

**Minutes of 1010th Meeting of the
Town Planning Board held on 27.4.2012**

Present

Permanent Secretary for Development
(Planning and Lands)
Mr. Thomas Chow

Chairman

Mr. Stanley Y.F. Wong

Vice-chairman

Professor S.C. Wong

Mr. Timothy K.W. Ma

Professor Edwin H.W. Chan

Ms. Bonnie J.Y. Chan

Mr. Rock C.N. Chen

Dr. Wilton W.T. Fok

Mr. Sunny L.K. Ho

Professor P.P. Ho

Professor Eddie C.M. Hui

Ms. Janice W.M. Lai

Mr. Dominic K.K. Lam

Dr. C.P. Lau

Ms. Julia M.K. Lau

Ms. Christina M. Lee

Mr. Maurice W.M. Lee

Mr. H. F. Leung

Mr. Clarence W.C. Leung

Mr. Laurence L.J. Li

Dr. W.K. Lo

Mr. Roger K.H. Luk

Ms. Anita W.T. Ma

Dr. W.K. Yau

Chief Traffic Engineer (Hong Kong)

Transport Department

Mr. Peter Wong

Deputy Director of Environmental Protection

Mr. Benny Wong

Assistant Director (2), Home Affairs Department

Mr. Eric Hui

Director of Lands

Miss Annie Tam

Director of Planning

Mr. Jimmy Leung

Deputy Director of Planning/District

Miss Ophelia Wong

Secretary

Absent with Apologies

Professor K.C. Chau

Mr. H.W. Cheung

Mr. Ivan C.S. Fu

Mr. Lincoln L.H. Huang

Mr. Patrick H. T. Lau

Mr. Stephen H.B. Yau

In Attendance

Assistant Director of Planning/Board
Mr. C.T. Ling

Chief Town Planner/Town Planning Board
Ms. Christine K.C. Tse

Senior Town Planner/Town Planning Board
Ms. Caroline T.Y. Tang

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 1009th Meeting held on 13.4.2012

[The meeting was conducted in Cantonese.]

1. The minutes of the 1009th Meeting held on 13.4.2012 were confirmed without amendments.

Agenda Item 2

[Open Meeting]

Matters Arising

[The meeting was conducted in Cantonese.]

(i) **Approval of Draft Plan**

2. The Secretary reported that, on 17.4.2012, the Chief Executive in Council approved the draft Tseung Kwan O Outline Zoning Plan (to be renumbered as S/TKO/20) under section 9(1)(a) of the Town Planning Ordinance and the approval was notified in the Gazette on 27.4.2012.

(ii) **Reference Back of Approved Plans**

3. The Secretary reported that, on 17.4.2012, the Chief Executive in Council referred the following approved plans to the Town Planning Board for amendment under section 12(1)(b)(ii) of the Town Planning Ordinance and the reference back was notified in the Gazette on 27.4.2012:

- (a) Cheung Sha Wan Outline Zoning Plan No. S/K5/33;
- (b) Ho Chung Outline Zoning Plan No. S/SK-HC/9; and
- (c) Kwu Tung South Outline Zoning Plan No. S/NE-KTS/12.

[Ms. Janice W.M. Lai arrived to join the meeting at this point.]

Tuen Mun and Yuen Long District

Agenda Item 3

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/YL-TYST/553

Proposed Temporary Eating Place (Outside Seating Accommodation of a Licensed Restaurant) for a Period of 5 Years in “Residential (Group A)” Zone, Government Land in front of Shops No. 4-5, G/F, Blocks 1-9, Treasure Court, 8 Ying Fuk Street, Hung Shui Kiu, Yuen Long, New Territories
(TPB Paper No. 9071)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

4. The following government representatives and the applicant’s representative were invited to the meeting at this point:

- Mr. W.W. Chan - District Planning Officer/Tuen Mun and Yuen Long (DPO/TMYL), Planning Department (PlanD)
- Ms. Cheung Suk Fun - Health Inspector (Licenses), Food and Environmental Hygiene Department (FEHD)
- Mr. Cheung Wai Leung - Applicant’s representative

[Mr. Rock C.N. Chen and Mr. Laurence L.J. Li arrived to join the meeting at this point.]

5. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited DPO/TMYL to brief Members on the review application.

