 2004 and 2005 on grounds of insufficient planning merits, adverse visual and traffic impacts, excessive BH, and proposed PR relaxation not justified. The applicant (i.e. International Trader Limited (ITL))’s appeals were dismissed by TPAB on 12.12.2006. ITL applied for JR and on 15.11.2007, the CFI allowed the JR quashing the TPAB’s decisions. The Board’s appeal against the CFI’s judgment was dismissed by the CA on 27.2.2009;
- (g) the central issue of the appeal was whether, as a matter of law, the Board (and the TPAB) when determining a section 16 application, were entitled and indeed required to have regard to any and all planning considerations which they reasonably judged to be relevant in their task of taking the right decision on the application in the public interest. The CA held that the Board’s discretion was one that had to be exercised within the parameters of the approved plan in question. If the Board took into account material considerations which fell outside the ambit of an approved plan, considerations which were therefore not relevant to it, it acted *ultra vires*. For the subject case, as a lack of direct access was the main reason for the rezoning of the site as “R(C)7”, once that limitation was removed by way of site amalgamation, a section 16 application for relaxation of restrictions should be acceded to;
- (h) on what constituted material consideration in considering planning applications, the CA interpreted that documents speaking directly to an approved plan, i.e. ES and guidelines, were also material planning considerations;

- (i) the town planning appeal was against the Board's decision to reject on review an application for a proposed hotel. One of the grounds relied upon in the appeal was the ITL case, for which the appellant argued that the Board had taken into account irrelevant considerations such as the size and configuration of the application site; and the traffic management and safety concerns in the consideration of the application;
- (j) the TPAB did not agree with the appellant's argument and considered that except in the cases where the planning intention of a specific zone was expressed in a very narrow and specific manner as the "R(C)7" zone in the ITL case, as a matter of principle, it had to be proper and legitimate for the Board (and TPAB) to consider the implications on the environment, drainage, traffic, infrastructure, landscape and topography, in so far as the relevant plan permitted. That was consistent with the underlying purposes of the Town Planning Ordinance; and
- (k) notwithstanding the above, the town planning appeal was allowed by the TPAB on 27.2.2014 mainly on considerations that the proposed hotel was in line with the planning intention of the "R(A)" zone; planning merits; lack of hotel amenities for guests was not a relevant consideration; and the traffic concerns were not valid grounds for rejection.

72. The Chairperson invited Members to consider the application for review and decide whether to approve or reject the application.

73. Noting the CA's ruling in paragraph 71(g) above, a Member asked whether it was legally proper for the Board to take into account in the section 17 review the latest planning intention of the Site which was not featured in the approved Kam Tin South OZP No. S/YL-KTS/13 (i.e. the effective plan when the section 16 application was considered by the RNTPC). The Secretary said that the CA judgment was premised on the background of the specific planning intention of the "R(A)7" zone on the Mid-levels West OZP. In that regard, the TPAB considered in town planning appeal No. 5/2011 that except in cases where the planning intention of a specific zone was expressed in a very narrow and specific manner as the "R(C)7" zone in the ITL case, as a matter of principle, it had to be proper and legitimate

for the Board to consider the implications on the environment, drainage, traffic, infrastructure, landscape and topography, in so far as the relevant plan permitted.

74. Members had the following views and comments:

- (a) the previous legal advice was applicable to the current review application given the similar circumstances and context of the cases. As the amended draft Kam Tin South OZP No. S/YL-KTS/14 incorporating the zoning amendment for the Site had already been published before the review hearing, it should be legitimate for the Board to consider the review application under section 17 to take into account, among other material considerations, the provisions of the draft amended OZP;
- (b) both the CA and town planning appeal cases cited by the applicant did not involve amendment to the subject OZPs. As the facts and circumstances of the two cases were different from that of the current application, the CA judgment and TPAB decision would not be applicable to the current case. In particular, the CA judgment should be read in context against the background of the specific planning intention of the subject “R(A)7” zone;
- (c) as planning was a continuous process, it should be reasonable for the Board to take into account the latest planning intention of the Site in the making of its decision in order to meet the changing development needs, even though the amended OZP incorporating such planning intention might not yet be published;
- (d) it was incumbent on the Board to strike a balance between private development rights and public interest. In the current case, consideration of the Site for public housing development with a much larger yield was in the public interest; and
- (e) the proposed development under application might not materialise regardless of the Board’s decision on the application, as the land exchange involving a large portion of government land would unlikely be approved.

