

**Minutes of 1190th Meeting of the
Town Planning Board held on 14.12.2018**

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 Ivan C.S. Fu

Mr Sunny L.K. Ho

Dr F.C. Chan

Mr David Y.T. Lui

Mr Peter K.T. Yuen

Mr Philip S.L. Kan

Mr K.K. Cheung

Dr C.H. Hau

Mr Thomas O.S. Ho

Dr Lawrence K.C. Li

Mr Stephen L.H. Liu

Miss Winnie W.M. Ng

Ms Sandy H.Y. Wong

Mr Franklin Yu

Mr Stanley T.S. Choi

Mr Daniel K.S. Lau

Mr K.W. Leung

Professor John C.Y. Ng

Dr Jeanne C.Y. Ng

Mr Ricky W.Y. Yu

Assistant Director (Environmental Assessment)
Environmental Protection Department
Mr C.F. Wong

Deputy Director (General)
Lands Department
Ms Karen P.Y. 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
Mr Raymond K.W. Lee

Deputy Director of Planning/District
Ms Jacinta K.C. Woo

Secretary

Absent with Apologies

Mr H.W. Cheung

Mr Stephen H.B. Yau

Dr Frankie W.C. Yeung

Dr Lawrence W.C. Poon

Mr Wilson Y.W. Fung

Mr Alex T.H. Lai

Professor T.S. Liu

Mr L.T. Kwok

Ms Lilian S.K. Law

Professor Jonathan W.C. Wong

In Attendance

Assistant Director of Planning/Board

Miss Fiona S.Y. Lung

Chief Town Planner/Town Planning Board

Ms April K.Y. Kun

Senior Town Planner/Town Planning Board

Mr Eric C.Y. Chiu

Agenda Item 1

Confirmation of Minutes of the 1189th Meeting held on 23.11.2018

[The item was conducted in Cantonese.]

1. The minutes of the 1189th Meeting held on 23.11.2018 were confirmed without amendments.

Agenda Item 2

Matters Arising

[The item was conducted in Cantonese.]

- (i) Judicial Review lodged by Designing Hong Kong Limited against the Decision of the Town Planning Board in respect of the Draft Central District (Extension) Outline Zoning Plan No. S/H24/8
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2. The Secretary reported that the Court of First Instance (CFI) had handed down a judgment dismissing Ms Ho Loy's application for being a party to the judicial review (JR) lodged by Designing Hong Kong Limited (DHKL) against the decision of the Town Planning Board (the Board) not to amend the draft Central District (Extension) Outline Zoning Plan (OZP) No. S/H24/8 in respect of the Central Military Dock site. A copy of the CFI's judgment had been provided to Members prior to the meeting.

3. On 20.7.2018, Ms Ho Loy filed an application to the Court for an order that Ho Loy herself be joined as an applicant in the JR. On 30.8.2018, the Court made a consent order that if Ms Ho Loy's joinder application was dismissed by the CFI:

- (a) DHKL would cease to be a party to the JR;
- (b) the JR would be discontinued; and

- (c) the interim stay of submission of the OZP to the Chief Executive in Council (CE in C) for approval made on 23.7.2014 would be discharged.

4. Ms Ho Loy's joinder application was heard by the CFI on 25.10.2018. On 30.11.2018, the CFI handed down judgment and dismissed Ms Ho Loy's joinder application with cost to the Board after taking into account:

- (a) the very significant delay of some four years in the JR application;
- (b) the absence of any satisfactory explanations for the delay; and
- (c) the prejudice caused to good administration (including delay in handing over the relevant site to the Hong Kong Garrison).

5. As a result of the CFI's decision, the JR application was disposed of and the interim stay of OZP submission granted in 2014 had also been discharged. As the Board had already agreed on 16.5.2014 that the OZP and its Notes and ES were suitable for submission under section 8 of the Town Planning Ordinance (the Ordinance), the Secretariat would submit the OZP to the CE in C for approval as soon as possible.

6. Members noted the outcome of the JR and agreed that the Secretariat should submit the OZP to the CE in C for approval as soon as possible.

[Post-meeting Note: Ms Ho Loy submitted an appeal application on 14.12.2018.]

- (ii) Judgment Received on an Application for Civil Claim against the Town Planning Board in respect of the Tai Po Outline Zoning Plan No. S/TP/25

7. The Secretary reported that the following Members had declared interests in this item:

Mr H.W. Cheung - owning a flat at Heung Sze Wui Street, Tai Po

Dr Frankie W.C. Yeung - his company owning a flat at On Chee Road, Tai Po

Mr Daniel K.S. Lau - co-owning with spouse a property at Ma Wo Road,
Tai Po

8. Members noted that Mr H.W. Cheung and Dr Frankie W.C. Yeung had tendered apologies for being unable to attend the meeting and agreed that as the item was to report the judgment on an application for claim and no discussion was required, Mr Daniel K.S. Lau could stay in the meeting.

9. The Secretary reported that the judgment on the subject civil claim application against the Town Planning Board (the Board) was handed down by the Court of First Instance on 19.11.2018. The application was related to the rezoning of a site at 4770 Tai Po Road, Kon Hang, Tai Po (the Site) from “Green Belt” (“GB”) to “Residential (Group C) 8” (“R(C)8”) on the draft Tai Po Outline Zoning Plan No. S/TP/25 (the OZP). The Plaintiff was the tenant under a former Short Term Tenancy of the Site. However, he was not a representer/commenter of the OZP. A copy of the judgment had been provided to Members prior to the meeting.

