

**Minutes of 866th Meeting of the
Town Planning Board held on 8.9.2006**

Present

Dr. Peter K.K. Wong

Vice-Chairman

Mr. Michael K.C. Lai

Dr. Greg C.Y. Wong

Ms. Carmen K.M. Chan

Mr. Erwin A. Hardy

Professor Nora F.Y. Tam

Mr. Nelson W.Y. Chan

Mr. David W.M. Chan

Mr. Leslie H.C. Chen

Professor David Dudgeon

Mr. Tony C.N. Kan

Mr. Edmund K.H. Leung

Dr. C.N. Ng

Dr. Daniel B.M. To

Mr. Stanley Y.F. Wong

Mr. Alfred Donald Yap

Ms. Sylvia S.F. Yau

Mr. B.W. Chan

Mr. Walter K.L. Chan

Ms. Maggie M.K. Chan

Mr. Raymond Y.M. Chan

Mr. Y.K. Cheng

Mr. Felix W. Fong

Ms. Anna S.Y. Kwong

Dr. James C.W. Lau

Ms. Starry W.K. Lee

Mr. K.Y. Leung

Director of Environmental Protection
Dr. Michael Chiu

Director of Lands
Mr. Patrick L.C. Lau

Director of Planning
Mrs. Ava S.Y. Ng

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

Secretary

Absent with Apologies

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

Dr. Lily Chiang

Professor Peter R. Hills

Professor N.K. Leung

Professor Bernard V.W.F. Lim

Professor Paul K.S. Lam

Principal Assistant Secretary (Transport)
Environment, Transport and Works Bureau
Ms. Ava Chiu

Assistant Director (2), Home Affairs Department

Ms. Margaret Hsia

In Attendance

Assistant Director of Planning/Board

Mr. Lau Sing

Chief Town Planner/Town Planning Board

Ms. Brenda K.Y. Au

Senior Town Planner/Town Planning Board

Mr. C.M. Li

1. The Vice-Chairman extended a welcome to Members and said that the Chairperson had tendered apologies for being unable to chair the meeting, and he would chair the meeting in her stead.

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 865th Meeting held on 25.8.2006

2. The minutes of the 865th meeting held on 25.8.2006 were confirmed without amendment.

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

Agenda Item 2

[Open Meeting]

Matters Arising

- (i) Draft Kowloon Tong Outline Zoning Plan No. S/K18/12
Consideration of Representations No. TPB/R/S/K18/12-1 to 129
and Comments No. TPB/R/S/K18/12-C1 to C3
(TPB Paper No. 7673)

3. The Secretary said that Dr. Greg C.Y. Wong, Mr. Felix W. Fong and Mr. Y.K. Cheng had declared interests in this item. Dr. Wong had current business dealings with Cheung Kong (Holdings) Limited (Cheung Kong) as Representation No. 3 to the draft Kowloon Tong Outline Zoning Plan (OZP) No. S/K18/12 was submitted by a subsidiary of Cheung Kong. Mr. Fong's firm had represented a number of representers. Mr. Cheng was a Council Member and Chairman of the Campus Development Committee of the Hong Kong Baptist University (HKBU) and Representation No. 126 was submitted by the HKBU. Members noted that Mr. Cheng had not yet arrived.

[Dr. Greg C.Y. Wong and Mr. Felix W. Fong left the meeting temporarily at this point.]

4. The Secretary said that on 14.7.2006, the Board, upon giving consideration to the representations and comments in relation to the draft Kowloon Tong OZP, decided not to propose any amendment to the plan to meet the representations. However, Members agreed that the Explanatory Statement (ES) of the OZP could be revised to explain in more detail the flexibility provided for application for minor relaxation of the building height restrictions and the factors that would be taken into account when considering such applications on individual planning and design merits. The current submission was to seek the Board's agreement to the proposed revisions of the ES.

5. The Secretary went on to say that to reflect Members' view on the issue, paragraphs 7.1.4, 7.3.12, 7.4.8 and 7.6.2 of the ES in respect of the "Commercial" zone, relevant "R(C)" sub-zones, "Government, Institution or Community" zone and "Other Specified Uses" annotated "Sports and Recreation Club" zone respectively had been revised and the changes were highlighted in Annex II of the Paper. Opportunity had also been taken to update the ES to reflect the latest position of the OZP and developments in the area.

6. After deliberation, Members agreed to endorse the proposed revisions of the ES of the draft Kowloon Tong OZP as shown in Annex II of the Paper.

[Dr. Greg C.Y. Wong and Mr. Felix W. Fong returned to join the meeting whilst Mr. Y.K. Cheng arrived to join the meeting at this point.]

(ii) Town Planning Appeal No. 17 of 2005 (17/05)
Proposed Temporary Open Storage of Construction Materials
for a Period of 3 Years in "Agriculture" Zone
Lots T128(part), 2806RP(Part), 2807RP and
Adjoining Government Land in DD 51, Tong Hang, Fanling
(Application No. A/NE-LYT/291)

7. The Secretary said that the appeal was related to an application (No. A/NE-LYT/291) for temporary open storage of construction materials for a period of 3 years at a site zoned "Agriculture" ("AGR") on the draft Lung Yeuk Tau and Kwan Tei South OZP

No. S/NE-LYT/10. The appeal was heard by the Town Planning Appeal Board (TPAB) on 24.7.2006 and dismissed by the TPAB on 28.8.2006. A copy of the Summary of Appeal and the TPAB's decision was tabled for Members' reference. The appeal was dismissed on the following grounds:

- (a) the TPAB did not detect any unfairness in treatment stemming from the approvals of 5 applications in the vicinity and the tolerance of the existing open storage activities on a nearby site;
- (b) the applicant had not submitted any technical assessment/proposal to refute the contentions of the relevant departments that there would be adverse traffic, environmental and landscape impacts from the proposed development. The subject site was a natural extension of the adjacent green plantation. Granting of planning permission would disrupt the continuity and contrary to the planning intention of the "AGR" zone; and
- (c) the onus was on the Appellant to demonstrate what planning gains would ensue from the grant of the planning permission.

(iii) Appeal Statistics

8. The Secretary said that as at 8.9.2006, 30 cases were yet to be heard by the Town Planning Appeal Board. Details of the appeal statistics were as follows:

Allowed	:	17
Dismissed	:	86
Abandoned/Withdrawn/Invalid	:	117
Yet to be Heard	:	30
Decision Outstanding	:	0

Total		250
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Agenda Item 3

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/K10/212

Proposed Hotel (Guesthouse) in “Residential (Group A)” Zone

1/F, 43-47 South Wall Road, Kowloon City

(TPB Paper No. 7662)

[The hearing was conducted in Cantonese.]

9. Referring Members to paragraph 4.1.1(b) of the Paper, Mr. Patrick L.C. Lau clarified that if planning permission for the subject application was granted by the Board, a lease modification would be required to effect the proposed use. Apart from administration fee, no premium payment would be required for the case.

[Mr. Raymond Y.M. Chan arrived to join the meeting at this point.]

Presentation and Question Session

10. Mr. Kelvin Chan, District Planning Officer/Kowloon of the Planning Department (PlanD), and the following applicant’s representatives were invited to the meeting at this point:

Ms. Wu Wai-sheung

Mr. Horace K.K. Cheung

Mr. Ng Kwok-lun

11. The Vice-Chairman extended a welcome and explained briefly the procedures of the review hearing. The Vice-Chairman then invited Mr. Kelvin Chan to brief Members on the background to the application.