75. As Members considered that the CA judgment and TPAB decision were made in respect of rather unique planning circumstances and justifications, the context of which was not relevant to the subject review application. Noting the previous legal advice and after giving due consideration to the CA and TPAB cases cited by the applicant, Members considered that the review application should be rejected.

76. Members then went through the rejection reason as stated in paragraph 7.1 of TPB Paper No. 10391 and considered that it should be suitably amended.

77. After deliberation, the Board decided to reject the application on review for the following reason :

“the Site is located within an area of a comprehensive planned public housing development. The latest planning intention of the “Residential (Group A)” zone for public housing development on the Site has been manifested on the draft Kam Tin South Outline Zoning Plan No. S/YL-KTS/14. Approval of the application would jeopardise the implementation of the public housing development and affect the supply of public housing flats.”

[Ms Jacinta K.C. Woo, Mr Thomas C.C. Chan and Mr Lawrence W.C. Poon returned to join the meeting at this point.]

**Tuen Mun & Yuen Long West District**

**Agenda Item 8**

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/YL-TYST/874

Proposed Animal Boarding Establishment in “Green Belt” Zone, Lot 943 RP in D.D. 119,  
Kung Um Road, Yuen Long

(TPB Paper No. 10431)

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[The meeting was conducted in Cantonese.]

**Presentation and Question Sessions**

78. The following representative from the Planning Department (PlanD) and applicant were invited to the meeting:

Mr David C.M.Lam - District Planning Officer/ Tuen Mun & Yuen  
Long West (DPO/TM&YLV), PlanD

Mr K.T. Hung - Applicant

79. The Chairperson extended a welcome and explained the procedure of the review hearing. She then invited DPO/TM&YLV, PlanD to brief Members on the review application.

80. With the aid of a PowerPoint presentation, Mr David C.M. Lam briefed Members on the background of the review application including the consideration of the application by the Rural and New Town Planning Committee (RNTPC) of the Board, departmental and public comments, and planning considerations and assessments as detailed in TPB Paper No. 10431 (the Paper).

[Mr Martin W.C. Kwan returned to join the meeting at this point.]

81. The Chairperson then invited the applicant to elaborate on the review application. Mr K.T. Hung made the following main points:

- (a) while the applied use was ‘animal boarding establishment’, the proposed development was in fact a care home for aged dogs (care home) which was intended to provide not only a shelter but also life-time healthcare and protection for aged dogs. The services were totally free of charge and all the expenses were paid by himself;
- (b) in respect of the opposing public comments received, the two submitted by Kadoorie Farm and Botanical Garden and Ms Mulvihill were standard comments which raised similar grounds against all applications for animal boarding establishments. There was also opposing comment from a company who intended to acquire the Site for depositing container trailers;
- (c) the proposed care home was comprehensively planned and would adopt a green concept involving the use of solar panels for power generation and there would be farmland for agricultural rehabilitation within the Site. The concept of the development was in line with the planning intention of the “Green Belt” (“GB”) zone. The proposal had been reported by web media and received widespread support; and
- (d) while the surrounding areas were mainly occupied by unauthorised vehicle parking and storage uses, no enforcement action had been taken against those uses.

82. As the presentation from DPO/TM&YLW, PlanD and the applicant had been completed, the Chairperson invited questions from Members.

#### Operation of the Care Home

83. The Chairperson, Mr Andy S.H. Lam, Principal Assistant Secretary (Transport) 3, Transport and Housing Bureau (PAS(T)3, THB) and some Members raised the following questions to the applicant:

- (a) how the operation of the proposed care home would be;

- (b) how many dogs would be kept at the care home and where they were kept now;
- (c) why such a large site of 620 sq.m. was required for the care home;
- (d) how new dogs were received by the care home;
- (e) whether the current mode of operation would remain unchanged in the long term; and
- (f) whether the proposed care home required a licence from the government based on the intended mode of operation and without any charges on the dog owners.

