

**Minutes of 1283rd Meeting of the
Town Planning Board held on 21.10.2022**

Present

Permanent Secretary for Development
(Planning and Lands) (Acting)
Mr Vic C.H. Yau

Chairperson

Mr Lincoln L.H. Huang

Vice-chairperson

Mr Wilson Y.W. Fung

Mr Stephen L.H. Liu

Dr C.H. Hau

Miss Winnie W.M. Ng

Mr Franklin Yu

Mr Stanley T.S. Choi

Mr Daniel K.S. Lau

Ms Lilian S.K. Law

Mr K.W. Leung

Professor John C.Y. Ng

Professor Jonathan W.C. Wong

Mr Ricky W.Y. Yu

Mrs Vivian K.F. Cheung

Mr Ben S.S. Lui

Mr K.L. Wong

Principal Assistant Secretary (Transport and Logistics) 3
Transport and Logistics Bureau
Miss Fiona W.S. Li

Chief Engineer (Works),
Home Affairs Department
Mr Paul Y.K. Au

Assistant Director (Environmental Assessment),
Environmental Protection Department
Mr Terence S.W. Tsang

Director of Lands
Mr Andrew C.W. Lai

Director of Planning
Mr Ivan M.K. Chung

Deputy Director of Planning/District
Mr C.K. Yip

Secretary

Absent with Apologies

Ms Sandy H.Y. Wong

Mr L.T. Kwok

Professor Roger C.K. Chan

Dr Venus Y.H. Lun

Dr Conrad T.C. Wong

Mr Vincent K.Y. Ho

Mr Timothy K.W. Ma

Ms Bernadette W.S. Tsui

In Attendance

Assistant Director of Planning/Board

Ms Lily Y.M. Yam

Chief Town Planner/Town Planning Board

Ms Josephine Y.M. Lo

Senior Town Planner/Town Planning Board

Ms Annie H.Y. Wong

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 1282nd Meeting held on 7.10.2022

[The item was conducted in Cantonese.]

1. The draft minutes of the 1282nd meeting held on 7.10.2022 would be sent to Members in due course. Subject to any proposed amendments by Members, the minutes would be confirmed.

[Post-meeting Note: The minutes were sent to Members on 26.10.2022 and were confirmed on 27.10.2022 without amendments.]

Agenda Item 2

[Open Meeting]

Matters Arising

[The item was conducted in Cantonese.]

(i) Abandonment of Town Planning Appeal

Town Planning Appeal No. 1 of 2022

Proposed Minor Relaxation of Building Height Restriction for Permitted Flat Use in “Residential (Group B)” Zone and area shown as ‘Road’, 33-35 Kennedy Road, Wan Chai, Hong Kong

(Application No. A/H5/414)

2. The Secretary reported that an appeal had been abandoned by the appellant of his own accord. Town Planning Appeal No. 1/2022 was received by the Appeal Panel (Town Planning) (TPAB) on 29.3.2022 against the decision of the Town Planning Board on 21.1.2022 to reject on review an application (No. A/H5/414) for proposed minor relaxation of building height restriction for permitted flat use at 33-35 Kennedy Road, Wan Chai. The application site fell within an area zoned “Residential (Group B)” and shown as ‘Road’ on the then draft

Wan Chai Outline Zoning Plan (OZP) No. S/H5/29.

3. The Appeal was abandoned by the appellant on 6.10.2022. On 11.10.2022, the TPAB formally confirmed that the appeal was abandoned in accordance with Regulation 7(1) of the Town Planning (Appeals) Regulations of the Town Planning Ordinance.

(ii) Appeal Statistics

4. The Secretary reported that as at 18.10.2022, a total of 6 cases were yet to be heard by the Appeal Board Panel (Town Planning). Details of the appeal statistics were as follows:

Allowed	39
Dismissed	169
Abandoned/Withdrawn/Invalid	212
Yet to be Heard	6
Decision Outstanding	7
<hr/> Total	<hr/> 433

[Mr Paul Y.K. Au, Chief Engineer (Works), Home Affairs Department, joined the meeting at this point.]