6. With the aid of a powerpoint presentation, Mr. W.W. Chan presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for a proposed eating place (outside seating accommodation (OSA) of a licensed restaurant) for a period of five years at the application site which fell within an area zoned “Residential (Group A)” on the approved Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/10;
- (b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 21.10.2011 and the reasons were:
 - (i) the proposed development would reduce the width of the existing footpath and the applicant had not demonstrated that the pedestrian environment currently enjoyed by the public in that location would not be adversely affected; and
 - (ii) the applicant failed to demonstrate in the submission how the potential environmental hygiene nuisance of the proposed development would be mitigated;
- (c) the justifications put forth by the applicant in support of the review application were summarised in paragraph 3 of the Paper, as follows:
 - (i) the approval period sought was shortened from five years to one year;
 - (ii) the width of the OSA was reduced from 1.4m to 1.2m so that the remaining clear width of the footpath would be not less than 3.5m;
 - (iii) the proposed operation hours were changed from between 9:00 a.m. and 11 p.m. to between 9:00 a.m. and 10:30 p.m.;
 - (iv) in the past five years, there had been no prosecution by government departments for environmental nuisance and no

confirmed cases of reported complaints of noise or smoke nuisance regarding the concerned restaurant;

- (v) an OSA manager would be appointed to take charge of the management of the OSA; and
 - (vi) cooking or warming of food would be strictly prohibited in the OSA. Thorough clean-up would be conducted after every meal time at 10:30 a.m., 2:30 p.m., 8:30 p.m. and 10:30 p.m.;
- (d) the departmental comments were detailed in paragraph 5 of the Paper. The Commissioner for Transport (C for T) advised that the minimum clear width of the footpath remained after the OSA's occupation should be 3.5m. The proposed width of 1.2m of the OSA was considered acceptable. The Director of Food and Environmental Hygiene (DFEH) had reservation on the application at this stage, noting that there were local concerns on the potential hygiene problem, greasy smoke nuisance, smoking problem, noise nuisance, inconvenience to nearby residents and obstruction to the pedestrians. There were also complaints on the outside seating of the restaurants nearby. Other government departments generally had no adverse comment on the review application;
- (e) public comments – there were 19 public comments received on the review application. All commenters raised objection to the review application mainly for reasons of narrowing the width of the existing footpath, occupation of government land/public space for private use, impact on pedestrian safety, creation of a smoking zone outside the restaurant, causing of environmental hygiene problem and worsening of law and order. 10 similar comments objecting to the application were also received during the s.16 application stage;
- (f) PlanD's view – PlanD did not support the review application based on the planning considerations and assessments as set out in paragraph 7 of

the Paper which were summarised below:

- (i) although the proposed width of the OSA of 1.2m was considered acceptable by C for T, the proposed area was just enough for placing the furniture of dining tables and chairs. It was expected that the restaurant operator would need to make use of the remaining width of the footpath to serve the diners;
- (ii) DFEH maintained his reservation on the OSA proposal at this stage as he was aware of the local concerns on the potential hygiene problem, greasy smoke nuisance, smoking problem, noise nuisance, inconvenience to nearby residents and obstruction to the pedestrians caused by the proposal;
- (iii) there was strong local objection to the review application; and
- (iv) there was no major change in circumstances since the application was rejected by the RNTPC on 21.10.2011.

7. The Chairman then invited the applicant's representative to elaborate on the review application.

8. Mr. Cheung Wai Leung made the following main points:

- (a) the width of the OSA was reduced from 1.4m to 1.2m so as to allow enough space along the footpath for use of the pedestrians and residents;
- (b) the approval period sought was shortened from five years to one year in order to allow monitoring of the management of the OSA. Should there be any problem arising from the OSA, the application for renewal could be rejected;
- (c) the proposed operation hours were changed from between 9:00 a.m. and 11 p.m. to between 9:00 a.m. and 10:30 p.m. in order to minimise the

potential nuisance to the nearby residents;

- (d) in the past five years, the applicant was not prosecuted by government departments for environmental nuisance and there was no confirmed cases of reported complaints of noise or smoke nuisance;

[Ms. Christina M. Lee arrived to join the meeting at this point.]

