

CONFIDENTIAL

(downgraded on 23.3.2012)

**Minutes of 1006th Meeting of the
Town Planning Board held at 2:30 p.m. on 28.2.2012**

Sai Kung and Islands District

Agenda Item 2

[Confidential Item. Closed Meeting]

Consideration of the Draft Po Toi Islands

Development Permission Area Plan No. DPA/I-PTI/B

TPB Paper No. 9042

[The meeting was conducted in Cantonese.]

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

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| Mr. Ivan Chung | - District Planning Officer/Sai Kung and Islands (DPO/SKIs) |
| Miss Erica Wong | - Senior Town Planner/Islands |
| Mr. Gary Lui | - Planning Assistant/Islands |

2. The Chairman extended a welcome and invited Mr. Ivan Chung, DPO/SKIs to brief Members on the Paper.

3. With the aid of a powerpoint presentation, Mr. Ivan Chung briefed Members on the details of the draft Po Toi Islands Development Permission Area (DPA) Plan No. DPA/I-PTI/B as detailed in the Paper and covered the following main points:

Location and Physical Characteristics

- (a) Po Toi Islands comprised a group of islands located at the

southern-most of Hong Kong, which included mainly Po Toi, Mat Chau, Beaufort Island, Sung Kong and Waglan Island. These five islands (the Area) were generally of hilly terrain and covered by rocky outcrops and vegetated areas of shrubs and grasses;

[Dr. W.K. Lo arrived to join the meeting at this point.]

Need for Statutory Plan

- (b) the Area had a rural and natural setting with scientific importance and conservation value which were unique in Hong Kong. Recently, activities involving vegetation clearance and laying of concrete slabs had been detected in the southwestern part of Po Toi (i.e. near Wan Tsai), causing an adverse impact on the natural environmental. The affected sites covered an area of about 1.93 ha, most of which were private lots;
- (c) to prevent any haphazard and uncontrolled development that might adversely affect the rural and natural character of the Area, it was necessary to prepare a DPA plan to cover the Area to provide interim planning guidance and control for future development pending preparation of an Outline Zoning Plan (OZP) and to enable enforcement actions to be taken against unauthorised developments and undesirable change of use to safeguard the Area's rural and natural character with scientific importance and conservation value;
- (d) on 20.2.2012, under the power delegated by the Chief Executive, the Secretary for Development had directed the Town Planning Board (the Board), under section 3(1)(b) of the Town Planning Ordinance (the Ordinance), to prepare a draft DPA plan to cover Po Toi Islands which were not covered by any statutory plan;

Object of the Plan

- (e) the object of the draft DPA Plan was to delineate the extent of the Area and to set out the types of developments and uses which were permitted

at all times and such types of developments and uses that might be permitted with or without conditions on application to the Board within the boundaries of the Area. The draft DPA Plan was to illustrate the broad principles of development within the Area;

- (f) the draft DPA Plan was to provide interim planning guidance and to facilitate development control within the Area during the period required for detailed analysis of the land use pattern, study of infrastructural provisions and development constraints for the formulation of an OZP. The draft DPA Plan would be replaced by an OZP within three years;

The Planning Scheme Area

Existing Situation

- (g) Po Toi Islands had an area of about 550 ha, including Po Toi (about 369 ha), Waglan Island (about 10 ha), Mat Chau (about 3 ha), Beaufort Island (about 120 ha) and Sung Kong (about 48 ha);
- (h) Po Toi was the southern-most island in Hong Kong. It was largely natural in character with scattered rural settlements at Tai Wan and Wan Tsai. There was one recognised village, known as Tai Wan Village, at Po Toi. Marine access to Po Toi was available via the public pier from Tai Wan to Aberdeen/Stanley. There was a footpath network connecting the public pier in Tai Wan and other places of interests on the island. Most of the streams on Po Toi were largely natural and unpolluted. They should be preserved from the nature conservation point of view. One lighthouse was found on Po Toi for navigation purpose. Activities involving vegetation clearance and laying of concrete slabs had recently been detected in the southwestern part of Po Toi (i.e. near Wan Tsai), causing damage to the natural environment;
- (i) Waglan Island was the eastern-most island in Hong Kong. It was largely natural in character with building structures found in the southern part of the island. In addition, the Hong Kong Observatory

had set up an automatic weather station at the top of the island. There were some ruined structures found near the lighthouse and the meteorological monitoring station;