Hong Kong District

Agenda Item 3

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/H3/444

Proposed Office and Shop and Services in “Residential (Group A) 6” Zone, 380 Des Voeux Road West, Shek Tong Tsui, Hong Kong

(TPB Paper No. 10858)

[The item was conducted in English and Cantonese.]

5. The Secretary reported that the application site (the Site) was located in Sai Ying

Pun/Sheung Wan. The following Members had declared interests on the item:

Professor Roger C.K. Chan - his spouse owning a property in Sai Ying Pun;
and

Dr Conrad T.C. Wong - his companies owning properties in Sai Ying
Pun.

6. Members noted that Professor Roger C.K. Chan and Dr Conrad T.C. Wong had tendered apologies for being not able to attend the meeting.

Presentation and Question Sessions

7. The following government representatives and the applicant's representatives were invited to the meeting at this point:

Planning Department (PlanD)

Mr Mann M.H. Chow - District Planning Officer/Hong Kong
(DPO/HK)

Ms Karmin Tong - Senior Town Planner/Hong Kong (STP/HK)

Applicant's Representatives

Mr Paul Y.S. Lau - Luck Rich Properties Limited

Mr Gregory K.C. Lam]

Mr Endy S.T. Cheng]

Mr Marco C.K. Wong] DeSPACE (International) Ltd.

Ms Rebecca F.Y. Lau]

Mr Mario K.H. Li]

8. The Chairperson extended a welcome and briefly explained the procedure of the review hearing. He then invited PlanD's representative to brief Members on the review application.

9. With the aid of a PowerPoint presentation, Ms Karmin Tong, STP/HK, briefed Members on the background of the review application including the consideration of the application by the Metro Planning Committee (MPC) of the Town Planning Board (the Board), departmental and public comments, and planning considerations and assessments as detailed in TPB Paper No. 10858 (the Paper).

[Mr Ricky W.Y. Yu, Mrs Vivian K.F. Cheung and Miss Winnie W.M. Ng joined the meeting during PlanD's presentation.]

10. The Chairperson then invited the applicant's representatives to elaborate on the review application. With the aid of a PowerPoint presentation, Mr Endy S.T. Cheng and Mr Gregory K.C. Lam, the applicant's representatives, made the following main points:

The Site

- (a) the Site was small (about 4.65m wide and 30m long), narrow and elongated in shape, and abutted Des Voeux Road West (DVRW) and Sai On Lane. DVRW was a busy district distributor road connecting Central and the Western District and well served with public transport including extensive bus services. To the southwest of the Site was an exit of MTR HKU Station which was accessible within three-minute walk via Whitty Street;

The Existing Building

- (b) the Site had an area of about 139.2m² and the estimated maximum plot ratio (PR), gross floor area (GFA) and site coverage (SC) of the existing 5-storey building thereon were 3.18, 443.3m² and 96% respectively;

The Redevelopment Proposal

- (c) the applicant proposed to redevelop the Site into a 24-storey commercial building with a 21-storey office tower (3/F to 23/F) on top of a 3-storey podium with 'Shop and Services' use (G/F and 2/F) and electrical and mechanical facilities (1/F). The shop frontage would face DVRW and an access would be reserved to the main entrance and lift lobby of the office tower. The SC of the podium and office tower would be 100% and 60% respectively. The efficiency ratio of the proposed commercial building would be about 52% which was lower than the existing one;

The Application

- (d) whilst the Lands Department (LandsD), Transport Department (TD), Buildings Department, Urban Design and Landscape Section of PlanD, Drainage Services Department and Fire Services Department had no objection to the s.16 application, it was rejected by the MPC of the Board on 22.4.2022 on the grounds that:
 - (i) the proposed development was not in line with the planning intention of the "Residential (Group A)6" ("R(A)6") zone which was for high-density residential developments and there was no strong planning justification for a departure from the planning intention of the "R(A)6" zone (Rejection Ground 1);
 - (ii) the proposed development did not comply with Town Planning Board Guidelines No. 5 (TPB PG-No. 5) in that the proposed office was located in a predominantly residential area (Rejection Ground 2);