10. In summary, the Judge ruled that a breach of statutory duty did not, by itself, give rise to any private law cause of action. In the present case, the Plaintiff failed to even identify what statutory duty was breached by the Board. The judgment concluded that the Plaintiff’s claim was an abuse of the process of the court and did not disclose any reasonable cause of action. The civil claim application was therefore dismissed and the Plaintiff was ordered to pay the costs of the action, including the application for the summons. The Plaintiff applied leave for appeal on 30.11.2018 and the Court instructed on 5.12.2018 the Plaintiff to file written submission and serve the submission to the Board for response within 14 days, i.e. by 19.12.2018.

11. Also, as reported on 24.8.2018, the Plaintiff had separately lodged a Judicial Review application against, amongst others, the Board’s decision to the rezoning of the Site (HACL 1700/2018). The hearing for the leave application was scheduled for 16.5.2019.

12. Members noted the judgment and agreed that the Secretary should act on behalf of the Board in handling the appeal application in consultation with the Department of Justice.

(iii) Open Data Proposal for Planning Applications and Statutory Plans

13. The Secretary reported that the Data.Gov.HK (資料一線通) had been set up by the Government to facilitate centralised dissemination of datasets provided by government departments and public/private organisations, and to encourage development of web applications and innovative uses. Currently, information on planning applications and publication of statutory plans had been disseminated via various channels, including the Town Planning Board (the Board) website and the Statutory Planning Portal under various format. To tie in with the open data trend, it was suggested to disseminate statistics of planning applications considered by the Board and its Committees, with information on applied uses, locations, etc; as well as information on statutory plans gazetted under s.5/s.7 and s.9 of the Town Planning Ordinance via the Data.Gov.HK, from 2019 onwards and the datasets would be updated quarterly.

14. Members agreed to the proposed arrangement.

[Mr Stephen L.H. Liu arrived to join the meeting at this point.]

Sha Tin, Tai Po & North District

Agenda Item 3

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/NE-KLH/543

Proposed House (New Territories Exempted House - Small House) in “Agriculture” Zone,
Lot 857 RP in D.D. 9, Tai Wo Village, Tai Po
(TPB Paper No. 10501)

[The meeting was conducted in Cantonese.]

15. The Secretary reported that Mr K.K. Cheung and Mr Alex T.H. Lai had declared interests in this item as the applicant had been a client of their firm. Members noted that Mr Alex T.H. Lai had tendered apologies for being unable to attend the meeting and agreed that as Mr K.K. Cheung had no involvement in the subject application, his interest was considered indirect and he could stay in the meeting.

Presentation and Question Sessions

16. The following representative of the Planning Department (PlanD) and the applicant’s representatives were invited to the meeting at this point:

Ms Jessica H.F. Chu	-	District Planning Officer/Shu Tin, Tai Po and North District, PlanD (DPO/STN)
Mr Fung Ho Kee Rocky]	
]	
Mr Lee Yuk Ming]	Applicant’s Representatives
]	
Mr Ip Koon Fat Peter]	

17. The Chairperson extended a welcome and explained the procedure of the review hearing. She then invited DPO/STN to brief Members on the review application.

18. With the aid of a PowerPoint presentation, Ms Jessica H.F. Chu, DPO/STN, briefed Members on background of the review application including the consideration of the application by the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board), departmental and public comments, and planning considerations and assessments as detailed in TPB Paper No. 10501 (the Paper).

[Mr Stanley T.S. Choi arrived to join the meeting at this point.]

19. The Chairperson then invited the applicant's representatives to elaborate on the review application. With the aid of a visualiser, Mr Fung Ho Kee Rocky and Mr Lee Yuk Ming, the indigenous inhabitant representative (IIR) of Yuen Leng, made the following main points:

- (a) the previous application No. A/NE-KLH/445 was rejected by the Board on review in 2013 as the proposed development did not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories (Interim Criteria) in that the proposed Small house would not be able to be connected to the planned sewerage system in the area. In the current application, the applicant had addressed the concern on sewerage discharge with a proposal to connect to the public sewerage system through other private lots and consent from relevant land owners had been obtained;
- (b) based on the advice from the concerned IIR and the site inspection by the applicant and his representatives, many of the land shown as available on Plan A-2 of the RNTPC Paper prepared by PlanD were actually occupied for various uses and many of those sites had site constraints such as irregular configuration and could not accommodate a typical Small House, had problem of access or were subject to land dispute;
- (c) many of the vacant land in Yuen Leng was actually owned by Tso/Tong, being used as private garden and local access, or being ruins or land already under application for Small House grant. Based on their assessment, only four pieces of land within the "V" zone of Yuen Leng

could potentially be purchased. There was a general shortage of land to meet the demand for Small House development;

- (d) cross-village Small House application would only be allowed if the proposal was accepted by all villagers at the receiving village. Given that Kau Lung Hang San Wai, Kau Lung Hang Lo Wai and Yuen Leng were three different villages, the assessment on land available for Small House development in these villages should not be calculated in a collective manner;
- (e) despite the Site was zoned “Agriculture” (“AGR”), there was no water supply available for irrigation in the area, therefore it was unrealistic to use the Site for agricultural purpose. It was estimated that there was about 300,000 square feet of abandoned agricultural land in the vicinity of the Site. The large patch of land to the further east of the Site might be more suitable for agricultural rehabilitation; and
- (f) there were existing Small Houses to the immediate north of the Site. Other domestic structures could also be found in the vicinity. Small House developments in the area were generally delayed as the planned sewerage system for the area was degazetted in 2010.