12. With the aid of Powerpoint slides, Mr. Kelvin Chan covered the following main aspects as detailed in the Paper:

(a) the reasons for the Metro Planning Committee to reject the application on

28.4.2006;

- (b) the similar applications within the same “Residential (Group A)” (“R(A)”) zone as detailed in paragraph 5 in Annex A of the Paper;
- (c) the applicant’s further written representation in support of the review application as summarised in paragraph 3 of the Paper;
- (d) departmental comments – the District Lands Officer/Kowloon East, Lands Department advised that some of the proposed security measures to prohibit unauthorized entry to the building would be carried out at the common areas and there was no information/proof that the co-owners of the building had accepted such measures. The Chief Building Surveyor/Kowloon, Buildings Department had no in-principle objection to the proposed development and advised that there was inadequate provision of open space under Building (Planning) Regulation 25 on the subject floor under the proposal, but modification might be granted for guesthouse use;
- (e) 15 public comments were received during the statutory publication period of the review application. 12 commenters (including one from a Kowloon City District Councillor with signatures of 23 residents from the subject building) objected to the proposal on grounds of security, possible vice activities, fire safety, building management, deterioration of hygiene situation, doubts on effectiveness of the proposed mitigation measures, and no prior consultation with the residents on the operation of the guesthouse. The other three commenters raised concerns on the provision of car parking, fire safety, worsening of the environment, and security and vice activities; and
- (f) PlanD’s view – the application was not supported for the reasons detailed in paragraph 6.1 of the Paper.

13. The Vice-Chairman then invited the applicant’s representatives to elaborate on the application.

14. Ms. Wu Wai-sheung and Mr. Ng Kwok-lun made the following main points:

- (a) the premises was purchased by the applicant one year ago on consideration that guesthouse use could comply with the lease conditions, relevant provisions of the BO and requirements of the Licensing Authority of the Home Affairs Department (HAD);
- (b) the applicant had done its best to contact the other owners of the building with a view to resolving their concerns. As the building did not have an Owners' Corporation, the applicant was unable to contact all of the residents to provide them with details on the proposed security measures. However, the applicant had invited residents to attend a meeting through posting of notice, and all those attended did not object to the proposed guesthouse;
- (c) to address the concern on security, the applicant was willing to provide at its own cost an intercom between the 1/F and the main entrance of the building, a security CCTV system, and a security door to separate 1/F from other floors;
- (d) it was the applicant's genuine intention to operate a guesthouse legally and properly. After obtaining planning permission, the applicant would still have to comply with various requirements on public hygiene as well as fire and structural safety. The guesthouse licence, to be renewed on an annual basis, could be cancelled if there were any adverse impacts, vice activities and public complaints. With the Board's planning permission, the applicant could proceed to obtain approvals from other authorities;
- (e) the application should be considered on its own merits and in the context of the area where the premises was situated. The target customers of the proposed guesthouse were back-packers. The nature of the proposed guesthouse would be similar to the small guesthouses in Europe, but with a distinct Hong Kong character. There would be no vice activities; and
- (f) the guesthouse would be managed by the owner of the premises, who had

experience in the hospitality field and would like to contribute to the local tourism by providing guestrooms at affordable rates to the tourists.

15. As some of the proposed security measures would be installed in the common areas of the building and approval from all owners of the building had not yet been obtained, a Member asked how the applicant could guarantee that the measures would be implemented eventually. In reply, Ms. Wu Wai-sheung said that the applicant had contacted more than half of the 35 owners on the upper floors and those of the 3 shops, and they had no in-principle objection to the proposed development. The applicant would continue to contact the remaining owners with a view to obtaining their approvals for the proposed security measures. To this end, the applicant had also discussed with the Kowloon City District Councillor who had commented on the application.

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

16. In reply to a Member's question on the guesthouse at No. 19-21 South Wall Street, Mr. Kelvin Chan said that no planning permission had been granted for that guesthouse but it had been operating for quite some time with a guesthouse licence. Mr. Ng Kwok-lun said that he had no connection with that guesthouse and was not involved in its operation.

17. Another Member asked whether the proposed development would cause adverse sewerage impact on the Kowloon City area and whether it would affect the structural safety of the building. In reply, Mr. Kelvin Chan said that the Chief Engineer/Mainland South, Drainage Services Department had no comment on the application whilst the Director of Environmental Protection had no objection. Given the small scale of the proposed guesthouse, it was unlikely that significant adverse sewerage and drainage impacts would be resulted. The structural safety aspect of the proposed development would be examined by the Buildings Department at the building plan submission stage.

18. A Member asked whether the applicant had obtained support for the proposed guesthouse from the residents of the building. Another Member asked whether the premises had been used for guesthouse purpose, noting that the Licensing Authority had in its letter dated 15.2.2006 (Annex B of the Applicant's s.16 submission) asked the applicant to cease the operation of guesthouse in the premises. In reply, Ms. Wu Wai-sheung and Mr. Ng

Kwok-lun made the following main points:

- (a) although the names of the commenters were provided in Annex A of the Paper, the applicant was not able to contact them direct as their exact addresses were not shown in the document. However, the applicant had contacted the Kowloon City District Councillor who had submitted comments with the signature of 23 residents of the building;
- (b) the applicant had got verbal agreement from about half of the owners of the building to the proposed guesthouse but there was no written confirmation available; and
- (c) the premises was under refurbishment for the proposed use and the applicant had never used the premises for guesthouse purpose.

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

Deliberation Session

20. A Member said that in the Office of the Licensing Authority, HAD's letter dated 15.2.2006 (Annex B of the Applicant's s.16 submission), the applicant was requested to cease the operation of the guesthouse at the premises. This Member asked whether the Licensing Authority should be asked to confirm if the guesthouse under application had been in operation. Another Member said that the Licensing Authority should also be asked to clarify the circumstances upon which a guesthouse licence would be cancelled. In reply, the Vice-Chairman pointed out that the Board should consider the application under the Town Planning Ordinance having regard to the merits of the case. Issues related to licensing should be left to the licensing authority.

21. A Member said that the residential buildings in vicinity of South Wall Road and

Carpenter Road were over 40 years old. Quite a number of guesthouses had operated in the area for a long time, but the number was dwindling. Also, vice activities were not significant. The proposed development could provide some stimulus to the area and foster the local economy. This Member was of the view that sympathetic consideration might be given to the application.

22. Majority of Members, however, did not support the application and their views were summarized as follows:

- (a) given that the application premises and the residential units above were accessible via the same staircases from the G/F, it was likely that the residents on the upper floors would be subject to nuisances from the operation of the guesthouse. However, no detailed information on the proposed security measures had been submitted and the feasibility of the measures had not been demonstrated. The proposed security door might not meet the safety requirements of the Fire Services Department;
- (b) the Board should give due consideration to the concerns raised by the residents of the upper floors. In the absence of Owners' Corporation for the building, the interests of the residents on the upper floors were not protected. It would be difficult for them to sanction the operator of the guesthouse if nuisances occurred in future;
- (c) from the documents submitted and the applicant's presentation at the meeting, there was insufficient evidence to demonstrate that the applicant had made genuine efforts to consult the owners/residents on the upper floors in respect of the proposed development and mitigation measures given that the total number of owners/residents of the building was not large; and
- (d) the premises was located in a residential/commercial building within the "R(A)" zone. Different from other hotel applications previously approved by the Board in the Ma Tau Kok area, the proposed guesthouse involved only the 1/F of the building. Approval of the application would set an undesirable precedent for the penetration of guesthouse use within the

existing commercial/residential buildings in the Kowloon City residential neighbourhood.