- (e) an OSA manager would be appointed to take charge of the management of the OSA. The OSA manager would be responsible for the training and monitoring of the staff to avoid causing any environmental nuisance. The detailed proposals were set out in paragraph 3(e) of Paper. A name plate with telephone number of the OSA manager would be displayed in a conspicuous place at the shopfront to facilitate members of the public to contact the OSA manager;
- (f) thorough clean-up would be conducted after every meal time at 10:30 a.m., 2:30 p.m., 8:30 p.m. and 10:30 p.m.;
- (g) since a waiting area had been designated inside the restaurant, customers would not have to wait at the OSA;
- (h) this review application had addressed the departmental and public concerns; and
- (i) the benefits brought about by the OSA to the public, e.g. the cyclists and local people, should be taken into account. The OSA would also contribute to the economic and tourism development of Hong Kong.

9. A Member asked if any survey on pedestrian flow had been conducted for the subject area. Mr. W.W. Chan replied that PlanD had not conducted any pedestrian survey but as the application site was located near the main entrance of a residential building and a supermarket, a high level of pedestrian flow was envisaged. Mr. Cheung Wai Leung said that they did not carry out a pedestrian survey for the subject area but they could do so

if necessary. According to several site inspections conducted by him at noon time, the pedestrian flow along that section of the footpath was not very high.

10. Noting that the OSA was partly covered by a canopy, a Member asked about the utilisation rate of the OSA, especially during rainy days and typhoon seasons. Mr. Cheung Wai Leung said that the OSA would mainly be an additional attraction of the restaurant and they did not expect that the OSA itself would attract a lot of patrons. The OSA would not be opened when there was heavy rain or typhoon. Mr. Cheung did not understand why some OSAs were allowed to operate in the vicinity but the subject OSA was not approved. By referring to Plan R-4 and Drawing R-1, another Member asked if the waiters/waitresses serving customers at the OSA had to pass through the main entrance of the restaurant. In reply, Mr. Cheung said that the main entrance of the restaurant was more than 2m wide which was wide enough for staff serving the OSA. He reiterated that the OSA would mainly serve as an additional attraction of the restaurant.

11. In response to a question raised by a Member, Ms. Cheung Suk Fung, Health Inspector (Licenses), FEHD said that she had no information in hand about the complaints from the nearby residents concerning the nuisance created by the OSAs in the neighbourhood of the restaurant.

12. A Member asked about the number of tables inside the restaurant and in the OSA respectively. Mr. Cheung Wai Leung replied that the restaurant could accommodate about 200 customers and only two or three tables were proposed to be placed in the OSA serving about 8-10 customers. This Member further asked whether the restaurant would recruit a new OSA manager to monitor the operation of the OSA. Mr. Cheung said that they would deploy an experienced staff to take up the post of OSA manager who would be responsible for staff training and management of the OSA. The same Member enquired if the restaurant had considered its legal liability if an accident occurred to a pedestrian within the OSA area. Mr. Cheung said that according to other OSA operators, this kind of accidents seldom happened but they would strengthen staff training on pedestrian safety and would arrange insurance cover.

13. A Member asked whether the 3.5m clear width of the footpath could be maintained during operation of the OSA as some space would be required for circulation

and provision of catering services. Mr. Cheung Wai Leung said that as the OSA would only accommodate 8-10 customers, it would unlikely impede pedestrian flow along that section of footpath.

14. Another Member asked whether smoking would be allowed in the OSA. Ms. Cheung Suk Fun advised that this should be checked with the Tobacco Control Office.

15. The Chairman asked why the OSA was required and whether the design of the restaurant could be modified to create an open air area within the boundary of the restaurant to serve the intended objective. A Member further asked whether the OSA was to satisfy customers who were smokers. Mr. Cheung Wai Leung said that the OSA was not being proposed for serving smokers. He added that in the New Territories, some would like to sit outdoors even when there were seats indoors. They did not sit outdoors for the purpose of smoking. That explained why there were a number of OSAs in the area. Mr. Cheung invited Member to visit the area to understand the habit of the people living in that area.

16. In response to a Member's question, Mr. W.W. Chan said that there was no planning application for OSA in the area. Another Member asked if the OSAs in the area were illegal. Mr. W.W. Chan answered that the OSAs in the area might be suspected unauthorised developments under the Town Planning Ordinance.

17. The Chairman enquired if the subject restaurant had been prosecuted for obstructing the pedestrians or causing environmental nuisance problem to the surrounding area. Ms. Cheung Suk Fun replied that she had no such information in hand. Mr. Cheung Wai Leung confirmed that the subject restaurant was not subject to prosecution or confirmed complaints in the past five years.