20. As the presentation from DPO/STN and the applicant’s representatives had been completed, the Chairperson invited questions from Members.

[Mr David Y.T. Lui arrived to join the meeting at this point.]

21. The Chairperson and some Members raised the following questions to DPO/STN:

- (a) noting that the applicant had proposed to provide connection to the public sewerage system, whether the sewerage issue had been duly addressed;
- (b) there appeared to be limited agricultural activities in the area and what the main reasons of PlanD were for not supporting the application;

- (c) whether there was sufficient land for Small House development in Tai Wo;
and
- (d) whether land ownership was a material consideration in the case.

22. In response, Ms Jessica H.F. Chu, DPO/STN, made the following main points with the aid of some PowerPoint slides:

- (a) the applicant had proposed to provide connection to the public sewerage system and relevant departments' concerns on sewerage discharge aspect had been addressed;
- (b) planning applications were assessed based on their individual merits, taking into account the planning circumstances of each site. Notwithstanding that, planning intention should be one of the major considerations in the planning assessment. The Site and its surrounding areas were zoned "AGR" and the proposed Small House development was not in line with the planning intention. While there was not much active agricultural activities in the vicinity of the Site and the Site had been hard-paved, there was still scope for using the Site for different types of agricultural activities not necessarily confined to growing of crops;
- (c) as advised by the Lands Department (LandsD), since the 'VE' of Tai Wo overlapped with the 'VE' of Yuen Leng and Kau Lung Hang San Wai and Lo Wai, PlanD had compiled information on the land available within the "V" zone of all these villages in the estimation of land supply for Small House development. Based on the latest estimate by the PlanD for the "V" zones serving Kau Lung Hang, Yuen Leng and Tai Wo, about 9.64 ha of land (or equivalent to about 385 Small House sites) was available within the "V" zones concerned. While land available could not fully meet the future Small House demand of 736 Small Houses, it was still capable to meet the 190 outstanding Small House applications for the concerned villages;

- (d) notwithstanding the estimation in (c), PlanD had also looked into the demand and supply in Tai Wo alone, noting that the applicant was an indigenous villager of Tai Wo. In this regard, based on the estimate by PlanD, about 126 sites were available for Small House development in the “V” zone of Tai Wo which was sufficient to fully meet the 61 outstanding Small House applications of Tai Wo;
- (e) the previous approved application No. A/NE-KLH/275 was submitted by a different applicant and had lapsed. That application was approved in 2001, before criteria (i) on connection to public sewers requirement was incorporated into the Interim Criteria on 23.8.2002 and there was a general shortage of land for Small House development in the relevant “V” zones at the time of consideration; and
- (f) land ownership was subject to change and it was not a major planning consideration in assessing planning application for Small House development.

23. A Member asked the applicant’s representatives whether the cross-village Small House application requiring unanimous agreement among villagers of the receiving village was an arrangement common in the New Territories or just applicable to the concerned villages. Mr Lee Yuk Ming replied that the said arrangement regarding cross-village Small House application was a local rule laid down by former village representatives of the three concerned villages in 1990s. He further said that the ‘VE’ drawn up by LandsD in 1972 referred to a 300-foot radius from the edge of the last village type house built at that time, and there were overlapping of the ‘VE’ for the three villages. Regarding the land available for Small House development, it only appeared sufficient because PlanD had combined the figures for Kau Lung Hang Lo Wai, Kau Lung Hang San Wai and Yuen Leng. However, as they were individual villages, PlanD’s assessment in a collective manner was not appropriate. Mr Lee continued to say that for the current application, agricultural activity in the area was extremely limited and only a handful of banana trees could be found in the vicinity of the Site. As the applicant of the previous approved application No. A/NE-KLH/275 eventually submitted an application for Small House grant to LandsD for another site within the “V”

zone, the current applicant subsequently purchased the Site and this was the only piece of land owned by him that could be used for Small House development.

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

Deliberation Session

25. The Chairperson noted that the applicant's representatives had emphasised that the Site was not suitable for agricultural activities and that the Director of Agriculture, Fisheries and Conservation (DAFC) had remarked in the TPB paper that the Site had low potential for agricultural rehabilitation. Mr Raymond K.W. Lee, Director of Planning, said that while there were examples of approving Small House applications in "AGR" zones, each application should be considered based on its individual planning circumstances and merits. For the current application, Members should also give due consideration to whether the Site formed an integral part of a larger "AGR" zone and whether approving the application would have adverse implication on the "AGR" zone from a wider perspective. Members also noted that despite the Site had been hard-paved, a range of agricultural uses such as green house, nursery grounds, hydroponics etc. could still be carried out.

26. A Member opined that as DAFC considered that the Site had low potential for agricultural rehabilitation and there were existing Small House developments near the Site, the proposed Small House development was not incompatible with the surrounding environment. In this regard, sympathetic consideration might be given to the application. Another Member did not agree and said that the applicant was an indigenous villager of Tai Wo and there was still land available within the "V" zone of Tai Wo to fully meet the outstanding Small House application, approving the current application would set a precedent. The Member also considered that in considering Small House applications, a consistent approach to concentrate proposed Small House developments within the "V" zone for orderly development pattern should be adhered to. Two Members concurred. Another Member further said that according to the aerial photo in Plan R-3 of the Paper, there was still vacant land in Tai Wo.