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

- (a) there was insufficient information in the submission to demonstrate that the operation of the proposed hotel (guesthouse) would not cause any adverse impact to the residents of the subject building; and
- (b) the approval of the application would set an undesirable precedent for the penetration of the guesthouse use within the existing commercial/residential buildings in the Kowloon City residential neighbourhood.

[Dr. Greg C.Y. Wong and Mr. Erwin A. Hardy left the meeting temporarily at this point.]

Agenda Item 4

[Open Meeting (Presentation and Question Session Only)]

Further Consideration of Review of Application No. A/K9/206
Proposed Conversion of an Existing Commercial/Office Building
for Hotel Use in “Residential (Group A)” Zone,
83 Wuhu Street, Hung Hom, Kowloon
(TPB Paper No. 7663)

[The hearing was conducted in Cantonese.]

24. The Secretary said that Dr. Greg C.Y. Wong had declared an interest in the item as his company had business dealings with the applicant. Members noted that Dr. Wong had left the meeting temporarily.

Presentation and Question Session

25. The following representatives from Government departments were invited to the

meeting at this point:

Mr. Kelvin Chan	District Planning Officer/Kowloon, Planning Department (PlanD)
Mr. C.C. Lau	Senior Town Planner/Kowloon, PlanD
Mr. Raymond Chan	Senior Assistant Law Officer, Department of Justice (DoJ)

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

Mr. Hectar Pun
Mr. K.K. Cheung
Professor Lawrence Lai
Mr. Andrew Lui
Miss Cathy Chan
Mr. Louie Kwan
Ms. Lui Tien-yen
Ms. Chan Sheung-yan
Ms. Tong Chao-leen

27. The Vice-Chairman extended a welcome and explained briefly the procedures of the review hearing. He then invited Mr. Kelvin Chan to brief Members on the background to the application.

28. With the aid of Powerpoint slides shown at the meeting, Mr. Kelvin Chan covered the following main aspects as detailed in the Paper:

- (a) the background of the application as stated in paragraph 1 of the Paper;
- (b) on 19.11.1993, the Metro Planning Committee (MPC) approved with conditions a planning application (No. A/K9/91) for a 25-storey commercial/office building with a plot ratio (PR) of 12 on the site. There was no PR restriction for the "Residential (Group A)" ("R(A)") zone under the then Hung Hom Outline Zoning Plan (OZP). A bonus PR of 0.033

was granted for the building subsequently by the Building Authority for dedication of 2 corner splay areas within the site. The existing building was completed in 1996;

- (c) taking into account the legal advice from the DoJ set out in paragraph 3 of Annex A of the Paper, the MPC agreed on 28.4.2006 to advise the applicant that there was no provision for the Board to grant planning permission for the proposed hotel development, which had a non-domestic PR exceeding the maximum PR restriction for a non-domestic building in the “R(A)” zone;
- (d) on 4.8.2006, the applicant’s legal representatives submitted further information (FI) related to the interpretation of the Remarks column under the Notes of the “R(A)” zone (Attachment B 1 of the Paper) as summarized in paragraph 2 of the Paper;
- (e) the DoJ’s comments on the applicant’s legal submissions (Attachment E of the Paper) as summarized in paragraph 3 of the Paper;
- (f) departmental comments – other departments consulted had no comment on the legal arguments put forward by the applicant;
- (g) 5 public comments were received during the statutory public inspection periods, raising concerns on the high PR of the development, environmental and waste management problems during conversion, structural safety of the adjacent building, and traffic impacts on the local area;
- (h) although the Board had approved some applications in respect of sites in the “R(A)” zone in Kowloon for conversion of the existing buildings to hotel use with PR greater than 9, these applications were approved at a time before the DoJ’s advice was sought. The legal advice would be applied to the subject and future similar cases; and
- (i) PlanD maintained its previous view of not supporting the application as

there was no provision for the Board to grant planning permission for the proposed hotel development, which had a non-domestic PR exceeding the maximum PR restriction for a non-domestic building in the “R(A)” zone.

[Ms. Starry W.K. Lee arrived to join the meeting at this point.]

29. The Vice-Chairman then invited the applicant’s representatives to elaborate on the application.

30. With reference to the Skeleton Submissions (SS) at Attachment B1 of the Paper and an extract of the Town Planning Ordinance (TPO) tabled at the meeting, Mr. Hectar Pun made the following main points:

- (a) the nature of the subject application was the same as the other similar applications approved by the Board before. The Board should not change its practice of approving similar applications up to the existing PR simply because of the recent legal advice. The Board and DoJ should not change its stance on the interpretation of the Remarks of the Notes for the “R(A)” zone;
- (b) the legal arguments as set out in the applicant’s SS were highlighted as follows:

Background

- i. the factual background and chronology of events were detailed in Section II of the SS. In particular, the relevant departments consulted had no in-principle objection to the proposed hotel use and had no adverse comments on the impacts of the proposed development from traffic, safety and environmental protection perspectives. They also did not challenge the need and demand for hotels in the area;
- ii. the aim of the TPO as set out in the Preamble was to promote the health, safety, convenience and general welfare of the community,

and should be borne in mind in interpreting the Notes of the OZP;

Legal Interpretation of the OZP

- iii. the main issue of the review was what was the maximum PR for the proposed hotel. The lease of the application site did not impose any PR restriction. If the OZP did not stipulate any restriction in this regard, the development intensity of the site would only be subject to the maximum PR prescribed in the Buildings Ordinance (BO). In the instant case, the maximum PR for non-domestic use according to the Building (Planning) Regulations (B(P)R) was 15. The PR of the proposed development was only 12.033, the same as that of the existing building;
- iv. the Remarks in the Notes of the “R(A)” zone in the OZP were irrelevant to the subject case. The applicant accepted that paragraph (1) of the Remarks did not apply to non-domestic buildings, but only to domestic and composite buildings. However, paragraph (2) of the Remarks was equally not applicable in the present case;
- v. the phrase ‘to be erected’ did not appear in paragraph (1) of the Remarks, but was specifically inserted in paragraph (2) with the specific intention of qualifying the meaning of the paragraph to catch only new non-domestic buildings to be erected in the future. The words ‘to be’ denoted that an act or event had not yet happened. Hence, the Remarks of the Notes were not applicable to alteration of existing building for non-domestic use only. In the subject case, there was no non-domestic building to be erected as a commercial building had already been erected on the site;
- vi. the reasons for excluding the phrase ‘to be erected’ in paragraph (1) of the Remarks had been explained in Professor Lawrence Lai’s Statement of Opinion at Attachment B1 of the Paper. In view of the Preamble of the TPO and the difficulties of converting domestic floor areas to non-domestic use, paragraph (1) of the Remarks specifically

allowed conversion of an existing domestic or composite building up to the stipulated PR or the PR of the existing building, whichever was the greater. This was meant to provide sufficient incentive for urban redevelopment;

- vii. if paragraph (2) of the Remarks was applicable to an existing building undergoing alteration and modification works, it would mean that the applicant had to reduce the PR of the existing building from 12.033 to 9 (i.e. a reduction of gross floor area (GFA) by 2,875m²). Such extensive alteration works would be risky to the public, non-environmentally friendly, expensive and time consuming. The practical difficulties that would result from applying paragraph (2) of the Remarks to the present case demonstrated that it could not have been the intention of the Chief Executive in Council in February 2004 in approving the OZP including the Remarks of the Notes in a way which would not only cause great inconvenience to landowners, but also environmental pollution;

[Dr. Daniel B.M. To left the meeting at this point.]