84. In response, Mr K.T. Hung, the applicant, made the following main points:

- (a) the proposed care home would provide not only a shelter but also activity areas, healthcare and rehabilitation facilities for aged dogs. The concept of the care home was similar to a residential care home for elderly people;
- (b) the dogs would be fed with quality food and would spend the rest of their lives in the care home. In cases of illness, they would be taken to Yuen Long for veterinary service. For those dogs which passed away, they would be sent to a pet funeral shop for cremation by hydrolysis, which was a green process that reduced the animal remains to bone fragments. As after the process the sterile solution was very rich in nutrients, he was liaising with the funeral shop operator regarding the use of the solution for cultivation purpose at the Site;
- (c) the care home would accommodate about 30 dogs initially but the number was expected to increase as there was a long waiting list of dogs awaiting reception. The dogs were currently kept and taken care of by him and his wife at a site in Yuen Long. As that site was located on a sloping ground beside a container yard, its physical surrounding had been under constant change and became unsuitable for keeping dogs;

- (d) to provide quality care service for the dogs, intake of new dogs to the care home would be examined on a case by case basis taking into account the background of each dog and its genuine need for reception. Excessive intake of dogs would be avoided. So far dogs had been received from the Agriculture, Fisheries and Conservation Department (AFCD) as well as from owners who had difficulties in continuing to keep the dogs;
- (e) while the care home would provide basic but comfortable shelters for the aged dogs, it would not be operated as a commercial business and the mode of operation would not be changed in the foreseeable future; and
- (f) upon obtaining planning permission, application for the appropriate government licence(s) would be submitted. To his understanding, many of the existing animal care homes were operating illegally without planning permission.

85. A Member asked DPO/TM&YLW whether there would be any control over the future operation of the care home. In response, Mr David C.M. Lam said that under the planning application system, while there would be control on the land use, scale and built form of the proposed development based on the development scheme submitted by the applicant, detailed operation matters including the fee to be charged would not be a subject of planning control. According to the Director of Agriculture, Fisheries and Conservation (DAFC), under the current legislation, any person who provided food and accommodation for animals in return for a fee paid by the owner should apply for a Boarding Establishment Licence from AFCD.

#### Funding Arrangement

86. The Chairperson and some Members raised the following questions to the applicant:

- (a) whether the care home had received any subsidies provided by the Government or charitable organisations;

- (b) what the operation cost of the care home was and how the operation would be sustained financially in the long term; and
- (c) whether the applicant's operation was registered under a company or charitable organisation.

87. In response, Mr K.T. Hung made the following main points:

- (a) the expenses for construction of the care home and provision of the services therein were entirely funded from his own pocket. While donations of dog food and small amount of money had been received from friends on and off, there was no funding support from the Government nor charitable organisations;
- (b) apart from the rental cost of the Site, the operational cost of the care home would not be high. He intended to set up a trust to support the operation of the care home in the long run and to encourage the younger generation to participate in the operation; and
- (c) his company had been registered as a charitable institution under section 88 of the Inland Revenue Ordinance (IRO) since 2015 in the name of 'Animals Home Limited' (老有所依).

#### 'Animal Boarding Establishment' Use and "GB" Zoning

88. The Chairperson and some Members raised the following questions to DPO/TM&YLW:

- (a) what the rationale for placing 'Animal Boarding Establishment' use under Column 2 of the "GB" zone was;
- (b) whether there was any zoning where 'Animal Boarding Establishment' was a Column 1 use;

- (c) whether there was any shortage in animal boarding establishment in Hong Kong; and
- (d) whether the proposed care home was considered compatible with the “GB” zoning.

89. In response, Mr David C.M. Lam made the following main points:

- (a) the Column 1 and 2 uses of each zoning mainly followed the ‘Master Schedule of Notes for Statutory Plans’ and Column 2 uses were intended to provide flexibility in the use of land while maintaining appropriate planning control. Application for ‘Animal Boarding Establishment’ use within “GB” zone could be considered by the Board based on individual merits of each case taking into account the scale, operation and impacts of the proposed development, the justifications provided by the applicants as well as the relevant TPB Guidelines;
- (b) he had no information in hand regarding the zoning under which ‘Animal Boarding Establishment’ was always permitted. However, there were precedent cases which animal boarding establishments had been approved in the Yuen Long District. The relevant planning considerations included the potential environmental impacts and the long-term planning intention of the site;
- (c) while AFCD did not have the statistics or data related to the demand of animal boarding facilities in Hong Kong, based on his understanding, the department had been lending support to animal welfare organisations for provision of adoption and caring facilities for abandoned pet animals; and
- (d) according to TPB Guidelines on ‘Application for Development within “GB” zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 10), there was a general presumption against development and the design and layout of any proposed development within the “GB” zone should be compatible with the character of the surrounding areas.