The Board should consider the case taking into account the condition of the wider area in the “AGR” zone. Unless there was a significant change in the overall character of the entire “AGR” zone, whether the Site itself had been hard-paved should not be a major concern. There was no strong justification in the current submission to warrant a departure from the planning intention of “AGR” zone.

27. Members generally agreed that while the Site might not have high potential for agricultural rehabilitation and farming, it still possessed potential to be used for other kinds of agricultural and related uses and the review application was not supported.

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

- “ (a) the proposed development is not in line with the planning intention of the “AGR” 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 “V” zone of Tai Wo 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.”

[Mr David Y.T. Lui left the meeting at this point.]

Agenda Item 4

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/NE-LT/637

Proposed House (New Territories Exempted House - Small House) in “Agriculture” Zone,
Lot 1328 RP in D.D. 19, Chuen Shui Tseng, Lam Tsuen, Tai Po
(TPB Paper No. 10502)

[The meeting was conducted in Cantonese.]

Presentation and Question Sessions

29. The following representative of the Planning Department (PlanD) and the applicant’s representatives were invited to the meeting at this point:

Ms Jessica H.F. Chu	-	District Planning Officer/Shu Tin, Tai Po and North District, PlanD (DPO/STN)
Mr Hui Kwan Yee]	
]	
Mr Wan Sung Tai]	
]	Applicant’s Representatives
Ms Wan Wai Sum]	
]	
Ms Yau Wai Ling]	

30. The Chairperson extended a welcome and explained the procedure of the review hearing. She then invited DPO/STN to brief Members on the review application.

31. With the aid of a PowerPoint presentation, Ms Jessica H.F. Chu, DPO/STN, briefed Members on background of the review application including the consideration of the application by the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board), departmental and public comments, and planning considerations and assessments as detailed in TPB Paper No. 10502 (the Paper).

32. The Chairperson then invited the applicant's representatives to elaborate on the review application. Mr Hui Kwan Yee and Mr Wan Sung Tai, the IIR of Lung A Pai and acting IIR of Shuen Shui Tseng, made the following main points:

- (a) there was no water available for irrigation in the area hence the potential to use the Site for agricultural activities was very low. The Site was flat and the proposed Small House development would not cause any adverse impact on the surrounding areas. The proposed Small House would be able to be connected to the public sewerage system. The applicant had also revised the layout of the proposed Small House so as to minimise the landscape impact. All relevant departments consulted, including District Lands Office/Tai Po of Lands Department, had no adverse comment on the application;
- (b) in support of the review application, the applicant had submitted his analysis (Drawing R-2 of the Paper) on why some land within the "Village Type Development" ("V") zone could not be used for Small House development;
- (c) the relevant IIR had provided information on 10-year Small House demand forecast and it was clear that based on the forecast there was insufficient land to meet the demand for Small Houses;
- (d) similar application No. A/NE-LT/430 with only 50% of the Small House footprint falling within the village 'environs' ('VE') was approved in 2011. In contrast, the proposed Small House under the current application had a footprint falling entirely within the 'VE';
- (e) the applicant was an indigenous villager of Lung A Pai and the Site was the only piece of land owned by him. If the application was approved, the applicant would be able to live close to his family members and the Board was requested to give sympathetic consideration to the application;
- (f) the Site, situated at about 53mPD, was higher than the surrounding areas

and water supply to the site for irrigation purpose was no longer available after the nearby agricultural fields were abandoned some 40 years ago; and

- (g) many of the vacant land in the “V” zone were either owned by Tso/Tong, which were almost impossible to acquire, or government land located on a slope, which were not suitable for Small House development.

33. As the presentation from DPO/STN and the applicant’s representatives had been completed, the Chairperson invited questions from Members. Members had no question on the review application.

34. As Members had no 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 in the absence of the applicant’s representatives and inform the applicant of the Board’s decision in due course. The Chairperson thanked the applicant’s representatives and PlanD’s representative for attending the meeting. They left the meeting at this point.

Deliberation Session

35. In response to a Member’s query, the Chairperson said that cases that were given sympathetic consideration usually involved sites covered by previous approval granted to the same applicant while the approved development was not implemented due to reasons outside the control of the applicant, or Small House development on sites falling mostly within the “V” zone. Each case would be considered based on its individual merits.

36. A Member considered that the review application should be rejected as there was no strong justification provided in the applicant’s submission to warrant a departure from the decision of the RNTPC.

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

- “ (a) the proposed development is not in line with the planning intention of the “AGR” 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 “V” zone of Chuen Shui Tseng 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.”

Kowloon District

Agenda Item 5

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/K12/41

Proposed Two Houses in “Government, Institution or Community” Zone, Lots 1636 S.A and 1636 RP in S.D. 2, 57 Ngau Chi Wan Village, Kowloon

(TPB Paper No. 10500)

[The meeting was conducted in Cantonese.]

38. The Secretary reported that the application site was located in Ngau Chi Wan Village. Mr Martin W.C. Kwan, Chief Engineer (Works), Home Affairs Department (HAD) had declared an interest on the item for his close relative owning a flat at Choi Fung Court in Choi Wan. Members agreed that as the property of Mr Martin W.C. Kwan’s relative had no direct view of the Site, he could stay in the meeting.