Application of Principles of Statutory Interpretation

- viii. the DoJ's comments on the applicant's SS were flawed. Remarks contained in the Notes of the OZP should be construed in the manner in which statutes were construed. It would be contrary to the well-established rules of statutory interpretation to dismiss the words 'to be erected' as superfluous or unnecessary. The proper approach was to apply the presumption that words were not used in a statute without a meaning and were not tautologous or superfluous, and so effect had to be given if possible to all the words used, for the drafter was deemed not to waste its words or said anything in vain (*Halsbury's Laws of Hong Kong, Vol. 23 (2004 Reissue), p.568, para. 365.309*);

[Mr. Erwin A. Hardy returned to join the meeting at this point.]

- ix. it was only natural and consistent with the basic rules of English grammar that the sentence should be regarded as exclusively describing an act which had not yet been done, but would, should or was intended to be done in the future. The words 'to be' were used not because the passive voice was used in the sentence. Even if the words 'to be' were not included, the use of passive voice of the statement would not be affected;
 - x. the applicant did not accept the DoJ's view that absurdities would arise if the applicant's interpretation of the Remarks was adopted;
 - xi. in any event, paragraph (2) of the Remarks should be interpreted in a way which would not deprive persons of their right to private ownership of property guaranteed under the Common Law and Basic Law. Even if there was any ambiguity, it should be resolved in favour of the applicant;
- (c) given that paragraphs (1) and (2) of the Remarks were not applicable to the present case and that the Board had previously approved a number of similar applications with a PR greater than 9 in other districts where the Remarks of the OZP were similar to the present one, the Board was bound to approve the subject application. The DoJ's view on the interpretation of the Remarks was irrelevant to the application; and
- (d) the issue before the Board was whether the application should be approved or not. The PlanD's view that there was no provision for the Board to consider the present application was wrong and unfair to the applicant. The Board should deal with the application under sections 16 and 17 of the TPO. Otherwise, the applicant would be deprived of the right for review and appeal under the TPO.

31. The Vice-Chairman asked Mr. Raymond Chan to respond to the legal points made by the applicant's legal representatives. The Secretary also requested Mr. Chan to advise, if the applicant's argument that both paragraphs (1) and (2) were not applicable to the

subject development was accepted, whether the Board had the power to reject the application based on planning merits.

32. In response, Mr. Raymond Chan made the following main points:

- (a) there was no question of the DoJ changing its opinion as this was the first time the DoJ provided legal opinions on the issue;
- (b) the Board had not refused to deal with the application as alleged. It only advised the applicant that there was no provision to grant planning permission to the applicant after obtaining the legal advice;

The Expression ‘to be erected’ in Paragraph (2) of the Remarks

- (c) the words ‘to be’ did not necessarily connote something in the future. In fact, the words “to be” were used because of passive voice;
- (d) the applicant argued that words were not used in a statute without a meaning and were not tautologous or superfluous. In paragraphs 38 to 42 of the SS, the applicant relied on some case authorities in support of its argument that the expression ‘to be erected’ should be given a meaning. It should, however, point out that the judgments in the cases quoted by the applicant contained qualifications like ‘unless from necessity one would be obliged to do so’ and ‘unless there is good reason to the contrary’;
- (e) the following 2 absurd consequences would arise if the applicant’s argument was accepted:
 - i. paragraph (2) of the Remarks related to new buildings only, whereas paragraph (1) applied to both existing and new buildings. This was an absurdity. Paragraph 7.3.3 of the Explanatory Statement (ES) provided that developments or redevelopments within the “R(A)” zone were subject to specific control on PR, except otherwise specified in the Notes. The Notes did not say that redeveloping an existing non-domestic building was not subject to PR control;

- ii. if the applicant's argument that a converted hotel was governed by the B(P)R was accepted, the PR of the site could be as high as 15. This meant that the PR for a converted non-domestic building might even be greater than that of the existing building (PR 12.033 in this case). This was another absurdity. Even if paragraph (2) of the Remarks applied only to new buildings to be erected, the proposed conversion of the existing commercial building into a hotel building was tantamount to erecting a new building. It was quite obvious that the end result of the proposed conversion was that a new building would be erected;

Ambiguity in Paragraph (2) of the Remarks

- (f) there was no ambiguity in paragraph (2) of the Remarks. Therefore, there was no question of giving the benefit of doubt to the applicant;

Deprivation of Property Rights

- (g) paragraphs (1) and (2) of the Remarks did not take away property rights. Under the OZP, an owner was not required to demolish his existing building in order to comply with the restrictions under the OZP. Furthermore, it was well-established that the right to use and develop private property was not absolute but was subject to limitation by countervailing public interests. In particular, the possible imposition or modification of planning control which might be adverse to the economic value of property was a risk inherent in private ownership;

Consequence of D of J's Interpretation

- (h) paragraphs (1) and (2) of the Remarks dealt with the controls on domestic and composite buildings, and non-domestic buildings respectively;
- (i) as a non-domestic building was not totally compatible with the residential characteristic of the "R(A)" zone, it was not surprising that upon

conversion of an existing building or redevelopment of an existing building resulting in a non-domestic building, the benefit of the PR of the previous building was not made available;

- (j) the applicant's argument that if certain parts of the existing building had to be demolished, waste material would be produced which was not environmentally-friendly was irrelevant. The issue before the Board was whether it had the legal power under section 16 of the TPO to approve the application;

The Board's Power

- (k) the Board should first decide whether it had the power under the TPO to consider the application. If the Board's decision was affirmative, it could then proceed to consider the application on its own planning merits; and
- (l) it was the DoJ's view that there was no provision for the Board to grant planning permission for the proposed hotel development.

33. In response to Mr. Raymond Chan's presentation, Mr. Hectar Pun made the following main points:

- (a) if the Board accepted the applicant's contention that paragraphs (1) and (2) of the Remarks did not apply to non-domestic buildings, the Board had to approve the application given that similar planning applications had been approved before and that there were no technical reasons against the proposed PR of 12.033 as evidenced in the comments of concerned departments;
- (b) the DoJ's view that there was no ambiguity in the Remarks could not be right. Otherwise, the issue would not have to be contested at the hearing. As stated before, any ambiguity on the Remarks of the Notes should be resolved in favour of the applicant, and in a way which would not deprive the applicant's rights to private ownership of property guaranteed under the Common Law and Basic Law;

- (c) there was no PR control on the conversion of the subject building to hotel use, which could be developed up to the maximum PR of 15 under the B(P)R;
- (d) the applicant's right to appeal would be deprived if the Board took the view that it had no power to consider the application. The only remedy for the applicant was to seek judicial review of the Board's decision;
- (e) paragraph 7.3.3 of the ES did not mention non-domestic buildings. Apparently, it was not meant to deal with the PR control of these buildings; and
- (f) the DoJ's interpretation of the Remarks would result in absurdities as the PR of the existing building would have to be reduced from 12.033 to 9 even if one floor of the building was to be converted for hotel use. Also, if conversion of an existing building to hotel was treated as construction of a new building, it would not be necessary to distinguish domestic and composite uses from non-domestic use for the purpose of PR control as stipulated in the Remarks.

34. In reply, Mr. Raymond Chan said that it could not be right to argue that the Board had to abide by its previous decisions if the Board was not empowered to make such decisions. With regard to paragraph 7.3.3 of the ES, the fact that paragraph 7.3.3 did not mention PR of the existing building indicated that paragraph 7.3.3 was not intended to cover everything that ought to be covered.

35. The Secretary said that the applicant's point that the Board had all along approved similar applications for conversion of buildings for hotel use was not correct. She went on to show to Members a similar application (No. A/K1/103) for conversion of a commercial/office building into hotel use in Temple Street rejected by the MPC on 24.1.1997 on the ground that there was no provision under the Notes of the Tsim Sha Tsui OZP for the Board to grant planning permission to the application which proposed a PR exceeding the restriction specified in the OZP. The construction of the relevant Remarks in the Tsim Sha Tsui OZP was the same as that of paragraphs (1) and (2) under the Remarks of the Notes for

the “R(A)” zone in the Hung Hom OZP.