18. As the applicant's representative had no further comment to make and Members had no further question, the Chairman informed the applicant's representative that the hearing procedures for the review application had been completed. The Board would further deliberate on the review application in his absence and inform the applicant of the Board's decision in due course. The Chairman thanked DPO/TMYL, the Health Inspector (Licenses), FEHD and the applicant's representative for attending the meeting.

They left the meeting at this point.

Deliberation Session

19. A Member considered that the application site, being located in a mixed rural and urban environment, was a suitable site for OSA. It was also separated from Castle Peak Road by a row of planters. The granting of a one year approval for the subject application could be supported and used as a test case to provide information that would be useful to the Board in considering similar applications in future. This would help encourage the regularisation of other OSAs in the area. Another Member shared this view and said that the application site was not within an area of high pedestrian flow and there should be enough space for pedestrians.

20. The Vice-chairman held a different view and had doubt on the proposed width of 1.2m for the OSA. He said that it was difficult to ensure that the tables would be placed within the defined area, especially during busy hours. He was also concerned about the precedent effect and whether the clear width of 3.5m footpath should be taken as a benchmark for similar applications. This might also set an example for other shops such as convenient stores and supermarkets which tended to expand their business area onto the footpath nearby. Moreover, as smoking might be allowed in OSA, other restaurant operators might also make application for OSA in order to satisfy smoker clients. In view of the above, he did not support the subject application. The Chairman informed Members that according to the information obtained from FEHD, smoking in OSA of licensed restaurants was allowed.

21. A Member shared the same view of the Vice-chairman and further pointed out that the design of the restaurant had not taken into account the provision of the OSA. For OSAs in other areas such as Stanley, the restaurants were designed with an open frontage to provide for outdoor seating. Besides, it was doubtful whether the OSA manager could ensure that the OSA would not be extended beyond the defined area. The Chairman also said that the design of the restaurant could be modified to provide an OSA within the boundary of the restaurant.

22. Another Member was concerned that the application site had occupied part of a public footpath which should be for the use of pedestrians. Noting that the site was located near a cul-de-sac and there were some planters along the roadside, and there were schools, bicycle parking and supermarket in the vicinity, this Member was concerned about the safety and hygiene problem that the OSA might cause and considered that the subject application could not be supported.

23. A Member said that the granting of a one year approval for the subject application could be supported if it could be ensured that a 3.5m clear width of the footpath could be maintained. Another Member agreed and added that if there was a breach of the minimum requirement of the 3.5m clear width footpath, the relevant authority could take appropriate enforcement action.

24. A Member said that as there were planters along the roadside, pedestrians might have problem passing through the area when the application site was occupied by the OSA. Noting that it would be difficult to ensure the provision of a 3.5m clear width along the footpath, another Member considered that the subject application should not be approved.

25. A Member said the applicant had not considered other alternatives to provide the OSA such as setting back the indoor area to provide the OSA within the boundary of the restaurant. While the applicant's initiative to seek planning approval before operation was appreciated, the views of the residents and the safety of the pedestrians should also be considered. Therefore, this Member did not support the subject application.

26. In response to a Member's question, the Chairman said that there were previously approved OSAs in other areas in Hong Kong, e.g. the seafood restaurants in Sai Kung. This Member considered that the OSA could be provided within the boundary of the existing restaurant and the approval of the subject application would set an undesirable precedent for other similar applications.

27. A Member opined that this application should not be approved as the application site had encroached onto government land. It would set a precedent for other similar applications and thus should not be encouraged.

28. A Member had no strong views on the application and suggested that if the application was approved, the approval of one year could allow the monitoring of the situation and approval conditions requiring the payment of tenancy fees and the purchase of third party insurance should be incorporated. The Chairman explained that the proposed approval conditions were outside the purview of the Board. The same Member said that if the application was rejected, then the concerns of the Board should be clearly explained to the applicant.

29. Upon the Chairman's request, the Secretary explained the consideration in determining whether an OSA would require planning permission in areas covered by urban and new town outline zoning plans (OZPs). She said that OSAs operating on a make-shift nature with or without temporary structures (e.g. placing some tables and chairs in areas outside the restaurant on certain hours of each day) could be regarded as a temporary use in land use planning terms, provided that the duration of use was expected to be less than five years. In such cases, no planning permission would be required. There were not many planning applications for OSA in the urban area. One of the applications for OSA was related to amendments to an approved Master Layout Plan within a "Comprehensive Development Area" zone at Kowloon Station. On the other hand, OSA was subject to the licensing control of the FEHD and granting of Short Term Tenancy (STT) or Short Term Waiver (STW) by the Lands Department (LandsD). However, in areas covered by rural OZPs, all temporary uses other than those specified under the Notes of the OZP would require planning permission from the Board. As such, the subject case for OSA required planning permission from the Board.