Presentation and Question Sessions

39. The following representatives of the Planning Department (PlanD), the applicant and the applicant’s representatives were invited to the meeting at this point:

Ms Johanna W.Y. Cheng	-	District Planning Officer/Kowloon (DPO/K)
Ms Sandy S.K. Ng	-	Senior Town Planner/Kowloon (STP/K)
Mr Lau Ming	-	Applicant
Mr Hudson Yeung]	
]	Applicant's Representatives
Ms Johnson Shu]	

40. The Chairperson extended a welcome and explained the procedure of the review hearing. She then invited DPO/K to brief Members on the review application.

41. With the aid of a PowerPoint presentation, Ms Johanna W.Y. Cheng, DPO/K, briefed Members on background of the review application including the consideration of the application by the Metro Planning Committee (RNTPC) of the Town Planning Board (the Board), departmental and public comments, and planning considerations and assessments as detailed in TPB Paper No. 10500 (the Paper).

42. The Chairperson then invited the applicant and his representatives to elaborate on the review application. Mr Lau Ming, the applicant, and Mr Hudson Yeung, the applicant's representative, made the following main points:

- (a) the applicant did not own any property in Hong Kong except the Site. Two houses were proposed in the current application. One would be occupied by the applicant and the other one would be rented out to provide income;
- (b) similar application No. A/K12/39 was allowed by the Town Planning Appeal Board (TPAB) in 2013. The TPAB's decision should provide an important reference for considering the current application;

- (c) during the development of Choi Hung Estate, the then Governor had agreed to retain Ngau Chi Wan Village. The applicant felt aggrieved that his land with building entitlement had been rezoned to “Government, Institution or Community” (“G/IC”). The Government had not notified the village office, villagers’ representative and relevant land owners about the rezoning. Most villagers of Ngau Chi Wan Village were unaware that their land had been rezoned as “G/IC” and earmarked for development of community facilities;
- (d) if the Site had to be resumed by the Government for development of a community hall in future, the applicant would not raise any objection. If required, approval conditions restricting resale of the proposed houses for five or even ten years could be incorporated; and
- (e) there had been a long delay in implementation of the community hall proposal and there was yet a development programme. There were other pieces of land near the Hammer Hill Road Swimming Pool that could be used for such development.

43. As the presentation from DPO/K and the applicant and his representatives had been completed, the Chairperson invited questions from Members.

44. The Chairperson and some Members raised the following questions to DPO/K:

- (a) whether the Site was occupied by any structure when the first OZP was gazetted and what the restriction on the OZP was on redevelopment of a demolished house;
- (b) the floor area that the applicant was entitled to build under lease and whether lease modification would be required if the planning application was approved by the Board;
- (c) the location of the planned community hall and whether there was programme for its implementation;

- (d) whether the elevated road on the ODP was still required;
- (e) whether there was scope to develop the proposed houses in the southern portion of the Site so as to avoid encroachment onto the area earmarked for government use on the draft Ngau Chi Wan Outline Development Plan No. D/K12/2D (the ODP);
- (f) the reasons for allowing application No. A/K12/39 on appeal and whether there were major differences between that application and the current application, and whether the development approved under application No. A/K12/39 had commenced; and
- (g) whether the application site boundaries under previous applications No. A/K12/20 and A/K12/35 were different from the current application.

45. In response, Ms Johanna W.Y. Cheng, DPO/K, made the following main points with the aid of some PowerPoint slides:

- (a) the Site was zoned “G/IC” on the OZP gazetted in 1990. While there was no official record provided by departments, it was observed in an aerial photo taken in 1990 that a structure existed on the Site but currently the Site was vacant. According to the Notes of the OZP, any material change of use or any other development, except minor alteration and/or modification to the development of the land or building in respect of the existing use which was always permitted, or redevelopment had to conform to the requirements of the Notes. As the structure previously existed on the Site had been demolished, development of the proposed houses should conform with the requirements of the OZP and planning permission from the Board was therefore required;
- (b) the Lands Department (LandsD) advised that the Site was held under the Block Government Lease. The total area of the lot was 0.04 acre of which half was building land and the remainder was agricultural land.

The building area of the house lot was 80.94m², whereas the building area proposed by the applicant was 81.63m². If the building area exceeded the entitlement under the lease, modification to the lease was necessary;

- (c) according to the ODP, the Site fell partly within an area earmarked for government use and partly within an area planned for development of a public carpark. While relevant government departments advised that there was demonstrated need for a proposed community hall in the area, there was no firm implementation programme for the community hall development at the moment;
- (d) the elevated road passing through the Site as shown on the ODP was obsolete and no longer required;
- (e) even if the proposed houses were developed in the southern portion of the Site, instead of in the northern portion as currently proposed, the houses would still be within a larger "G/IC" zone and might affect design flexibility and hinder the implementation of the developments in the "G/IC" zone in the long-run;
- (f) application No. A/K12/39 for a proposed house was allowed by TPAB on appeal and the appellant provided similar grounds as the current applicant, i.e. the site was a piece of private land; there was previously a structure at the site; and the long delay in implementation of the community hall had deprived the applicant's right. As the site of application No. A/K12/39 was a building lot, no lease modification was required. A set of general building plan (GBP) for that site had been approved but the construction work had not commenced. The major difference between application No. A/K12/39 and the current application was that the Site was located in the central part of the "G/IC" zone and comprised half building land and half agricultural land; and
- (g) the application site boundaries of previous applications No. A/K12/20 and A/K12/35 covered the Site and some government land to the east.