- (j) Mat Chau, Beaufort Island and Sung Kong were virtually uninhabited small isolated islands covered by rocky outcrops and vegetated areas of shrubs and grasses;

Transport and Utility Services

- (k) there was no road network in the Area but footpath systems on Po Toi and Waglan Island provided access from piers/jetties to the villages, mountain uplands as well as other places of interest;
- (l) there was no vehicular access to the Area. There was no public transport service in the Area except the licensed ferry services from Aberdeen/Stanley to Po Toi;
- (m) there was no sewerage, drainage and water supply systems in the Area. Electricity and portable water were provided to the locals at Tai Wan Village of Po Toi via portable electricity generators and water tanks, dams and water pipes provided and maintained by the Islands District Office;

Landscape Value

- (n) according to the “Landscape Value Mapping of Hong Kong” (2005) by PlanD, the overall landscape value of these islands was high. The islands featured steep rocky coast and low cliffs from 100mPD to 270mPD with high landscape value geological formations. In Po Toi, there were some well-known geological formation in granite rock along the coastline, e.g. Palm Cliff, Tortoise Rock and Coffin Rock. Rock Carvings on Po Toi were Declared Monuments of particular historic or cultural significance. The overall landscape characters of these islands were remote, rugged and visually dramatic;

Scientific Significance

- (o) Po Toi had a special scientific value worthy of conservation. Migratory birds, Romer's Tree Frog (*Liuixalus romeri*, 盧氏小樹蛙) and butterflies were the three scientific interests contributing to the ecological and conservation importance of Po Toi. Owing to its geographical position, Po Toi was considered as a crucial re-fuelling stop for migratory birds. More than 300 species of migratory birds, such as Hodgson's Redstart (*Phoenicurus hodgsoni*, 黑喉紅尾鶇), Dark-throated Thrush (*Turdus ruficollis*, 赤頸鶇), Brown Hawk Owl (*Ninox scutulata*, 鷹鴞), Blue-winged Pitta (*Pitta moluccensis*, 馬來八色鶇) and Oriental Honey Buzzard (*Pernis ptilorhyncus*, 鳳頭蜂鷹) had been recorded. Po Toi was one of the only four sites in Hong Kong with natural populations of Romer's Tree Frog. Po Toi also had a diverse assemblage of over 60 species of butterflies. Besides, Waglan Island was known to be a breeding site for terns;

Geotechnical Safety

- (p) the Area comprised hillsides with history of instability, and was subject to potential landslide hazard. For any future development in the Area including the delineated "Village Type Development" ("V") zone, natural terrain hazard study might be required to assess the potential hazards and constraints arising from natural terrain, and to provide suitable hazard mitigation measures, if found necessary, as part of the development;

Cultural Heritage

- (q) two Declared Monuments, known as the Rock Carvings on Po Toi and Waglan Lighthouse, as well as a Site of Archaeological Interest, namely Tai Wan Site of Archaeological Interest were found in the Area. Prior consultation with the Antiquities and Monuments Office (AMO) of the Leisure and Cultural Services Department should be made if any developments, re-developments or rezoning proposals might affect the two Declared Monuments, the Site of Archaeological Interest, historic

buildings/structures and their immediate environs;

Land Ownership

- (r) most of the land in the Area (about 99.4%) was government land, and the remaining about 3.3 ha (0.6%) was private land located in Po Toi, comprising mainly fallow agricultural land and lots with building entitlement;

General Planning Intention

- (f) the planning intention of the Area was to protect the rural and natural landscape of the Area with scientific importance and high conservation value from encroachment by unauthorised development and from undesirable change of use, and to reflect the existing recognised village and rural settlements. Due consideration should be given to the conservation of the ecologically and environmentally sensitive areas, such as Po Toi, when development in or near the Area was proposed;

Land Use Proposals

Village Type Development (“V”) Zone (0.56ha)

- (g) there was only one recognised village in the Area, namely Tai Wan Village on Po Toi, which was zoned “V” on the draft DPA Plan. The boundary of the “V” zone was drawn up provisionally around existing clusters having regard to the existing village clusters and building structures, ‘village environs’ (‘VE’), local topography and site characteristics. The boundary of the “V” zone would be further reviewed and defined during the preparation of OZP stage to take account of the results of relevant assessments/studies on various aspects including Small House demand and developments, conservation value, the environment, infrastructure, landscape character, etc.;

Unspecified Use (549.11ha)