### Lease Arrangement

90. The Chairperson and some Members raised the following questions to the applicant:
- (a) why the Site was chosen for the care home; and
  - (b) whether there was any written consent from the landowner regarding the long-term use of the Site.
91. In response, Mr K.T. Hung made the following main points:
- (a) the Site was owned by his friend who previously used it for depositing containers. However, such use had been subject to enforcement action by the Government. As the Site was under-utilised, the landowner promised to rent it to him for 10 years initially and extendable afterwards and at a low rental of a few thousand dollars. The landowner also reminded him to apply for planning permission before changing the use of the land; and
  - (b) a long-term tenure could enable stable operation of the care home as during the past few years, he had to relocate the care home once in every two years and each move involved substantial effort and hard works.

### Design of Development

92. Ms Jacinta W.C. Woo, the Director of Planning (D of Plan) asked if the applicant could provide more details on the building design of the proposed development and whether the dogs would be kept in an enclosed environment. In response, Mr K.T. Hung said that there were two options of building design. One option was a steel frame structure which would be equipped with an air ventilation system and would not be totally enclosed. This option was preferred as the steel parts could be readily assembled and dismantled and hence environmentally less intrusive. The second option was a concrete structure which was less favourable due to its permanent impacts on the environment. As he had experience in

working on several major infrastructural projects in Hong Kong, the building works for the proposed care home would not be a difficult task for him.

93. A Member asked DPO/TM&YLW whether there were any plans and drawings to demonstrate the compatibility of the proposed development with the surrounding environment. In response, Mr David C.M. Lam said that all the information submitted by the applicant had been incorporated into the Paper for consideration of the Board. The potential impact of the care home on the surrounding environment should be one of the material considerations in assessing whether the proposed development would be considered acceptable on the Site. In that regard, the proposed development involving site formation and a 2-storey structure was considered not in line with the planning intention of the “GB” zone and did not comply with TPB PG-No. 10 in that the development was not compatible with the surrounding areas and the development would affect the existing natural landscape and the integrity of the “GB” zone.

#### Vegetation Clearance

94. Some Members raised the following questions:

- (a) whether there had been any vegetation clearance carried out at the Site and the surrounding areas; and
- (b) whether there was any change in the land ownership of the Site since the vegetation clearance.

95. In response, Mr David C.M. Lam made the following main points:

- (a) according to the aerial photos, the Site was covered with vegetation in 2012. In 2013, vegetation on the Site had been cleared and the Site was used for depositing containers which was subsequently subject to planning enforcement action against the unauthorised development (UD). While there were warehouses, open storage yards and car repair workshops to the further north and further east of the Site, they mainly fell within the “Undetermined” (“U”)

zone and were suspected UDs subject to enforcement action being taken by the Planning Authority; and

(b) he had no information in hand regarding the ownership history of the Site.

96. Mr K.T. Hung said that while the UD previously existed on the Site was subject to enforcement action, the containers involved had subsequently been removed and the Site was reinstated and now covered with grass. However, the land adjacent to the Site had been subject to vegetation clearance and used for unauthorised storage of container trailers.

### Environmental Impact

97. A Member asked whether the proposed care home would have any adverse environmental impacts on the surrounding areas. In response, Mr K.T. Hung said that while the proposed care home was located in a remote area, mitigation measures including noise barriers and an air ventilation system would be installed to minimise the potential noise and odour impacts. Mr David C.M. Lam said that the Site was located in a “GB” zone sandwiched between “U” and “Conservation Area” zones. Though the existing village settlements were located further away to the east and northeast, there were scattered domestic structures in the vicinity of the Site with the nearest one located at 70m to its southeast. According to the Director of Environmental Protection (DEP), as the applicant had not provided information regarding the detailed design of the facilities, the concerns on potential noise nuisance and odour had not been fully addressed.

98. In response to the question of another Member, Mr K.T. Hung said that dogs were kept in the surrounding developments and some stray dogs were also found in the area.

### Agricultural Rehabilitation

99. Mr Andy S.H. Lam, PAS(T)3, THB, asked whether agricultural rehabilitation on the Site was actually feasible taking into account the existing land uses (mainly storage) in the vicinity of the Site. In response, Mr David C.M. Lam said that there were existing agricultural lands to the west on the Site. DAFC advised that that the Site possessed a high potential of agricultural rehabilitation and it would be more desirable to use the Site for

farming. Mr K.T. Hung said that the Site was located within a “GB” zone which would not be resumed or acquired for development. The landowner had no intention to resume agricultural activities on the Site.