46. The Chairperson and some Members raised the following questions to the applicant and his representatives:

- (a) when the structure was demolished and reason for hard-paving the Site;
- (b) whether it was the applicant's intention to build two houses with building area exceeding the entitlement under lease; and
- (c) whether the applicant would still find it meaningful to put efforts into the construction of the proposed houses when the Site might have to be resumed by the government for development of government facilities in the not too distant future.

47. In response, Mr Lau Ming, the applicant, and Mr Hudson Yeung, the applicant's representative, made the following main points:

- (a) the applicant could not remember when the previous residential structure at the Site was demolished. The Site had been paved to avoid causing rodent and mosquito nuisances to the surrounding areas as the Food and Environmental Hygiene Department had referred complaints to the applicant. The applicant had proposed to construct two houses at the northern portion of the Site whereas the southern part would be used as private open space. If the application was approved, the Site would not be left unattended and it would bring improvement to the local area in terms of environmental hygiene;
- (b) the applicant was willing to reduce the building area of the proposed houses to tally with the entitlement under the lease; and
- (c) the applicant understood that there was a chance that the Site would be resumed by the Government in future for development of a community hall. The applicant considered it acceptable even if he could only live in the proposed houses for a short period, say five to ten years.

[Mr Franklin Yu arrived to join the meeting during the question session and Mr Stephen L.H. Liu left the meeting during the question session.]

48. As Members had no further question, the Chairperson said that the hearing procedure for the review application had been completed. The Board would further deliberate on the review application in the absence of the applicant and his representatives and inform the applicant of the Board's decision in due course. The Chairperson thanked the applicant and his representatives and PlanD's representatives for attending the meeting. They left the meeting at this point.

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

Deliberation Session

49. The Chairperson said that Members might wish to take into account the building entitlement of the lease on one hand and the wider perspective concerning implications for future planning in respect of the "G/IC" zone as a whole on the other. It was noted that the Director of Housing considered that the Site fell within an area that could be considered for public housing development subject to further study.

50. The Chairperson asked and Ms Karen P.Y. Chan, Deputy Director (General), LandsD (DD/G, LandsD) said that if the Site was required to be resumed, the resumption cost would be higher if there was a building at the Site. Compensation would be determined taking into account the market value of the property at the Site and rehousing and ex-gratia allowances might have to be arranged as appropriate for tenants.

51. In response to a Member's query, the Secretary said that Choi Hung Villa located to the northwest of the Site was once zoned as "G/IC" but subsequently rezoned back to "Village Type Development" after hearing of representations by the Board noting that the site was already covered by a set of approved GBP at that time. In response to another Member's question, the Secretary said that repair and maintenance works of an existing house within the "G/IC" zone would be always permitted. However, if the house had been demolished, redevelopment would require planning permission from the Board.

Similar Application No. A/K12/39

52. A Member said that the current application shared similarities with application No. A/K12/39 which was allowed on appeal, and considered some of the grounds in allowing the appeal were applicable to the current application.

53. Another Member did not agree and said that the Site comprised half building land and half agricultural land and in comparison, the site of application No. A/K12/39 was a building lot. Four other members echoed this view and pointed out that there were fundamental differences in the two applications in that the site of application No. A/K12/39 was at the corner of the “G/IC” zone, while the current Site was located in the central part of the “G/IC” zone which was crucial for the comprehensive planning and development of the zone. If the two houses were developed on the Site, it would severely limit the design flexibility of the proposed community hall.

54. The Vice-chairperson said that the decision of the TPAB on application No. A/K12/39 was based on site-specific circumstances and should not be binding on the Board. It was important to ensure that the implementation of the planning intention for the “G/IC” zone would not be adversely affected. A Member went on to say that as a matter of principle, government and community facilities, which would serve a large number of people, should be given priority for development in the “G/IC” zone.

55. A Member said that in allowing the appeal of application No. A/K12/39, amongst others, the TPAB considered that the delay in implementation of the “G/IC” zone was unjust to the applicant. In this regard, the Board should consider whether this was applicable to the current application.

Site Circumstances

56. A Member pointed out that the Site together with its surrounding land in the “G/IC” zone were located conveniently in close proximity to the Choi Hung Mass Transit Railway Station. From land utilisation point of view, development for low density houses might not have optimised the development potential. The existing village houses and temporary structures might not be the best land uses at this location.

57. A Member said that the Site had an elongated configuration and it might be difficult to achieve a good layout from technical perspective and its compatibility with the surrounding area was in doubt. Another Member was of the view that whether the proposed houses in an elongated site could meet the requirements under the Buildings Ordinance was outside the purview of the Board.

58. The Chairperson said that if the application was approved by the Board, the applicant would still need to go through other process to satisfy requirements of relevant departments, including submission of GBP. In response, a Member said that it was up to the applicant to take appropriate actions to fulfil these requirements as well as resolving the site constraints.

Grounds for Sympathetic Consideration

59. Two Members said that there was an existing house at the Site when the Site was rezoned to "G/IC" on the OZP and it was unfortunate that the applicant had demolished the house instead of repairing the damages, otherwise the applicant would not need to seek for planning approval. The Members considered that sympathetic consideration could be given for the subject review application.