[Professor Edwin H.W. Chan arrived to join the meeting at this point.]

30. In response to a Member's question on whether the LandsD's approval was required if an OSA on government land was operated on a make-shift nature. The Secretary replied that even if the OSA was operated on a make-shift nature, the operator had to apply to LandsD for STT when it involved government land.

31. Mr. Jimmy Leung said that if an OSA, though operated on a make-shift nature, was to continue operation, it was arguable if it should be regarded as a temporary use. It

was more a permanent use on a part-time basis. Mr. Jimmy Leung further said that according to his understanding, the OSAs in Stanley which were operated during weekends only were allowed by the Government during SARS and the restaurant operators were not required to pay any fees.

32. A Member enquired if the subject application involved temporary or permanent structures. The Secretary said that there was no clear indication in the submission. The Chairman supplemented that if permanent structures were involved, approval of the building plan was required. Another Member considered that if the proposed OSA involved permanent structures, then the subject application should be rejected.

33. The Chairman said that as there was no information in the submission on whether the OSA involved temporary or permanent structures, Members might consider asking PlanD to seek clarification with the applicant on this particular aspect. If permanent structures were involved in the OSA, the subject application should be rejected. Members agreed to adjourn the meeting pending PlanD's clarification.

34. After further deliberation, the Board decided to adjourn the meeting and request the Planning Department to seek clarification with the applicant on whether the outside seating accommodation involved temporary or permanent structures.

[Mr. Sunny L.K. Ho left the meeting at this point.]

Hong Kong District

Agenda Item 4

[Open Meeting (Presentation and Question Session only)]

Further Consideration of Representations No. R1 to R793, R795 to R1023,
R1026 to R1046 and R1048 to R1068 and Comments No. C1 to C9 to the
Draft Wong Nai Chung Outline Zoning Plan No. S/H7/15
(TPB Paper No. 9072)

[The hearing was conducted in Cantonese and English.]

35. The following Members had declared interest in the item:

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|-----------------------|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Miss Bonnie J.Y. Chan | - | her family member owned a flat in Happy Valley |
| Dr. Wilton W.T. Fok | - | his family member owned a flat in Happy Valley |
| Mr. Dominic Lam |] | had business dealings with Ove Arup & Partners Hong Kong Ltd. (OAP) which was a consultant of Hong Kong Sanatorium and Hospital (HKSH). HKSH was one of the representers (R708). |
| Professor S.C. Wong |] | |
| Mr. Patrick Lau | - | being the Chairman of the Happy Valley Residents' Association which was one of the representers (R999) and had business dealings with OAP and MVA Hong Kong Ltd. which were the consultants of HKSH. HKSH was one of the |

representers (R708)

Mr. Maurice W.M. Lee - owned a flat at Link Road and a flat at Wun Sha Street

Miss Annie Tam - owned a flat at Broadwood Road
(Director of Lands)

Miss Ophelia Wong - owned a flat at Broadwood Road
(the Secretary)

36. Members noted that the properties owned by Miss Annie Tam, Mr. Maurice W.M. Lee, the family members of Miss Bonnie J.Y. Chan and Dr. Wilton W.T. Fok would not be affected by HKSH's project. Members agreed that Miss Chan and Dr. Fok could stay at the meeting. Members noted that Miss Tam and Mr. Lee had not yet arrived and agreed that they could join the meeting when they arrived. Members noted that Mr. Patrick Lau had tendered apology for being unable to attend the meeting. Members noted that Mr. Lam and Professor Wong had no involvement in HKSH's project and agreed that Mr. Lam could stay at the meeting. Members also noted that Professor Wong had not yet arrived and agreed that he could join the meeting when he arrived.

37. As in previous Board meetings to discuss the representation of HKSH, Members agreed that as the role of the Secretary was to provide information and advice on procedural matters and would not take part in the decision-making, she could stay at the meeting.