Similar Applications

- (e) there were ten similar planning applications approved for commercial developments (office or hotel) in "R(A)" zone in the territory. Four of them were approved by the Board on review, amongst which three were proposed for office use, including No. A/H3/402 at Shelley Street in Sheung Wan, No. A/H5/372 and 377 at Hennessy Road in Wan Chai and No. A/K2/193 at

Reclamation Street in Yau Ma Tei;

Responses to Rejection Ground 1

Exceptional Site Constraints

- (f) the Site was subject to exceptional site constraints due to small site area and narrow and elongated configuration. It had a width of only about 4.65m (with a service lane of about 1.5m abutting the eastern side of the Site) and was surrounded by buildings on both sides. The gap from the existing building on the Site to the adjoining Grace Mansion was 1.34m while that to Kam Wah Building on the other side was 2.61m the widest. There were difficulties in deploying prescribed windows for sunlight and air ventilation for domestic accommodation and provision of barrier-free access;
- (g) comparing with the Site, five out of ten similar applications had larger site areas (ranging from about 311m² to 1,341m²). For the other four similar applications with site areas below 200m², which were approved on sympathetic consideration, their site configurations were relatively regular;

Notional Schemes for Residential Development

- (h) according to the Building (Planning) Regulations (B(P)R) of the Buildings Ordinance (BO), the Site was a Class A site. Three notional schemes for residential development were submitted in the s.16 and s.17 application stages to illustrate the development options with different parameters: (i) Scenario 1 – a SC of 33.33% and the permissible maximum domestic PR of 8, (ii) Scenario 2 (avoiding nano flats) – the desirable SC of 66.6% and a PR of 3.3 and (iii) Scenario 3 – an option in between the first two (i.e. a SC of 39% and PR of 5.4);
- (i) in the press conference of the 2022-23 Land Sale Programme on 24.2.2021, the Secretary for Development announced the requirement of minimum flat size, i.e. at least 26m² in saleable area, for all Government land sale, railway

property development projects, projects of the Urban Renewal Authority (URA), as well as lease modification and land exchange applications by private developers with a view to enhancing living space and responding to the society's wish;

- (j) although the minimum flat size requirement was not stipulated under BO, the applicant intended to avoid building nano flats at the Site. Another residential scheme with the said minimum flat size adopted was therefore formulated (i.e. the minimum flat size scenario), under which the SC, PR and floor plate would respectively be 46%, 4.6 and 64m² (comprising 26m² for flat and 38m² for back of house facilities). The efficiency ratio would be 40%;

- (k) comparing Scenario 2 and the minimum flat size scenario with the existing building, the non-domestic GFA would increase from 134m² (the existing building) to 334.08m² (both schemes) after redevelopment. However, taking into account the domestic portion, there was limited incentive to take forward any of the two residential schemes given that:
 - (i) the proposed efficiency ratio of 22% and 40% would be lower than the existing one (76%-91%);
 - (ii) the proposed flat sizes of 10.9m² and 26m² would be smaller than the existing one (28.38m²-94.88m²), which was considered a waste of valuable land resources in the urban area;
 - (iii) the net saleable area (the actual domestic GFA) would decrease from 273.3m² to 183.74m² and 205.79m²;
 - (iv) the unit price per flat would be very high which would be undesirable for property buyers;
 - (v) it was not in line with the public aspiration, views of the Development Bureau (DEVB) as well as the Policy Address 2022 in avoiding nano

flats for enhancing living space;