[Mr. Patrick L.C. Lau left the meeting temporarily at this point.]

36. A Member said that the main difference in opinions between the applicant and DoJ was on the interpretation of the Remarks of the Notes for the “R(A)” zone, particularly the phrase ‘to be erected’ in paragraph (2). This Member asked whether the Board had the power to choose which legal opinion it should adopt. In reply, Mr. Hectar Pun said that both the applicant and DoJ agreed that paragraph (1) of the Remarks was not applicable to the subject application. The two parties differed in whether paragraph (2) of the Remarks was applicable to the present case. The applicant’s contention was that paragraph (2) was only applicable to new non-domestic buildings, but not relevant to the present case which involved conversion of an existing commercial/office building to hotel use. Mr. Raymond Chan said that the Board was not bound to accept the DoJ’s view, but should consider the views from both sides independently and impartially in deliberating on the case.

[Mr. Tony C.N. Kan and Mr. Felix W. Fong left the meeting temporarily at this point.]

37. In reply to another Member’s query with regard to the interpretation of paragraph 7.3.3 of the ES, Mr. Raymond Chan said that paragraph 7.3.3 of the ES did not mention non-domestic buildings. However, the fact that paragraph 7.3.3 did not mention PR of the existing building indicated that paragraph 7.3.3 was not intended to cover everything that ought to be covered. The DoJ was of the view that paragraph (2) of the Remarks was applicable to the present case as it specifically referred to non-domestic buildings. Mr. Hectar Pun said that the ES did not form part of the OZP and had no legal status. Paragraph 7.3.3 of the ES only applied to domestic and composite buildings. It did not specifically mention any PR control for conversion of an existing building to non-domestic use simply because there was no intention to do so. Mr. Raymond Chan said that although ES did not form part of OZP, it had been established in case law that the former could be used as an aid to interpretation of an OZP.

38. In reply to a Member’s question, Mr. Raymond Chan reaffirmed that the Board could consider the application. However, it had no power under the TPO to approve the application which proposed a PR exceeding the restriction stipulated in the OZP.

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

[Mr. Patrick L.C. Lau, Mr. Tony C.N. Kan and Mr. Felix W. Fong returned to join the meeting at this point.]

Deliberation Session

40. A Member was of the view that the phrase 'to be erected' was not solely a matter of legal interpretation, but also English grammar. As the application was only for conversion of an existing building for hotel use, the Board might give benefit of doubt to the applicant if there was any ambiguity in the Remarks of the Notes for the "R(A)" zone. The Board should consider whether its previous decisions on similar cases were relevant. In response, the Secretary said that the DoJ was of the view that the Board was not abided by its previous decisions since the Board actually had no power under the TPO to grant planning permission under such circumstances.

[Mr. Erwin A. Hardy left the meeting at this point.]

41. In response to some Members' enquiry about the details of similar applications considered by the Board in the past, the Secretary said that as pointed out earlier at the meeting, a similar application (No. A/K1/103) in Temple Street had been rejected on the ground that there was no provision under the Notes of the relevant OZP for the Board to grant planning permission to the application which proposed a PR exceeding the restriction specified in the OZP. Notwithstanding, the Board had also approved 3 similar applications (No. A/K2/172, A/K2/173 and A/K3/432) for conversion of whole buildings to hotel use with a PR greater than 9. In view of the inconsistency, legal advice on the proper interpretation of the Notes had been sought from the DoJ.

42. The Vice-Chairman said that the issue before the Board was whether the Board had power to approve the application under the TPO. The DoJ had taken the view that there

was no ambiguity in the Remarks and there was no provision under the TPO for the Board to grant planning permission in the present case. If Members considered otherwise, the Board would then have to deliberate on the application on its own planning merits. A Member said that the Board should not continue to make decisions which it was not empowered to make.

43. A Member pointed out that the Chinese version of the Notes clearly indicated that paragraph (2) referred to all non-domestic buildings, irrespective of whether they were existing or new buildings. A native English speaking Member said that there were no ambiguities in the words 'to be' in the English version which were used simply because passive voice was used in the sentence. The wording should not be used to construe as an intention to control the PR of new non-domestic buildings only. On the interpretation of the Remarks of the Notes for the "R(A)" zone, Members were of the view that the DoJ's interpretation should be followed.

44. A Member said that even if the Board had power to grant planning permission to the proposal, the application would not be supported in view of the planning intention of the "R(A)" zone which was for public and private residential developments. Another Member said that Wuhu Street was already rather congested and the traffic impact of the proposal should be considered.

45. In response to a question raised by a Member, the Secretary said that Members should make reference to the planning intention of the "R(A)" zone, which was for development of private residential developments, in interpreting the Notes. Given the planning intention, domestic and composite developments were allowed to be redeveloped to the maximum PR of 7.5 and 9 respectively, or the PR of the existing building, whichever was greater. However, a non-domestic building was not in line with the planning intention for the "R(A)" zone, and hence the benefit of enjoying the existing PR did not apply. Should a non-domestic building be given the benefit of enjoying the existing PR, this would in effect discourage lot owners from redeveloping their site to meet the "R(A)" planning intention, which was definitely not the intention of the Board.

46. A Member said that even if there was provision to consider the planning application, the Board should not approve it because of the contravention to the planning intention of the "R(A)" zone. Mrs. Ava S.Y. Ng said that as the issues on contravention to the planning intention and compatibility with the neighbouring developments had not been

fully addressed by the applicant and concerned departments, it should not be taken as a ground for rejection. The Vice-Chairman said that it was clear that the planning intention of the “R(A)” zone was not for hotel development. More importantly, there was no provision for the Board to grant planning permission for the proposed development involving a PR greater than 9. Members agreed.

47. After further deliberation, the Board agreed to reject the application on review and advise the applicant that there was no provision for the Board to grant planning permission for the proposed hotel development, which had a non-domestic plot ratio exceeding the maximum plot ratio restriction for non-domestic building in the “Residential (Group A)” zone.

[Dr. Greg C.Y. Wong returned to join the meeting, whilst Ms. Maggie M.K. Chan, Mr. Felix W. Fong, Mr. Walter K.L. Chan, Dr. C.N. Ng, Mr. Raymond Y.M. Chan, Ms. Starry W.K. Lee, Mr. David W.M. Chan and Mr. Stanley Y.F. Wong left the meeting at this point.]

Agenda Item 5

[Open Meeting (Presentation and Question Session Only)]

Further Consideration of Review of Application No. A/K2/177
Proposed Hotel (Guesthouse) in “Residential (Group A)” Zone,
G/F, 1/F, 2/F to 4/F(Part) and 5/F to 14/F, Wgrlex Building,
61-63 Portland Street, Yau Ma Tei, Kowloon
(TPB Paper No. 7664)

[The hearing was conducted in Chinese.]

48. The Secretary said that the Dr. Daniel B.M. To and Dr. James C.W. Lau had declared interests in the item as they had business dealings with the applicant. Members noted that Dr. To had already left the meeting.

[Dr. James C.W. Lau left the meeting temporarily at this point.]

Presentation and Question Session

49. Ms. Heidi Chan, District Planning Officer/Tsuen Wan and West Kowloon, Planning Department (PlanD) was invited to the meeting at this point.