[Ms. Julia M.K. Lau left the meeting temporary at this point.]

Presentation and Question Session (Request for Deferment)

38. The Chairman drew Members' attention that some letters requesting for deferring the hearing had been received from the representers a few days before the meeting. The Chairman said that the Board should first decide whether to accede to the deferral request or to proceed with the hearing of the representations and comments.

Those requested for deferral should be invited to the meeting to explain to the Board their reasons for the deferral. Other representatives/commenters present could also express their views on the deferral request.

39. The Chairman said that sufficient notice had been given to invite the concerned representatives and commenters to attend the hearing, but other than those that were present at the meeting, the rest had either indicated not to attend the hearing or made no reply. As sufficient notice had been given to the representatives and commenters, Members agreed to proceed with the hearing in their absence.

40. The following government representatives and representatives, commenters and their representatives were invited to the meeting at this point:

Ms. Ginger Kiang	- District Planning Officer/Hong Kong (DPO/HK), Planning Department (PlanD)
Mr. Tom Yip	- Senior Town Planner/Hong Kong (STP/HK), PlanD
Mr. Johnny Chan	- Engineer/Wanchai, Transport Department (TD)
Mr. Chris C.H. Lam	- Senior Geotechnical Engineer/Island, Civil Engineering and Development Department (CEDD)
Mr. Stephen H.W. Cheung	- Geotechnical Engineer/Island, CEDD

R175 – Ho Hung Kwong, Duncan

Mr. Ho Hung Kwong, Duncan	Representer
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R649 – Lam Lai Fun, Sian

Ms. Fong Suen Ki	Representer's representative
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R651 – Tsang Ka Keung

Mr. Billy Chiu	Representer's representative
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R682 – Tang, William

Mr. Tam Ka Fai] Representers' representative

R708 – The Hong Kong Sanatorium and Hospital

Mr. Ian Brownlee]
Mr. Joseph Chan]
Ms. Adrienne Li]
Ms. Anna Lee]
Mr. Ben Yu]
Ms. Carol Kwok] Representers' representatives
Mr. K.K. Kwan]
Mr. Fred Brown]
Mr. Chapman Lam]
Mr. Kelvin Ip]
Mr. Eddie Chan]
Mr. Kenneth Ip]

R709 – Sky Oasis Limited

Mr. Shek Yan Kit, Raymond] Representers' representatives
Ms. Lai Siu Yu, Jeanie]

R751 – 劉靜芳

R752 – 黃志妍

R754 – 廖綺玲

R770 – Wong Mun Ling, Cynthia

R828 – Chiu Kin Man

R928 – 黃漢明

R948 – Lee Wing Sum, Wendy

Ms. Lew Yee Ling] Representers' representative

R763 – Elite Eternal Limited

Mr. Lam Hau Sing] Representers' representative

R981 – 姜定佩

R1005 – 黃敏瑜

R1006 – 龍怡方

R1007 – Lai, Cindy

R1019 – Mrs. Chu

R1023 – 還小姐

R1048 – 雷先生

R1049 – Chan Shiu Tong

R1050 – 董太

R1051 – Kwan Tai Yuen

R1052 – Tse, Joseph

R1053 – Chan K.

R1054 – 潘先生

R1055 – To Ming Fai

R1056 – Wong K.H.

R1057 – 陳玉蘭

R1058 – Lau, Alex

R1059 – Fung King Cheong

R1060 – Ng, Ivan

Mr. Sum Kit Hang

Representers' representative

R971 – David John Forshaw

Mr. David John Forshaw

Representer

R972 – 楊

Ms. Yeung Lam Mee

Representer

R989 – Rose Allender

Ms. Rose Allender

Representer

R991 – Robert Allender

Mr. Robert Allender

Representer

- (b) six letters from R709, R764, R823, R866, R958 and R960 respectively requesting the Board to defer the hearing;
- (c) a sample reply from the Secretary of the Board to R709, R764, R823, R866, R958 and R960 dated 24.3.2012 asking them to be present at the meeting on 27.4.2012 to explain to the Board the reasons for the deferral request;
- (d) a letter from R709 dated 26.4.2012 substantiating further the request for deferring the hearing;
- (e) a letter from Kai Shing Management Services Limited on behalf of R992 dated 8.3.2012 submitting comments on HKSH's proposal;
- (f) an email from R1012 dated 25.4.2012 submitting comments for R1012, R1013, R1014 and R1028 on HKSH's proposal; and
- (g) four comments received at the meeting (letter from R751 dated 23.4.2012, letter from R754 dated 27.4.2012, letter from R928 dated 26.4.2012 and letter from R1003 dated 14.4.2012).