#### Temporary Planning Permission

100. Some Members asked DPO/TM&YLW whether a temporary planning permission could be granted for the proposed care home and what the relevant considerations were. In response, Mr David C.M. Lam said that should the Board consider appropriate, temporary planning permission could be granted for the proposed development. In that regard, the relevant considerations might include whether the proposed temporary use would jeopardize the long-term planning intention and have any permanent impact on the physical conditions of the Site and the surrounding areas. Temporary planning permission had previously been granted for such recreational uses as hobby farming within “GB” zones in the Yuen Long District.

101. The Chairperson asked the applicant whether the granting of temporary planning permission for the care home was acceptable. In response, Mr K.T. Hung said that the operation of the care home could be catered for under a temporary planning permission. As the steel frame structure of the development under one of his options could be assembled and dismantled readily, and measures including peripheral planting, septic tank system and noise barriers would be implemented on the Site, the proposed development would not entail any permanent impact on the surrounding environment.

[Mr Lincoln L.H. Huang, Mr Ivan C.S. Fu, Mr F.C Chan and Dr Frankie W.C. Yeung left the meeting during the Q&A session.]

102. As Members had no further questions to raise, the Chairperson said that the hearing procedure for the review application had been completed. The Board would further deliberate on the review application and inform the applicant of the Board’s decision in due course. The Chairperson thanked DPO/TM&YLW, PlanD and the applicant for attending the meeting. They left the meeting at this point.

Deliberation Session

103. A Member said that the fundamental consideration of the application should be whether, in land use term, the Site was suitable for development of a care home within the “GB” zone.

104. Another Member said that the original intention of the landowner was for storage use and the Site had been disturbed. It was only because the UD was subject to enforcement action that the Site was proposed for development of a care home. Against such background, the application might be regarded as a ‘destroy first, apply later’ case which should not be encouraged. While the Member had sympathy on the application, there was insufficient information to prove that the intended operation of the care home could be sustained in the long run.

105. A Member said that the grievances of the applicant were understandable given there were parking and open storage uses in the vicinity of the Site which resulted in the degradation of environment. The registration of a company under section 88 of the IRO would not preclude a charitable institution from charging a fee on its services.

106. Another Member said that the impact of the proposed development on the environment of the “GB” zone should be considered. Noting that the Site was sandwiched by parking and open storage uses to its east and vegetated areas to its west, approving the application would result in a further reduction in green areas on a permanent basis. The proposed care home, which provide not only shelters and activity facilities for dogs but might also involve the handling of animal remains after cremation, might not be compatible with the planning intention of the “GB” zone. There were also doubts on whether the operation of the care home could be sustained financially. In case there was a lack of long-term financial support, the operation might give rise to adverse environmental impact and nuisance to the residents nearby. In view of the above, the review application was not supported.

107. Members noted that the handling of animal remains by bio-cremation would not be conducted on the Site but in a pet funeral service shop at another location.

108. A Member said that as part of the “GB” zone had already been occupied by storage uses, it was unlikely that agricultural use would be resumed on the Site and that the potential environmental impacts of the proposed dog shelter facilities would be insurmountable. However, it was doubtful whether the dog care services/facilities provided in the care home would be subject to adequate control. While the planning approval for the proposed development on a temporary basis might be considered, the applicant should provide sufficient information to elaborate on the operation of the dog care services/facilities and to demonstrate that the operation of the care home could be sustained in the long run. Additional information, such as a written tenancy agreement specifying the term of tenure, rental level and user of the land, should be provided by the applicant for the consideration of the Board.

109. A Member was sympathetic in view of the sincerity of the applicant in running a facility for the welfare of aged dogs. Mr Andy S.H. Lam, PAS(T)3, THB, said that it might not be necessary to consider the long-term viability of the proposed care home as it might attract financial support for its operation at a later stage if the care home could be properly managed.

110. Another Member said that as ‘Animal Boarding Establishment’ use was a Column 2 use under the “GB” zoning, the application might be considered based its individual merits. As the previous UD on the Site had been discontinued and the Site was now covered with grass, the application might not be regarded as a ‘destroy first, apply later’ case. Consideration could be given to granting a temporary planning permission for a period of say three years for the proposed development. Should any of the approval conditions be not satisfactorily complied with, the planning permission could be revoked.