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

Mr. K.C. Kong

Mr. James Ng

51. The Vice-Chairman extended a welcome and explained briefly the procedures of the review hearing. The Vice-Chairman then invited Ms. Heidi Chan to brief Members on the background to the application.

52. With the aid of Powerpoint slides, Ms. Heidi Chan covered the following main aspects as detailed in the Paper:

- (a) the background of the application as stated in paragraph 1 of the Paper. Taking into account the legal advice from the Department of Justice (DoJ) on a relevant case (No. A/K9/206), the Metro Planning Committee (MPC) agreed on 28.4.2006 to advise the applicant that there was no provision for the Board to grant planning permission for the proposed hotel (guesthouse) development, which had a non-domestic plot ratio (PR) exceeding the maximum PR restriction for a non-domestic building in the "Residential (Group A)" ("R(A)") zone;
- (b) further written submission had been submitted by the applicant in support of the review application as summarized in paragraph 2 of the Paper. The applicant stated that the MPC on 24.6.2005 had approved a similar planning application (No. A/K2/172) for converting an existing 13-storey commercial/office development at Nos. 279-283 Shanghai Street, Yau Ma Tei within the "R(A)" zone into a guesthouse with a PR of about 10.49 which was greater than the maximum PR of 9;
- (c) the DoJ's comments on the FI in support of application No. A/K9/206

relevant to the current review application was that paragraph (1) of the Remarks of the Notes for the “R(A)” zone dealt with domestic and composite buildings, whereas paragraph (2) of the Remarks dealt with non-domestic buildings. As the subject building after the partial conversion was still considered as a non-domestic building, it should be subject to a maximum PR of 9;

- (d) departmental comments – other departments consulted had no comment on the legal issues of the case;
- (e) although the MPC had approved similar applications for guesthouse use with PR exceeding the maximum PR stipulated in the OZP, the subject and future similar cases should be dealt with based on the latest legal advice; and
- (f) PlanD’s view – the application was not supported as there was no provision for the Board to grant planning permission for the proposed hotel development, which had a non-domestic PR exceeding the maximum PR restriction for a non-domestic building in the “R(A)” zone.

53. The Vice-Chairman then invited the applicant’s representatives to elaborate on the application.

54. Mr. K.C. Kong made the following main points:

- (a) the application was for converting part of an existing 15-storey commercial/office building to a guesthouse. The existing office use on 2/F to 4/F (part) would remain unchanged;
- (b) the purpose of the Kowloon Density Study was to prohibit further increase in development intensity in the Kowloon area. Paragraph (1) of the Remarks of the Notes for the “R(A)” zone was intended to allow development of domestic and composite buildings to the maximum of 7.5 and 9 respectively or that of the existing buildings, whichever was the greater;

- (c) the OZP did not define domestic and non-domestic uses. Under the Buildings Ordinance (BO), guesthouse was a place of habitation and was regarded as domestic use. Upon conversion of the subject premises under application to hotel use, the building would become a composite building and hence should be subject to the maximum PR of the existing building (i.e. 10.99) as provided for in paragraph (1) of the Remarks of the Notes for the “R(A)” zone; and

- (d) the proposed development would not have any adverse impacts on the pedestrian and traffic flows in the area.

55. In reply to a Member’s query on whether guesthouse should be treated as a domestic use and what were the differences between hotel and guesthouse in terms of licensing requirements, Mr. K.C. Kong said that the BO and the Buildings Department had all along treated hotel and guesthouse as domestic use. Operation of both hotel and guesthouse would require licences from the licensing authority. Mr. Kong reiterated that the subject building would become a composite building upon conversion of the application premises into a guesthouse as 2/F to 4/F (part) of the building would remain as office use.

56. A Member asked whether the Board in interpreting the Notes of the OZP should follow the interpretation and definitions under the BO. The Secretary said that while the definitions of gross floor area and PR under the BO would be followed, it was the Board’s practice to treat hotel or guesthouse as a commercial use. As such, the PR for hotel development could be up to 12 and 15 in the “Commercial” zone in Kowloon and Hong Kong Island respectively. A hotel development was not regarded as a residential building in planning terms.

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

Deliberation Session

58. Members had a discussion on the application and did not agree to the applicant's view that upon conversion of the premises to guesthouse use, the building would become a composite building. Hence, the restriction stipulated in paragraph (2) of the Remarks of the Notes for the "R(A)" zone should be applicable to the case.

59. After further deliberation, the Board agreed to reject the application on review and advise the applicant that there was no provision for the Board to grant planning permission for the proposed hotel development, which had a non-domestic plot ratio exceeding the maximum plot ratio restriction for a non-domestic building in the "Residential (Group A)" zone.

[Dr. James C.W. Lau returned to join the meeting at this point.]

Agenda Item 6

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/YL-HT/444

Proposed Three New Territories Exempted Houses (Small Houses)

in "Village Type Development" and "Recreation" Zones,

Lots 1744S.A, 1744S.J and 1744S.K in D.D. 125, Ha Tsuen, Yuen Long

(TPB Paper No. 7665)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

60. Mr. Wilson So, District Planning Officer/Tuen Mun and Yuen Long of the Planning Department (PlanD), and the following applicant and his representative were invited to the meeting at this point:

Mr. Tang Kwong-yiu

- Applicant

Mr. Sit Kwok-keung

- Applicant's representative

61. The Vice-Chairman extended a welcome and explained briefly the procedures of the review hearing. The Vice-Chairman then invited Mr. Wilson So to brief Members on the background to the application.

62. With the aid of plans and photos shown at the meeting, Mr. Wilson So covered the following main aspects as detailed in the Paper:

- (a) the reasons for the Rural and New Town Planning Committee to reject the application on 19.5.2006;
- (b) in the further written representation submitted by the applicant, it was stated that partial approval of the proposed New Territories Exempted House (NTEH) on Lot 1744S.J would jeopardize the integrated Small House (SH) development on Lots No. 1744S.A to 1744S.N in D.D. 125;
- (c) departmental comments – the District Lands Officer/Yuen Long, Lands Department (LandsD) advised that no agreed village ‘environs’ (‘VE’) boundary plans for San Uk Tsuen and Lei Uk Tsuen had been drawn. As Lots No. 1744S.A and 1744S.K were outside the 300 feet distance from an Old Scheduled House Lot of San Uk Tsuen, they were regarded as outside the ‘VE’ of San Uk Tsuen. According to the current policy of LandsD, if the proposed SH site was outside or more than 50% of it was outside the ‘VE’ and “Village Type Development” (“V”) zone, such application would generally not be considered. He therefore did not support the proposed development on Lots No. 1744S.A and 1744S.K. The Chief Engineer/Mainland North, Drainage Services Department advised that there was concern about flooding susceptibility at San Uk Tsuen and the applicant should submit a drainage proposal and propose, provide and maintain a proper drainage system to his satisfaction;
- (d) no public comment was received during the statutory publication periods of the planning and review applications. The District Officer/Yuen Long advised that the Village Representatives of San Uk Tsuen strongly

supported the application; and

- (e) PlanD's view – the application was not supported for the reasons detailed in paragraph 6.1 of the Paper.