- (h) the Area was rural and natural in character, and had two Declared Monuments, known as the Rock Carvings on Po Toi and Walgan Lighthouse respectively. To prevent unauthorised activities and land

use change from further deteriorating the unique rural and natural character and the conservation value of the Area as well as from degrading the natural environment, planning guidance and development control were necessary. Owing to the urgency of preparing the draft DPA Plan, except the area zoned “V”, the other area had been designated as “Unspecified Use” pending detailed analysis and studies to establish the appropriate land uses in the course of the preparation of OZP. Apart from the ‘Agricultural Use’ and some uses which were permitted in the covering Notes of the draft DPA Plan, all uses and developments would require planning permission from the Board; and

Consultation

- (i) the draft DPA Plan together with the Notes and Explanatory Statement (ES) had been circulated to the relevant government bureaux and departments for comments. Comments received had been incorporated, where appropriate. The Islands District Council (IsDC) and the Lamma Island (South) Rural Committee (RC) would be consulted on the draft DPA Plan after its publication under s.5 of the Ordinance.

4. A Member enquired why the Tin Hau Temple in Miu Kok and some other structures found in the southwestern part of Po Toi were not included in the “V” zone of the draft DPA Plan. Mr. Ivan Chung said that the Tin Hau Temple and other structures, including a store located near the public pier at Tai Wan, were not included in the “V” zone because they were located away from the existing clusters of the recognised village and fell outside the ‘VE’ boundary. Appropriate land use zonings would be designated for these areas during the preparation of the OZP at a later stage.

5. Noting that the “V” zone was not the same as the ‘VE’, the Chairman asked how the boundary of the “V” zone was drawn up. Mr. Ivan Chung explained that the boundary of the “V” zone was drawn up having regard to the existing village clusters and building structures, ‘VE’, local topography and site characteristics. Areas of difficult terrain, dense vegetation, burial grounds, ecologically sensitive areas and streamcourses had been avoided where possible. Therefore, only the existing village clusters of Tai

Wan Village were zoned “V” on the draft DPA Plan. This approach had been adopted in some recent DPA plans prepared for the country park enclaves. The boundary of the “V” zone was only a provisional one and would be further reviewed during the preparation of the OZP stage after taking account of the results of relevant assessments/studies on various aspects including Small House demand and developments, conservation value, the environment, infrastructure, landscape character, etc.

6. A Member asked about the population in the Area. Mr. Ivan Chung said that according to the estimation of PlanD, the population in the Area was about 100.

7. Another Member asked whether consideration had been given to the history of Po Toi in drawing up the boundary of the “V” zone. Mr. Ivan Chung said that the boundary of the “V” zone was provisionally drawn up having regard to various factors as mentioned earlier. The historic or cultural significance of the Area such as information on the Declared Monuments had been obtained from AMO and reflected in paragraph 7.6 of the ES of the draft DPA Plan.

8. A Member enquired about the amount of government and private land in Po Toi. Mr. Ivan Chung said that about 3.3 ha of land in Po Toi was private land and the remaining area of about 365.7 ha was government land. Another Member further asked why there was such a large piece of private land at Wan Tsai. Mr. Ivan Chung said that he had no information at hand on the history of the private land. According to his understanding, the private land was agricultural land and was mainly bought by a private company.

9. Noting that the Po Toi DPA Plan was prepared to prevent proliferation of unauthorized works, the Vice-chairman asked if there were other islands which were under similar development threats such that the Board would take a more proactive approach to prepare DPA plans to prevent the environmentally sensitive areas from being disturbed. Mr. Ivan Chung said that PlanD had a work programme for preparation of DPA plans taking account of the potential development pressure and availability of manpower resources. Outlying islands including Po Toi were not accorded a high priority as they were relatively inaccessible and were not subject to high development pressure. However, after the recent incidents that unauthorised engineering works were

identified on Po Toi, the preparation of DPA plan for Po Toi was expedited. Other outlying islands might not be under similar situation as Po Toi as they were mostly government land.

10. In response to some Members' questions on the actual use of the concrete slabs found in the southwestern part of Po Toi near Wan Tsai, Mr. Ivan Chung referred to some site photos and said that according to a recent site visit, some concrete slabs which were not engraved with names or words were found on some areas of land in the southwestern part of Po Toi. The concrete slabs were mainly found on private land and the workers there claimed that the area was a memorial garden. Nevertheless, they were unable to ascertain whether there was anything underneath the concrete slabs. As these activities had damaged the natural environment, there was an urgent need to prepare a DPA plan to put Po Toi under statutory planning control and subject to planning enforcement.