43. The Secretary said that S.K. Lam, Alfred Chan & Co. (Solicitors & Notaries), in its letter dated 19.4.2012 (para. 42 (a) above), stated that the draft OZP No. S/H7/15 incorporating HKSH's proposal was gazetted on 30.9.2010 for public inspection for two months until 30.11.2010 and after expiration of the publication period, the draft plan should have been submitted to the CE in C for approval within nine months unless an extension of a maximum of six months was allowed by CE. As the Board had not submitted the draft OZP to CE in C for approval within the statutory time limit, the Board had no power to proceed further with the draft OZP or to convene the hearing on 27.4.2012. After seeking advice from Department of Justice (DoJ), the Secretary sent a reply (dated 23.4.2012) to the solicitor firm informing them that subsequent to the gazetting of OZP No. S/H7/15, an amendment to the draft OZP No. S/H7/15 (an amendment relating to a site at Ventris Road) was made and the draft OZP No. S/H7/16 was gazetted under section 7 of the Town Planning Ordinance (TPO) for public inspection for a period of two months from

26.8.2011. If there was no further amendment to the draft OZP, the Board should submit the draft OZP to the CE in C for approval within nine months (i.e. on or before 26.7.2012) after the expiration of the two-month exhibition period of the draft OZP No. S/H7/16, or by a date not more than six months upon the expiration of nine months as the CE might, on an application to be made by the Board under section 8(2) of the TPO, allow. In the circumstances, the statutory time limit under the TPO for the Board's submission of the draft OZP to the CE in C for approval had not yet expired.

44. The Secretary continued to say that regarding the deferral request, some representers claimed that they did not have enough time to study the substantial amount of materials sent to them before the meeting nor have time to seek professional advice. The representers said that it was unfair that HKSH had been given about one year to prepare the further information but they were only given a few weeks to comment on it. The Secretary pointed out that according to the Town Planning Board Guidelines on Deferment of Decisions on Representations, Comments, Further Representations and Applications made under the Town Planning Ordinance (TPB PG-No. 33), any deferral request received less than two weeks before the scheduled meeting date would be submitted to the Board for consideration together with the relevant TPB Paper on the representations at the scheduled meeting. The relevant parties and/or their representative(s) would be required to be present before the Board to explain the reasons for the deferment. As such, the concerned representers had been asked to attend the meeting to explain to the Board directly their reasons for requesting deferment of the hearing.

45. The Secretary also reported that Man Lam Christian Church (R1025) and Ms. Anita Ng (R1024) had written to the Secretary of the Board on 26.4.2012 and 27.4.2012 respectively asking why they were not invited to attend the resumed hearing. The Secretary explained that on 8.4.2011, the Board had already made a decision on the representations submitted by R1024 and R1025. According to the Board's practice, once the Board had made a decision on the representations, the concerned representers would not be invited to attend the resumed hearing of the remaining representations, which were not directly related to their representations. Since R1024 had been informed of the Board's decision on 6.5.2011, no further document had been sent to her. However, for R1025, after sending out the decision letter on 6.5.2011, some documents including an invitation to the resumed hearing on 27.4.2012 had inadvertently been sent to Man Lam

Christian Church by the Secretariat in March/April 2012. Although the Secretariat had explained to R1024 and R1025 the reasons for not inviting them to attend the resumed hearing, both R1024 and R1025 did not agree. The Secretary told Members that according to the advice from DoJ, the representers had no right to attend the hearing once the Board had made a decision on their representations. The Secretary invited Members to note the matter and that the Secretary would reply to the two representers separately.