63. The Vice-Chairman then invited the applicant and his representative to elaborate on the application.

64. Mr. Sit Kwok-keung tabled a set of documents and made the following main points:

- (a) the Board should not resist the SH Policy and regard it as giving a favour to the indigenous villagers in the New Territories. Instead, it was a Government tool to attract villagers to use their own resources to build houses for habitation and help meet part of the territorial housing demand;
- (b) an application for the proposed development of 11 SHs on Lots No. 1744S.A to 1744S.K in D.D. 125 was submitted on 25.2.2006, but returned to the applicant by the Secretariat via a letter of 28.2.2006 for the reason that those NTEHs within the “V” zone which did not require planning permission from the Board should not be included in the application. The applicant was thus forced to break up the proposal into two and submit a fresh application on 21.3.2006. However, the second submission was also not accepted by the Secretariat and the applicant had to revise it and resubmit the third application (i.e. the subject application) on 22.3.2006. The subject application covered only 3 SHs whose footprints fell entirely or partly outside the “V” zone;
- (c) the applicant questioned whether the Secretariat had the power of not accepting a planning application without referring it to the Board for consideration;
- (d) Lot No. 1744S.B did not form part of the subject application as the footprint of the proposed SH fell entirely within the “Village Type Development” (“V”) zone. However, the District Planning Officer/Tuen

Mun and Yuen Long had recently advised the LandsD that planning permission was required as part of the lot was within the “Recreation” (“REC”) zone, which was contrary to his advice rendered to the applicant in 1994 that planning permission was required only if the SH fell within the “REC” zone. As the “REC” part of the lot would remain vacant upon completion of the SH development, it should not be subject to planning application;

- (e) the Secretariat’s refusal to process the original application meant that not only the Board was deprived of the opportunity to consider the application in a holistic manner, but also that the applicant had no choice but to make the present application which covered only 3 SH sites outside or partly outside the “V” zone. Such an approach was unsatisfactory and result in the following problems/difficulties:
 - i. according to the requirements of the LandsD and Fire Services Department, emergency vehicular access (EVA) would be required for a development involving more than 10 SHs. As development of the remaining 8 SHs would not require planning permission, it would create confusion as to whether their future owners should be responsible for the maintenance of the EVA;
 - ii. out of the 11 SH sites within the same integrated development, only the 3 SHs under application would be subject to a set of stringent planning conditions, but not the other 8 sites; and
 - iii. owing to the artificial separation of the subject 3 SHs from the rest of the proposal, the whole integrated development could not be considered comprehensively;
- (f) the extent of the ‘VE’ of San Uk Tsuen had not been agreed by the local villagers. The “V” zone boundary had been drawn arbitrarily without regard to the local topography. The “V” zone should be extended westward to cover the application site and align with the footpath to the west. The Board should approve the application as the application site

should be zoned “V” if the local topography had been duly considered; and

- (g) no department had in-principle objection to the application. The applicant had maintained close liaison with the Drainage Services Department with a view to providing drainage facilities to their satisfaction. In any event, technical issues should be left to the District Lands Office Conference (DLOC) whilst provision of landscaping and other facilities on the application site could be addressed through the established land administration system. The Board should grant unconditional approval to the subject application.

65. The Vice-Chairman said that the Secretariat was the executive arm of the Board and tasked to assist the Board in processing planning applications. The Secretary supplemented that the letter issued by the Secretariat on 28.2.2006 was meant to assist the applicant by advising that those SHs felling within the “V” zone did not require planning permission from the Board and there were some requirements yet to be fulfilled by the applicant. She could explain the matter to the applicant in greater detail after the meeting, if necessary.

66. Mr. Patrick L.C. Lau referred Members to paragraph 4.1.1 of the Paper which set out LandsD’s view of not supporting the proposed development. Mr. Lau went on to ask the applicant why he considered that the application could be approved by the DLOC. In reply, Mr. Sit Kwok-keung said that the applicant had liaised with the District Lands Office (DLO) since 1997 and there was no indication from the DLO that the application would be rejected. Given the SH Policy, the LandsD could hardly reject the subject application.

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

Deliberation Session

68. Having heard the applicant's submission, Members did not consider that there was any justification for approving the proposed NTEHs at Lots No. 1744S.A and 1744S.K. After deliberation, the Board decided to reject the application on review of the proposed NTEHs at Lots No. 1744S.A and 1744S.K and the reasons were:

- (a) the proposed New Territories Exempted Houses (NTEHs) (Small Houses) were not in line with the planning intention of the "Recreation" ("REC") zone which was to designate areas for developments restricted to recreational uses. "REC" zone encouraged the development of recreation and tourism. No strong justification had been provided in the submission for a departure from the planning intention;
- (b) the proposed NTEHs (Small Houses) did not comply with the interim criteria for assessing planning applications for NTEH/Small House development in that the proposed NTEHs were both outside the village environs of recognized villages and the "Village Type Development" ("V") zone. There was insufficient information in the submission to demonstrate why suitable sites could not be made available within the areas zoned "V" for the proposed Small House development;
- (c) Small Houses should be developed within the "V" zone so as to ensure an orderly development and the sufficient provision of infrastructure. Approval of the application would set an undesirable precedent for other similar applications in the areas; and
- (d) there was insufficient information in the submission to demonstrate that there would not be any adverse drainage impact on the surrounding areas.

[Mr. Leslie H.C. Chen left the meeting whilst Dr. James C.W. Lau left the meeting temporarily at this point.]

Agenda Item 7

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/YL-TYST/319
Temporary Vehicle Repair Workshop for a Period of 3 Years
in “Undetermined” and “Village Type Development” Zones
Lots 1335(Part), 1548(Part), 1550S.A(Part), 1550S.B, 1551(Part)
and 1552(Part) in D.D. 119, Tong Yan San Tsuen, Yuen Long
(TPB Paper No. 7667)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

69. The Secretary said that Dr. James C.W. Lau had declared an interest in the item as he had business dealings with the applicant’s consultants, Top Bright Consultants Ltd. Members noted that Dr. James C.W. Lau had left the meeting temporarily.

70. Mr. Wilson So, District Planning Officer/Tuen Mun and Yuen Long of the Planning Department (PlanD), and the following applicant’s representatives were invited to the meeting at this point:

Mr. Raymond Leung

Ms. Shirley Chan

71. The Vice-Chairman extended a welcome and explained briefly the procedures of the review hearing. The Vice-Chairman then invited Mr. Wilson So to brief Members on the background to the application.

72. With the aid of plans and photos shown at the meeting, Mr. Wilson So covered the following main aspects as detailed in the Paper:

- (a) the reasons for the Rural and New Town Planning Committee to reject the application on 2.6.2006;
- (b) the previous applications concerning the site and the similar applications within the same “Village Type Development” (“V”) and “Undetermined” (“U”) zones;

- (c) no further written representations had been put forth by the applicant in support of the review application;
- (d) departmental comments – the Director of Environmental Protection advised that in accordance with the revised Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites, he did not support the application as there were sensitive uses in the vicinity (5m from the site) and environmental nuisance was expected. The Chief Engineer/Mainland North, Drainage Services Department advised that should the application be approved, conditions on submission and implementation of drainage proposals should be imposed. The Assistant Commissioner for Transport/New Territories, Transport Department was of the view that the Board should consider whether approval of the application would set an undesirable precedent for similar applications in the vicinity;
- (e) one public comment from the Shap Pat Heung Rural Committee was received during the statutory publication period of the review application objecting to the application on grounds of environmental pollution, noise, flooding and traffic problems; and
- (f) PlanD's view – the application was not supported for the reasons detailed in paragraph 6.1 of the Paper.