60. A Member said that as the applicant had proposed to redevelop two houses at the Site, one of which would be used for renting, it might not be justified for sympathetic consideration. Ms Karen P.Y. Chan, DD/G, LandsD, drew Members' attention that according to the lease, there was no lease condition restricting any sale of the Site and any building thereon to a third party.

Precedent Effect

61. A Member said that while the case might warrant some sympathetic consideration, the Board should also duly consider whether approving the application would set an undesirable precedent in a wider context and further affect the implementation of government projects in the future.

62. Members noted that there were a number of private lots within the same “G/IC” zone which might share similar circumstances with the Site in that the buildings might be old and obsolete and there was building entitlement under their respective leases. The Vice-chairperson said that if the application was approved, it might have a precedent effect and encourage the redevelopment of other houses in the “G/IC” zone. The cumulative impact on the prospect to implement the “G/IC” zoning should be duly considered. He further added that the increased difficulties in land resumption, other than monetary cost, should not be ignored.

Implementation Programme of Government Facilities

63. A Member considered that there was a prolonged delay in implementing the planned community hall in the “G/IC” zone. Also, the possibility to use the Site and its surrounding areas for housing development remained uncertain as it was subject to further study. As such, the prospect of housing development at the Site should not be given a significant weight. Two other Members considered that given the development of the planned community hall had already been delayed for some 20 years and there was still no firm implementation programme at the moment, sympathetic consideration should be given to the application to allowing the applicant to develop two houses on his own land in accordance with his lease entitlement.

64. A Member pointed out that there were many other domestic structures within the “G/IC” zone, if the Government had to implement the community hall development, lengthy land resumption process was expected. Allowing the redevelopment of the houses would unlikely affect the project in a substantial way while the applicant and his representative had stated clearly that they were well-aware that the Site might be resumed by the Government at any moment for provision of public facilities. If approval was given to the review application, it would be up to the applicant to decide whether to implement the proposal knowing the possible land resumption in future.

65. Two Members pointed out that planning was an on-going process and based on the current circumstances, allowing the redevelopment of houses at the Site was acceptable. Given the small scale of development, it should not have any significant adverse precedent effect. Some Members considered that allowing the current application was based on

site-specific circumstances and this should not be taken as an obligation for the Board to give sympathetic consideration to other applications with development rights. As views of Members were divided, a vote was taken on the review application. More Members were in favour of approving the review application.

66. At the request of the Chairperson, Mr Raymond K.W. Lee, Director of Planning, explained that planning permission under s.16 of the application was scheme-specific and based on the applicant's submission, the proposed two three-storey houses had a total building area of 81.63m² whereas the entitlement under the lease was only 80.94m². Members considered that as sympathetic consideration was given to the current application in view of its lease entitlement, an additional approval condition should be imposed requiring the development to be restricted to the entitlement under the land lease.

[Dr Lawrence K.C. Li left the meeting at this point.]

67. The Chairperson said that the slow progress with development of government facilities at the subject "G/IC" zone was a major consideration in Members' deliberation of the current application. Members' concern should be brought to the attention of relevant Government departments. In this regard, the Board decided to request the Home Affairs Department and Housing Department to expedite their efforts on implementation of the planned community hall and on reviewing whether public housing development should be pursued in the subject "G/IC" zone respectively.

68. After deliberation, the Board decided to approve the application on review, on the terms of the application as submitted to the Town Planning Board (TPB). The permission should be valid until 14.12.2022, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The permission was subject to the following conditions:

- “ (a) the total floor area of the proposed development should not exceed the building entitlement under the existing lease of the site;
- (b) the provision of fire service installation and water supplies for firefighting to the satisfaction of the Director of Fire Services or of the

Town Planning Board; and

- (c) the implementation of the sewerage connection from the Site to the public sewerage manhole to the satisfaction of the Director of Drainage Services or of the Town Planning Board.”

[Mr Thomas O.S. Ho, Mr K.K. Cheung, Mr C.H. Hau, Mr Ricky W.Y. Yu and Mr Andy S.H. Lam left the meeting at this point.]

Tsuen Wan & West Kowloon District

Agenda Item 6

[Open Meeting]

Review of the Draft Kwai Chung Outline Zoning Plan No. S/KC/26
(TPB Paper No. 10507)

[The item was conducted in Cantonese.]

69. The Secretary reported that the review was related to the Court of First Instance’s judgement on a judicial review (JR) case and the JR application was lodged by Tung Chun Company Limited (Tung Chun). Masterplan Limited (Masterplan) and LWK & Partners (HK) Limited (LWK) were the representative/consultants of Tung Chun for submitting the representation on draft Kwai Chung Outline Zoning Plan No. S/KC/26 (the subject OZP) and a section 16 application related to the site located at 1-7 Cheung Wing Road, Kwai Chung (the Site). Mr Ivan C.S. Fu had declared an interest on the item for being a Director of LWK and having current business dealings with Masterplan. As the interest of Mr Fu was direct, Members agreed that he should be invited to leave the meeting temporarily for the item.

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

70. The following representatives from Planning Department (PlanD) were invited to the meeting at this point:

- | | | |
|----------------------|---|--|
| Mr Derek W.O. Cheung | - | District Planning Officer/Tsuen Wan & West Kowloon (DPO/TWK) |
| Mr Stephen C.Y. Chan | - | Senior Town Planner/ Tsuen Wan & West Kowloon (STP/TWK) |

71. The Chairperson extended a welcome and invited the representatives from PlanD to brief Members on the subject review.