111. A Member said that the open storage and parking uses in the vicinity of the Site fell mainly within the adjoining “U” zone. The integrity of the “GB” zone should be maintained. While the nature of the proposed use might be considered acceptable, the scale and intensity of the proposed development appeared to be excessive and not compatible with the character of the surrounding areas. The review application was not supported by that Member.

112. A Member said that while the proposed development might be considered acceptable within the “GB” zone, given the unique mode of operation and the lack of long-term financial support, there was no guarantee that the intended operation of the care home could be

sustained in the long term. While the granting of a permanent planning permission for the proposed development would not be supported, consideration could be given to approving the application on a temporary basis. Another Member said that further information regarding the design and outlook of the proposed development in relation to the surrounding environment should be provided by the applicant.

[Mr Daniel K.S. Lau left the meeting at this point.]

113. A Member said that as planning permission was granted on the basis of a specific scheme, the burden was on the applicant to provide sufficient information in the application and to demonstrate that the proposed development would not entail any adverse impact on the surrounding areas. In the present case, there was no information as to whether residential dwelling would be provided within the proposed two-storey development and the potential impacts on the surrounding were uncertain. While the long-term financial support might not be a key consideration, a consistent approach should be adopted in assessing applications for development within “GB” zone. Should adequate information be provided by the applicant to address Member’s concerns, consideration could be given to granting a temporary approval for the proposed development.

114. In response to the Chairperson’s enquiry, Ms Jacinta K.C. Woo, D of Plan, said that in terms of procedure, the Board could defer making a decision on the review application pending submission of further information by the applicant to address particular concerns of the Board. That said, while DEP had indicated at the section 16 stage that the applicant did not provide information on the design and operation details of the facilities for the concerned departments to ascertain the environmental acceptability, no such additional information had been provided by the applicant during the section 17 stage. For those applications for animal boarding establishment previously approved, they were mainly located within the “Agriculture” zone, and information regarding the detailed design of the building and operation setting out the indoor/outdoor activities of the dogs was submitted. As there was a general presumption against development within the “GB” zone, any application for new development would only be approved in exceptional circumstances and should be supported with strong justifications.

115. A Member said that approving the application might encourage further developments intruding into the “GB” zone. Besides, the comments of DEP had not been adequately addressed by the applicant. Another Member agreed and said that a cautious approach should be adopted in considering applications within “GB” zone. The review application should be rejected given that insufficient information had been provided by the applicant to address the concerns of relevant government departments.

116. Another Member said that in view of the relatively small scale of the proposed development and the applicant had raised some new points at the review hearing, opportunity could be given for the applicant to submit additional information to address the Board’s concerns before a decision was made by the Board on the review application.

117. The Chairperson summed up the discussion and said that while some Members did not support the application in consideration that the development was not in line with the planning intention of the “GB” zone, some Members were of the view the scale and intensity of the proposed development might not be entirely incompatible with the surrounding environment, and some Members considered that insufficient information had been submitted by the applicant as to the details regarding design of the building and operation of the care home to address the environmental concern. The Chairperson said that Members could consider deferring a decision on the review application pending submission of further information by the applicant, or rejecting the review application. A vote was taken, with majority of the Members considered that the review application should be rejected.

118. Members then went through the rejection reasons as stated in paragraph 8.1 of the Paper and considered that they were appropriate.

119. After deliberation, the Board decided to reject the application on review for the following reasons :

- “(a) the development is not in line with the planning intention of “GB” zone which is 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 and there is a general presumption

against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention;

- (b) the proposed development does not comply with the Town Planning Board Guidelines No. 10 for 'Application for Development within "GB" Zone under section 16 of the Town Planning Ordinance' in that the proposed development would affect the existing natural landscape;
- (c) the applicant has failed to provide sufficient information regarding the detailed design of the structure and the operation setting to demonstrate that the proposed development would not cause adverse environmental impact on the surrounding areas; and
- (d) the approval of the application would set an undesirable precedent for similar applications within the "GB" zone. The cumulative effect of approving such similar applications would result in a general degradation of the landscape quality of the area."

### **Agenda Item 13**

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

### **Any Other Business**

120. The item was recorded under confidential cover.

121. There being no other business, the meeting was closed at 1:10 p.m.