73. The Vice-Chairman then invited the applicant's representatives to elaborate on the application.

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

- (a) the applicant would now request the Board to grant planning permission for a period of 1 year (instead of 3 years as applied for at the section 16 stage) so that he could have time to relocate the business to another location;
- (b) the site was the subject of 2 previous applications for temporary open

storage of private cars and vehicle parts and ancillary workshop rejected by the Board in 2002 and 2004. However, there had been major changes in planning circumstances since then. Under the Board's Guidelines No. 13D on 'Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance' issued in November 2005, part of the application site and a large area to its west, north and south had been re-designated from Category 2 to Category 1 areas which were considered suitable for open storage (OS) and port back-up (PBU) uses. This implied that the Board did not see any major traffic, environmental and drainage constraints in the area for the purpose of accommodating OS and PBU uses;

- (c) there was no local objection to the proposed development. The surrounding area was characterised by a mix of open storage yards, workshops, residential structures, and agricultural and vacant land. Although there were some domestic structures in the vicinity, they were generally 1-storey high, same as the proposed structures within the application site. If environmental assessment was considered necessary, it could be imposed as an approval condition and the applicant would comply with;
- (d) the landowner was not an indigenous villager and there was no imminent demand for SH development on the "V" portion of the site. The Board was asked to give sympathetic consideration to the application and grant a temporary permission for a period of 1 year in order to allow time for the applicant to relocate and develop this part of the site for SHs; and
- (e) there was no in-principle objection from the Drainage Services Department and the Transport Department to the proposed use. Also, similar applications in the vicinity had been approved by the Board.

75. In reply to a Member's question, Mr. Raymond Leung said that the applicant could sell the site to the indigenous villagers for SH development or leave it vacant upon expiry of the temporary approval. During the approval period, the applicant would provide drains and landscaping within the site.

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

Deliberation Session

77. A Member asked whether the Board could deliberate on the application given that the period of planning permission sought had now been reduced from 3 years to 1 year. In reply, the Secretary said that notwithstanding the reduction in the period of temporary permission sought, there was no material change to the nature and scale of the proposed use. Hence, the Board could consider the application under section 17 of the Town Planning Ordinance.

78. The Vice-Chairman said that the proposed use was not in line with the planning intention of the "V" zone and there was insufficient information in the submission to demonstrate that the development would not generate adverse impacts on the surrounding areas. Members agreed.

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

- (a) the development was not in line with the planning intention of the "Village Type Development" zone which was to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone was primarily intended for development of Small Houses by indigenous villagers. It was also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. No strong justification had been given in the submission for a departure from the planning intention, even on a temporary basis; and

- (b) there was insufficient information in the submission to demonstrate that the development would not generate adverse environmental, drainage and traffic impacts on the surrounding areas.

[Dr. James C.W. Lau returned to join the meeting at this point.]

Agenda Item 8

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/NE-TK/205

Proposed Private Garden in “Village Type Development” and

“Green Belt” Zones, Government Land Adjoining Lot 595S.A in D.D. 14,

Tung Tsz Village, Ting Kok, Tai Po

(TPB Paper No. 7668)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

80. The Secretary said that sufficient notice had been given to the applicant but the applicant had indicated that she would not attend the hearing. The Board agreed to proceed with consideration of the review application in the absence of the applicant.

81. Mr. W.K. Hui, District Planning Officer/Sha Tin, Tai Po and North of the Planning Department (PlanD), was invited to the meeting at this point.

82. The Vice-Chairman extended a welcome and invited Mr. W.K. Hui to brief Members on the background to the application.

83. With the aid of plans and photos shown at the meeting, Mr. W.K. Hui covered the following main aspects as detailed in the Paper:

- (a) on 19.5.2006, the Rural and New Town Planning Committee (RNTPC) decided to partially approve the application for private garden in the area

within the Short Term Tenancy (STT) on a temporary basis of three years, with the two proposed extension areas at the southern and eastern parts of the site excluded, subject to the submission and implementation of tree preservation proposal and reinstatement of the site to an amenity area upon expiry of the planning permission. The applicant sought a review of the RNTPC's decision to partially approve the application and requested the Board to waive the approval conditions;

- (b) the previous application concerning the site and the similar application within the same "Green Belt" ("GB") zone;
- (c) in support of the review application, the applicant had submitted further information as summarized in paragraph 3 of the Paper;
- (d) departmental comments – the District Lands Officer/Tai Po, Lands Department advised that the fenced off area was the subject of a STT approved on 1.5.2006 on regularization basis to resume control from illegal occupation. He had no objection to the garden use on the fenced off area. However, the proposed inclusion in the application of two extension areas outside the fenced off area contravened the spirit to regularize the private garden use, and there was a 'U' shape drainage outlet within the eastern extension area. He objected to the additional extensions. The Director of Agriculture, Fisheries and Conservation had reservation on the proposed inclusion of the eastern extension from the tree preservation point of view as a large tree was growing on that extension area. The Chief Town Planner/Urban Design and Landscape, PlanD advised that the roots of that large tree might extend beyond the existing fence below ground and the tree crown might overhang onto the subject house. A planning condition to require tree preservation was necessary so that the tree would not be felled, pruned or disturbed without prior consent from the relevant departments should the review application be approved;
- (e) no public comments were received during the statutory public inspection periods of the planning and review application and no local objection was received; and

- (f) PlanD's view – the application was not supported for the reasons detailed in paragraph 6.1 of the Paper.

84. In reply to a Member's query, Mr. W.K. Hui said that in general planting grass on the application site would meet condition (d) of the planning permission for reinstatement of the site.

85. As Members had no question to raise, the Vice-Chairman thanked the representative of PlanD for attending the meeting. He left the meeting at this point.

Deliberation Session

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

- (a) the inclusion of the two extension areas would contravene the spirit to regularize the private garden use under the Short Term Tenancy (STT) in respect of the site, and any further extension beyond the STT should not be allowed;
- (b) a large tree was located at the eastern portion of the site. Imposition of approval conditions related to submission and implementation of tree preservation proposal was to preserve the tree, and to ensure that the tree would not be disturbed by activities associated with the use of the land without prior consent from the relevant Government departments; and
- (c) imposition of an approval condition requiring the reinstatement of the site upon expiry of the planning permission was to ensure that the "Village Type Development" portion of the application site could be released for Small House development in the future whereas the "Green Belt" portion of the site be reinstated to match with the surrounding green and natural environment.

Agenda Item 9

[Open Meeting]

Submission of the Draft Shek Kip Mei Outline Zoning Plan No. S/K4/20A
under Section 8 of the Town Planning Ordinance
to the Chief Executive in Council for Approval
(TPB Paper No. 7670)

87. The Secretary briefly introduced the Paper.
88. After deliberation, the Board:
- (a) agreed that the draft Shek Kip Mei Outline Zoning Plan (OZP) No. S/K4/20A and its Notes at Annexes A and B of the Paper respectively were suitable for submission under the Town Planning Ordinance to the Chief Executive in Council (CE in C) for approval;
 - (b) endorsed the updated Explanatory Statement (ES) for the draft Shek Kip Mei OZP No. S/K4/20A at Annex C 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 No. S/K4/20A.

Agenda Item 10

[Open Meeting]

Submission of the Draft Kowloon Tong Outline Zoning Plan No. S/K18/12A
under Section 8 of the Town Planning Ordinance
to the Chief Executive in Council for Approval
(TPB Paper No. 7671)

89. The Secretary briefly introduced the Paper.

90. After deliberation, the Board:

- (a) agreed that the draft Kowloon Tong Outline Zoning Plan (OZP) No. S/K18/12A and its Notes at Annexes I and II of the Paper respectively were suitable for submission under the Town Planning Ordinance to the Chief Executive in Council (CE in C) for approval;
- (b) endorsed the updated Explanatory Statement (ES) for the draft Kowloon Tong OZP No. S/K18/12A 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 No. S/K18/12A.

Agenda Item 11

[Confidential Item]

91. The minutes of this item were recorded under separate confidential cover.

Agenda Item 12

[Open Meeting]

Any Other Business

92. There being no other business, the meeting was closed at 1:40 p.m.