72. With the aid of a PowerPoint presentation, Mr Stephen C.Y. Chan, STP/TWK, briefed Members on the background of JR lodged by Tung Chun who was a representer (R9) to the subject OZP, and the review of building height restrictions (BHR) on the subject OZP, as well as scope and findings of the review as detailed in the TPB Paper No. 10507 (the Paper). He highlighted that the review had concluded that the current BHR for the Site as well as the BHRs and non-building areas (NBAs) and building-gaps (BGs) requirements stipulated on respective land use zones should generally be able to accommodate the maximum plot ratio (PR)/gross floor area (GFA) permitted under the subject OZP after taking into account the Sustainable Building Design Guidelines (SBDG) requirements. In light of the findings, no amendment to the proposed BHR at the Site and other land use zones was recommended after considering the implications of SBDG, the NBAs/BGs requirements and the findings of updated planning assessments.

73. As the presentation of the representatives of PlanD was completed, the Chairperson invited comments and questions from Members.

74. In response to two Members' queries, Mr Derek W.O. Cheung, DPO/TWK, explained that according to the judgement of the subject JR case, the CFI ruled against the Board that: (a) it was ultra vires for the Board to have stated in the Decision Letter that the Applicant could proceed with the building development in accordance with the approved building plans, which should be a matter of Building Authority's (BA) discretion; (b) the Board had taken into account irrelevant consideration, i.e. the possibility of minor relaxation

of the BHR under section 16 of the Town Planning Ordinance (the Ordinance), in reaching its decision; and (c) the Board's decision was tainted by procedural unfairness as there was no evidence to show that two Members were apprised of the oral representations made by the Applicant's representative during their absence at the hearing meeting. To follow up on the judgement, a planning review for the BHR imposed for the Site and BHRs/NBAs/BGs for the Kwai Chung area as a whole was carried out. Based on the findings of the review, no amendment to the subject OZP was proposed. Among others, the BHR for the Site at 120mPD was considered appropriate and should be able to accommodate the maximum PR of 6.36 as permitted under the OZP.

75. Two Members noted that the Site was the subject of a previous approval under application No. A/KC/241 and requested additional background information. Mr Derek W.O. Cheung replied that application No. A/KC/241 for proposed hotel and service apartment with commercial/retail facilities with a building height of 169mPD at PR of 6.36 was approved on 17.3.2000 by the Metro Planning Committee of the Board. Subsequently, the General Building Plans (GBP) for the approved development were approved by the BA on 20.2.2003. However, the construction works for the approved GBP had not been undertaken. According to his understanding, the commencement of the construction works would need BA's consent and BA's consideration would be based on the prevailing requirements under the Buildings Ordinance and allied regulations. In response to the Chairperson's query, Mr Cheung said that as a general principle, since the approved development scheme under application No. A/KC/241 had commenced as GBP had been approved within the validity period of the planning permission, it would not be affected by the subsequent amendment to the development restrictions stipulated on the OZP, including the stipulation of a more stringent BHR.

76. In response to two Members' queries, Mr Derek W.O. Cheung said that the scheme approved under application No. A/KC/241 had a PR of 6.36 and this PR restriction had been incorporated into the draft Kwan Chung OZP No. S/KC/20 published on 26.9.2003. Since then, the PR restriction for the Site had remained unchanged. In 2017, Tung Chun submitted a new application (No. A/KC/444) for proposed comprehensive development for flat, eating place, shop and services and office with minor relaxation of BHR from 120mPD to 145mPD. The application was deferred on 26.1.2018 pending submission of further information related to the proposed landscaped area by the applicant.

77. In response to the Chairperson's question on the proposed way forward, Mr Derek W.O. Cheung explained that subject to the Board's agreement to the findings of the review, it was recommended that Tung Chun, which was R9 of the subject OZP, should be invited for the rehearing under section 6B(3) of the Ordinance and it was recommended that a period of two months should be allowed for Tung Chun to submit supplementary information (SI) before the reconsideration. The SI, if received, would be deposited at PlanD's Planning Enquiry Counters for public inspection. As there were 169 comments on R9, it was considered appropriate to invite these commenters to the re-consideration meeting so that they could make their views known to the Board. Should SI be received from R9, it was also recommended that a period of 3 weeks should be allowed for these commenters to provide comments on the SI of R9, if any. Both R9 and related commenters would be invited to the meeting to be arranged. Should the Board decide to propose any amendment to the OZP after reconsideration of R9, such proposed amendment should be published under s.6B(8) of the Ordinance, and the public would have an opportunity to submit further representation on the proposed amendment.

78. After deliberation, the Board decided to:

- (a) note the findings of the review that the BHR stipulated for the Site should be maintained having regard to the latest circumstances and updated planning assessments;
- (b) agree to invite Tung Chun and related commenters to a meeting to be convened for re-consideration of R9 under section 6B of the Ordinance according to the hearing arrangement as recommended in paragraphs 6.1 and 6.2 of the Paper; and
- (c) agree to allow a period of two months for R9 to submit supplementary information to the Board, if any, prior to the reconsideration of R9, and three weeks for the related commenters to provide comments on R9's submission, if any.

79. The Chairperson thanked the representatives of PlanD for attending the meeting. They left the meeting at this point.

Agenda Item 7

[Open Meeting]

Any Other Business

[The item was conducted in Cantonese]

80. There being no other business, the meeting was closed at 1:30 p.m..