Responses to Rejection Ground 2

Comparable Similar Applications Approved on Review

- (l) applications No. A/H3/402 and A/K2/193 were two similar ones comparable to the subject application in terms of site area (137.96m² and 310.79m² respectively). These two cases were considered not in compliance with TPB PG-No. 5 under PlanD's views, but favourable consideration was given by the Board on review. With reference to the reasons for approval of the two similar applications, favourable consideration should also be given to the subject application in view that:
- (i) the proposed office use was compatible with the surrounding developments;
 - (ii) the favourable environmental gains that would result as the proposed office use would be less susceptible to environmental air and noise nuisance;
 - (iii) the scheme put forward by the applicant was practical in spite of the small site area and other site constraints;
 - (iv) there was a need for redevelopment of the existing old building;

TPB PG-No. 5

- (m) the proposed office development would comply with the main planning criteria under TPB PG-No. 5 in that:
- (i) the Site could achieve a properly designed office building with a lettable floor area of 53.94m² and an efficiency ratio of about 60%, which would cater for the demand for office space from the retail

shops nearby for their back of house operations such as accounting, marketing or merchandising;

- (ii) there was no objection from TD;
- (iii) the Site was easily accessible and well served by public transport. It was even more accessible than the sites of the two comparable similar applications;
- (iv) according to the Town Planning Appeal Board's Decisions on Town Planning Appeals No. 2 of 2019 and 4 of 2019, which involved proposed office use in "R(A)" zone, the character of a locality was a question of fact and a matter of impression (i.e. a feel of change in atmosphere at the appeal site and its surrounding area from commercial to residential character which was quiet and tranquil). In this connection, as compared with the two comparable similar applications, the Site was located in a predominantly mixed-use area rather than residential area given the busier and noisier DVRW and the larger proportion of non-domestic uses (e.g. retail, church and office) on the lowest first three floors of the composite buildings therein;
- (v) there was no risk of subsequent illegal conversion of the proposed office to substandard domestic units given that the lavatories would be placed outside the office portion near the lift lobby as shown on the layout plan;
- (vi) as demonstrated by the road traffic noise levels measured at one residential unit of the existing development on 15.7.2022 and a video recording of bustle and hustle of DVRW, any residential development at the Site would be subject to adverse environmental impacts. According to the measurements, the noise level even at 7 a.m. exceeded the maximum permissible level (i.e. 70dB(A)) under the Hong Kong Planning Standards and Guidelines (HKPSG).

Furthermore, the Site was constrained to provide a buffer distance of 30m as required under the HKPSG to separate the residential use from district distributor road for achieving the noise standard. On the other hand, the proposed office development, which was less susceptible to air and noise nuisance, would produce environmental gains;

- (vii) on planning gains, the redevelopment for non-domestic uses at the Site could avoid the production of nano flats which were not desirable in the property market;
- (viii) the existing building was in poor condition without the provision of facilities for the disabled or lift, and with limited provision of fire services installations due to structural constraint (e.g. no sprinkler tank), dilapidated façade, and window openings not complying with the prevailing fire services regulations. While the need for redevelopment of the Site was considered imminent, the opportunity for comprehensive redevelopment of the whole street block was slim due to fragmented ownership of the buildings and most adjoining buildings were below 50 years of age;

Conclusion

- (n) in relation to Rejection Ground 1, there was a strong planning justification for a departure from the planning intention of “R(A)6” zone taking into account (i) sympathetic consideration for exceptional site constraints; (ii) the intention to avoid nano flat supply with low efficiency ratio and high unit price; and (iii) good planning intention to avoid net loss of domestic GFA as compared with the existing building; and
- (o) in relation to Rejection Ground 2, the proposed office development would comply with TPB PG-No. 5 given (i) the achievable properly designed office; (ii) no objection from TD; (iii) the easily accessible site location with a district distributor road (DVRW); and (iv) the site falling within a

predominantly residential area with composite buildings. Favourable consideration to the subject application should also be given by the Board taking into account the environmental (less susceptible to air and noise pollution) and planning (beneficial from an urban renewal perspective and more efficient use of land) gains the proposed office development would entail.