11. Noting the way the concrete slabs were laid, a Member opined that it was not clear if there was space underneath for the storage of urns.

12. With reference to the photos on Plans 4a and 5b of the Paper, a Member asked whether there was another area of unauthorised development in Po Toi in an area to the northeast of Tai Wan behind the village as it appeared that a piece of land had been cleared and covered with structures. Mr. Ivan Chung replied that the area in question was government land and the bamboo structures were set up for festival celebrations/religious functions and some government works might also be undertaken.

13. The Chairman enquired whether the unauthorised development identified would become an 'existing use'. Mr. Ivan Chung explained that 'existing use' should be the use in existence immediately before the first publication in the Gazette of the notice of the draft DPA Plan. Therefore, upon publication of the draft DPA Plan, aerial photos would be taken and a freezing survey would be carried out to record the 'existing use' of the Area at that point of time, including the use of the concrete slabs. The purpose of the freezing survey was to establish the 'existing use' status as defined under the Ordinance. While 'existing use' would be tolerated under the Ordinance, any material change of such use would have to comply with the provisions of the draft DPA Plan.

The onus of proof of the 'existing use' was on the landowner. As such, the landowner had to provide evidence to claim the 'existing use' status. The Secretary further explained that upon publication of the draft DPA Plan, any further excavation would require planning permission. Also, any intensification of use such that it would change the character of the use of the land might constitute a material change in the use of the land and would require planning permission from the Board.

14. In response to a Member's question on whether a residential building which was built but not yet occupied would be tolerated as an 'existing use'. The Secretary pointed out that the 'existing use' status had to be considered having regard to the circumstances of the case. According to an enforcement case in 1990s, the Court had ruled that an 'existing use' was meant to be the actual use found on the site. A piece of vacant land after site formation but not yet put for open storage use could not successfully claim open storage use as the 'existing use'. Besides, an increase in the number of containers deposited on a piece of land, say from 1 to 50 would be regarded as an intensification of the existing use, which would constitute an unauthorised development under the Ordinance if the use was not permitted under the specific zoning in the DPA plan or covered by a valid planning permission.

15. Another Member asked how the area covered by concrete slabs would be considered as a change of use in future after gazettal of the DPA Plan. The Secretary explained that if there was a change of use of the area to become a columbarium or burial ground, it had to be considered whether that would cause change to the character of the use of the land and advice from the Department of Justice would have to be sought, if required.

[Professor P.P. Ho left the meeting at this point.]

16. The Chairman said that the publication of the draft DPA Plan could act as a stopgap to prevent further degradation of the natural environment pending further study on the appropriate land uses for the Area. Any claim for the 'existing use' status had to be substantiated with evidence.

[Miss Annie Tam arrived to join the meeting at this point.]

17. A Member asked whether the Board had the power to request the landowner to reinstate the area being disturbed to its original state. Mr. Ivan Chung said that there was no provision under the Ordinance empowering the Board to require the landowner to reinstate the land to its original state before the engineering works were done. Miss Annie Tam said that the affected sites involved many private lots, with encroachment onto the adjoining government land. Under the leases, the private lots were mainly intended for agricultural purposes, and erection of structures thereon would require prior approval of the Lands Department (LandsD). LandsD had written to the lot owners to demand rectification of the breaches under the leases. The lot owners argued that the laying of concrete slabs on the lots concerned did not constitute erection of structures. The District Land Officer/Islands was in the process of pursuing lease enforcement in consultation with her legal advisers.

18. After further deliberation, the Board agreed that:

- (a) the draft Po Toi Islands DPA Plan No. DPA/I-PTI/B (to be renumbered to DPA/I-PTI/1) and its Notes at Appendices I and II of the Paper were suitable for exhibition for public inspection under s.5 of the Ordinance;
- (b) the ES at Appendix III of the Paper was suitable to serve as an expression of the planning intention and objectives of the Board for the draft Po Toi Islands DPA Plan and that the ES should be issued under the name of the Board; and
- (c) briefings on the draft DPA Plan would be conducted for the Islands District Council and the Lamma Island (South) Rural Committee after its publication under s.5 of the Ordinance.

19. As Members had no further questions and comments to raise, the Chairman thanked PlanD's representatives for attending the meeting. They all left the meeting at this point.