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

Locality of the Site

12. Some Members raised the following questions to PlanD's representatives:

- (a) whether there were known urban renewal projects in the area;
- (b) details of the land use review of the area in 2010 and the rationales of rezoning the Site from "Commercial/Residential" ("C/R") to "R(A)6"; and
- (c) to the east of the Site, besides the two hotel developments at DVRW, the type of the commercial buildings along Queen's Road West (QRW).

13. In response, with the aid of some PowerPoint slides, Mr Mann M.H. Chow, DPO/HK, made the following main points:

- (a) there was currently no known urban renewal project in the area;
- (b) as recommended in the 'Stage II Study on Review of Metroplan' completed in 2003, "C/R" zone should be changed to other more appropriate zonings, and the "Commercial" ("C") zoning should be extended into areas with "C/R" zones which were well located for office use including the margins of the Central and in parts of the Western District. The land use review for the subject area was subsequently conducted and the OZP was amended accordingly in 2010. The "C/R" zones in Sheung Wan being adjacent to

the central business district were rezoned to “C” while those in Sai Ying Pun, including the Site, were rezoned to “R(A)” sub-zones taking into account that the overall character of the area was predominantly residential in nature; and

- (c) the existing commercial developments along Queen’s Road West to the east of the Site included an office building at No. 426 and hotels at the junctions of Water Street/Queen’s Road West as well as Chiu Kwong Street/Queen’s Road West. All these commercial developments were either permitted uses within the then “C/R” zone and developed prior to their rezoning to “C” on the OZP, or the subject of approved planning application.

14. A Member enquired on the major types of non-domestic uses in the composite buildings in the area around the Site. In response, Mr Mann M.H. Chow, DPO/HK, said that according to the Notes of the OZP, a range of non-domestic uses, including ‘Office’ use, were always permitted on the lowest three floors of a building within the “R(A)6” zone. The major non-domestic uses of the composite buildings in the area included retail shops (e.g. supermarket) and restaurants. Mr Gregory K.C. Lam, the applicant’s representative, with the aid of a PowerPoint slide, supplemented that there were offices in the area. For instance, the office of Hong Kong & Kowloon Fruit & Vegetable Employees & Employers Guild (港九果菜行工商總會) was located at Kam Wah Building adjoining the Site, and another office building, Pacific Plaza, was located to the further west of the Site. In response to the Member’s further question, Mr Mann M.H. Chow, DPO/HK, pointed out that the office of the Guild was located on one of the lowest three floors of the composite building, which was always permitted within the “R(A)6” zone, while Pacific Plaza was one of the commercial buildings which existed before the rezoning of “C/R” sites on the OZP in 2010.

The Proposed Scheme

15. Some Members raised the following questions to the applicant’s representatives:

- (a) the ownership of the Site; and

- (b) the flat size in the notional residential schemes.

16. In response, with the aid of some PowerPoint slides, Mr Gregory K.C. Lam, the applicant's representative, made the following main points:

- (a) the Site was acquired in 2016-17 and fully owned by the applicant; and
- (b) under the minimum flat size scenario, the flat size would be 26m² and the PR would be below 5. Under Scenario 2, for adopting a SC of 33.33%, the flat size would be about 10.9m². The efficiency ratio of both scenarios would range from 20% to 40%.

Similar Application No. A/K2/193

17. In response to a Member's enquiry about the Board's decision on similar application No. A/K2/193, Mr Mann M.H. Chow, DPO/HK, said that the application was for a proposed 13-storey office development with shops (G/F-2/F) at 197-197A Reclamation Street, Yau Mei Tei, with a site area of 137.96m². It was approved on review by the Board on 10.6.2011 mainly on sympathetic consideration in view of the small site area and site constraints. The Member further enquired about the current use of the site. In response, Mr Gregory K.C. Lam, the applicant's representative, said that while the site was proposed for office use under the said application in 2011, it was currently occupied by a hotel development as observed during a site visit conducted prior to the meeting.

18. As Members had no further question to raise, the Chairperson said that the hearing procedure for the review application had been completed. The Board would further deliberate on the review application. The Chairperson thanked PlanD's representatives and the applicant's representatives for attending the meeting. They all left the meeting at this point.

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

Deliberation Session

19. With regard to the current use of the site of the similar application No. A/K2/193

cited by the applicant, at the Chairperson's invitation, the Secretary clarified that the said application for proposed office in "R(A)" zone at 197-197A Reclamation Street, Yau Ma Tei was approved by the Board on review on 10.6.2011, and another planning application No. A/K2/204 for a proposed hotel at the site was further approved by the MPC on 10.2.2012. The approved hotel development was subsequently implemented.

20. The Chairperson then invited views from Members.

Planning Intention and Planning Gains

21. A Member considered that the justifications put forward by the applicant in relation to site constraints, low efficiency ratio of residential development, avoiding supply of nano flats and easily accessible location at DVRW for office development were not unreasonable. However, taking into account the character of the locality which was predominantly residential in nature, the Member considered that the proposed commercial development was not in line with the planning intention of the subject "R(A)6" zone and did not support the review application. Some Members concurred that the whole street block where the Site was located was occupied predominantly by residential use, and considered that the proposed commercial development would not produce any planning gains. For example, the pedestrian environment and air ventilation in the area would not be improved nor the connectivity of the open space to the south of the Site (Sai On Lane Rest Garden) be enhanced through the proposed redevelopment of the Site for office use. Besides, the development of a pencil-type commercial block in lieu of a pencil-type residential development (with maximum non-domestic PR of 15 versus domestic PR of 8) would bring economic benefit to the applicant only and not much benefit to the locality. There was no justification for a departure from the planning intention to support the review application. A few Members further said that there should be scope to address the site constraints and the area would be improved if the sites of the same street block could be amalgamated and redeveloped holistically. It was considered more appropriate to retain the Site for residential use for allowing future redevelopment opportunity.

22. Mr Andrew C.W. Lai, Director of Lands, supplemented that the lease of the Site was an unrestricted one subject to the standard non-offensive trades clause. The development of the Site for either commercial or residential use would not contravene with the lease

conditions and no lease modification would be required. The control in respect of the risk of subsequent unauthorized conversion of office units to domestic units or other uses would be subject to other relevant mechanisms such as the planning regime and BO. He further remarked that the minimum flat size requirement of 26m² quoted by the applicant had been implemented since late February 2022. It was applicable to land sale sites for private residential developments and those involving lease modification and land exchange applications but not to the Site with unrestricted lease when lease modification was not required. Adopting the minimum flat size requirement to avoid building nano flats was of the applicant's own accord.

Urban Renewal Options

23. With regard to the condition of the existing building on the Site, two Members considered that there might not be imminent need for redevelopment, and refurbishment of the existing building could be a practical and feasible option.

24. In relation to the future redevelopment opportunity, a Member suggested and another Member concurred that the planning tool of transfer of PR for developments by private developers could be considered in order to provide incentive for redevelopment of such small individual site and help expedite urban renewal in the area. For instance, opportunity could be explored to open up the Site as an access from DVRW to Sai On Lane Rest Garden and the development potential of the Site could be transferred to other development site if transfer of PR for private developments could be allowed.

25. The Secretary supplemented that transfer of PR was one of the planning tools recommended in the Yau Mong District Study to incentivise private market participation in urban renewal. URA, DEVB and PlanD were studying the appropriate implementation mechanism to facilitate the application of the tools in the private market. Relevant guidelines would be prepared and submitted for the Board's consideration in due course.

Conclusion

26. The Chairperson concluded that Members generally did not support the application as there were no strong justifications from the applicant for a departure from the planning

intention of the “R(A)6” zone and the Site was located in a predominantly residential area. The proposed commercial development would not result in planning gains. Refurbishing or rehabilitating the existing building could be considered an alternative if there was no opportunity for comprehensive redevelopment at the moment. There was no particular reason to deviate from the MPC’s decision and the rejection reasons given by MPC were appropriate.

27. 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 “Residential (Group A)6” (“R(A)6”) zone which is for high-density residential developments and there is no strong planning justification for a departure from the planning intention of the “R(A)6” zone; and
- (b) the proposed development does not comply with Town Planning Board Guidelines No. 5 (TPB PG-No. 5) in that the proposed office is located in a predominantly residential area.”

Shatin, Tai Po & North District

Agenda Item 4

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/NE-LT/716

Temporary Warehouse for a Period of 3 Years and Filling of Land in “Agriculture” and “Village Type Development” Zones, Lots 128 (Part) and 132 (Part) in D.D. 19, Lam Tsuen, Tai Po
(TPB Paper No. 10870)

[The item was conducted in English and Cantonese.]

Presentation and Question Sessions

28. The following representative of the Planning Department (PlanD) was invited to the meeting at this point:

Mr Kevin K.W. Lau

- Senior Town Planner/Tai To (STP/TP)

29. The Chairperson extended a welcome and informed Members that the applicant and his representative had indicated not to attend the meeting. He then invited PlanD's representative to brief Members on the review application.

30. With the aid of a PowerPoint presentation, Ms Kevin K.W. Lau, STP/TP, briefed Members on the background of the review application including the consideration of the application by the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board), departmental and public comments, and planning considerations and assessments as detailed in TPB Paper No. 10870 (the Paper). PlanD maintained its previous view of not supporting the application.

31. As the presentation of PlanD's representative was completed, the Chairperson invited questions from Members.

Agricultural Activities

32. With regard to the comments of the Agriculture, Fisheries & Conservation Department (AFCD), a Member enquired on the location of the active agricultural activities in the vicinity of the Site. In response, with the aid of a PowerPoint slide, Mr Kevin K.W. Lau, STP/TP, said that there was a considerable scale of active agricultural activities located to the west and northwest of the Site. As for the Site, AFCD noted that with the presence of water source and access road, it possessed potential for agricultural rehabilitation and did not support the application from agricultural point of view.

The Applied Use

33. A Member asked about the reason for including filling of land as part of the applied use, and whether the proposed temporary warehouse was a permitted use for the "Agriculture" ("AGR") zone if filling of land was not involved. In response, Mr Kevin K.W. Lau, STP/TP, said that planning permission from the Board for filling of land was required for the subject "AGR" zone. The Site had already been formed without a valid planning permission, and

application to regularize the filling of land was thus required. 'Warehouse' use was neither a Column 1 nor Column 2 use under the "AGR zone, and planning permission for the proposed temporary warehouse use was also required.

Enforcement and Persecution Actions

34. Noting the changes in the site condition since 2005 as shown in the aerial photos, a Member asked whether enforcement action had been taken at the Site and its vicinity. In response, with the aid of a PowerPoint slide, Mr Kevin K.W. Lau, STP/TP, said that the Site was part of the subject of a planning enforcement case (No. E/NE-LT/0078) against unauthorized development (UD) involving parking of vehicles and storage uses. Enforcement Notice was issued requiring discontinuation of the UD. It was revealed in recent site inspections that parking of vehicles at the concerned lots had been discontinued, but not the storage use. Further enforcement and prosecution action might be taken by the Planning Authority. Moreover, since part of the UD involving parking of vehicles unlawfully occupied Government land, the case would be referred to the Lands Department (LandsD) for necessary follow-up action.

35. Mr Andrew C.W. Lai, Director of Lands (D of Lands), remarked that the Site was held under Block Government Lease demised for agricultural purpose, and no structure should be erected thereon without prior approval from LandsD. While parking of vehicles did not breach any lease conditions, according to a recent site inspection by the District Lands Officer/Tai Po, LandsD, a temporary structure was found on the Site without LandsD's approval and hence was subject to lease enforcement action. In that regard, a warning letter had been issued by LandsD.

36. A Member raised a follow-up question concerning the control of the applied use under the lease and the planning regime. In response, Mr Andrew C.W. Lai, D of Lands, said that pursuant to the Court's Judgment regarding the Melhado case in 1983, using the Site for parking or storage of containers without any structure erected was not a breach of the lease conditions. The Secretary supplemented that control under the lease was a contractual agreement between the land owner and the Government, which was different from the planning regime in controlling the use of land. Under the provision of the "AGR" zone of the Outline Zoning Plan, as 'Warehouse' was neither a Column 1 nor Column 2 use, planning permission

from the Board for such temporary use for not more than 3 years on the Site was required. In addition, according to the land filling clause as specified in the Remarks of the “AGR” zone, planning permission from the Board was required for filling of land, except for laying of soil for cultivation which did not exceed 1.2m in thickness. Any UD including unauthorised filling of land was subject to planning enforcement action and therefore the abovementioned enforcement action had been taken against the UD at the Site.

37. As Members had no further question to raise, the Chairperson said that the hearing procedure for the review application had been completed. The Board would further deliberate on the review application. The Chairperson thanked PlanD’s representative for attending the meeting. He left the meeting at this point.

Deliberation Session

38. The Chairperson invited views from Members.

Grounds for Lodging a Review

39. A Member did not support the application as the applicant failed to provide any justifications for a review of the RNTPC’s decision. Two Members pointed out that similar to some other cases, the applicants lodged a review as a matter of course without providing any further grounds in writing nor attending the hearing to substantiate the review application, which in turn took up the Board’s time and resources in processing the review application. It appeared an abuse of the planning system. Taking the current opportunity of streamlining the development-related statutory processes, consideration should be given to tackle such issue.

40. In response, the Chairperson said that currently, any applicant who was aggrieved by the Board’s decision on a planning application might apply in writing for a review. Whilst it was important to maintain an open planning system allowing review applications, under the current proposal of streamlining the development process in the context of amendment to the Town Planning Ordinance, an applicant lodging a review application would be required to set out the grounds for review. This would enable the Board to focus on the matters which warranted attention or reconsideration during the review and this would be a more effective use of public resources. A Member, who considered the proposed streamlining measure agreeable,

urged the administration to expedite implementation of the proposal.

Enforcement and Prosecution Actions

41. A Member observed that the Site and its immediate vicinity had been formed for UD which was not in line with the planning intention of the “AGR” zone. More effective enforcement actions should be taken with a view to preventing further proliferation of brownfield operations and degradation of agricultural land in the area. In response, Mr Ivan M.K. Chung, Director of Planning, pointed out that planning enforcement and prosecution actions had been proactively undertaken by the Planning Authority. That said, in order to make the most effective use of limited resources, it was essential to prioritise the cases for subsequent action according to the nature and implications of UDs. Higher priority would be given to UDs within or in the proximity of ecologically sensitive and important areas such as wetland and conservation zones. In 2021, there were 168 summons issued to prosecute against UDs and the total fine paid by offenders in Q2 2022 was 1.65 million dollars.

Agricultural Activities

42. A Member enquired and the Chairperson responded that information on distribution of active and fallow agricultural land in Hong Kong was not readily available. Another Member raised a question on the policy of promoting agricultural activities. In response, the Chairperson said that a consultancy study on Agricultural Priority Areas was being conducted to identify areas of quality agricultural land and formulate suitable policies and measures to provide incentives to encourage landowners to put fallow agricultural land into long-term agricultural use so as to support local agricultural development. It would also facilitate the release of fallow agricultural land without rehabilitation potential for other developments.

Conclusion

43. The Chairperson concluded that Members generally did not support the application as the applicant had not submitted any written representation in support of the review application. There was no particular reason to deviate from the RNTPC’s decision and the rejection reasons given by RNTPC were appropriate.

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

- “(a) the development is not in line with the planning intention of the “Agriculture” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and 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, even on a temporary basis; and
- (b) the applicant fails to demonstrate in the submission that the development would not result in adverse landscape impacts on the area.”

Agenda Item 5

Any Other Business

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

45. There being no other business, the meeting was closed at 11:40 a.m.