46. The Chairman then invited the concerned representers to explain their reasons for the deferral request.

R709 – Sky Oasis Limited

47. Ms. Lai Siu Yu, Jeanie (representative of R709) made the following main points:

- (a) there was insufficient time for them to gather relevant information, to collect views from local residents and to seek legal advice;
- (b) according to the TPO, the draft OZP (covering the amendment concerning the HKSH's site) should have been submitted by the Board to the CE in C for approval by 31.8.2011. However, five days before the expiry of the said deadline, the Board had made a further amendment to the draft OZP with respect to a site at Ventris Road (OZP No. S/H7/16) on 26.8.2011. The Board took the view that the statutory time limit applicable to the draft OZP had been correspondingly extended to 26.7.2012. While the Board had sought legal advice on this point, many residents had doubt as to whether such an interpretation of the law was correct;
- (c) the Government was biased towards HKSH as the hearing had been adjourned for over a year, allowing HKSH more than 10 months to submit its further information and to seek support from relevant government departments, which was not allowed under normal circumstances. Without such time extension, all the latest submissions

made by HKSH would have been out of time and should not be considered further;

- (d) the time allowed for the public to make comments on HKSH's further information was insufficient and was further reduced by the fact that the supplementary submissions made by HKSH had been provided to the concerned parties in three batches on 20.2.2012, 27.2.2012 and 23.3.2012. As the first two submissions were distributed in the form of CD-Rom, a lot of people had difficulties in accessing the information therein. The last batch of supplementary information was sent out on 23.3.2012 for comments by 13.4.2012. The representers/commenters were only given a few weeks to make comments, which was far too short as compared with the time allowed for HKSH to make its submissions. This was not a genuine consultation; and
- (e) as many residents in Happy Valley had to go to work, they could only use their spare time to study the submissions made by HKSH. They would also need time to arrange residents' meetings to discuss the matter and to collect views. Besides, they did not have the resources to engage professionals to prepare technical reports. They hoped that the Board and the relevant government departments could handle the matter with great care.

R763 – Elite Eternal Ltd.

48. Mr. Lam Hau Sing (representative of R763) said that he agreed with the reasons for deferment as presented by Ms. Lam Siu Yu, Jeanie (representative of R709). They needed more time to seek legal advice.

R958 – The Incorporated Owners of San Francisco Towers

49. Mr. Ho Yip Chor (representative of R958) said that the main reasons for deferment had already been presented by Ms. Lam Siu Yu, Jeanie (representative of R709). He added that as the TPB Paper was voluminous and difficult to comprehend and was only

received on 21.4.2012, deferment of the hearing would allow time for him to digest the materials. He also noticed that the meaning between the English and Chinese versions was slightly different in some parts of the TPB Paper.

R960 – The Incorporated Owners of Evergreen Villa, Stubbs Road

50. Ms. Helen Tseng (representative of R960) made the following main points:

- (a) it was difficult to read the information from CD-Rom and a large pile of documents were only received on 21.4.2012;
- (b) there was insufficient time for them to read all the materials or even arrange a site visit to HKSH. As they were concerned about the traffic impact, they should be given sufficient time to study the information submitted by HKSH; and
- (c) HKSH had been given almost one year to prepare submission. It would only be fair to allow sufficient time for the representers to make comments on HKSH's proposal.

R708 – The Hong Kong Sanatorium and Hospital

51. Mr. Ian Brownlee (representative of R708) objected to the deferral request and made the following main points:

- (a) they had made due diligence to prepare the information and make it available to the public;
- (b) the geotechnical and traffic issues involved were complicated and they had spent time to discuss with the relevant government departments and to re-run the complicated computer programme;
- (c) they had finished the final documents within a reasonable time period;

- (d) regarding the statutory time limit for the submission of the draft OZP to the CE in C for approval, it was the normal and usual practice for the Board to make further amendments to the draft OZP if required. As the deadline for submitting the draft OZP was 26.7.2012, further deferment of the hearing would not be beneficial to any party;
- (e) the Board would normally provide the TPB Paper to all representers and commenters one week before the meeting. In this particular case, the Board had made an administrative arrangement by circulating HKSH's submissions to the relevant parties well before the hearing. In fact, the CD-Roms were provided by HKSH to facilitate the comments from all other representers/commenters; and
- (f) the three-week time limit for public comments was in line with that set for public comments on planning applications and representations, which was considered reasonable.

R991 – Robert Allender

52. Mr. Robert Allender (representative of R991) said that he supported the deferral request as he had never heard of the statutory time limit for submission of the draft OZP to the CE in C by 26.7.2012 and he needed more time to study the matter.

53. On the issue of submitting the draft OZP for approval, the Secretary reiterated that according to the TPO, the Board had to submit the draft OZP to the CE in C for approval within nine months upon expiration of the exhibition of the draft OZP. In the case of the draft Wong Nai Chung OZP No. S/H7/16, the deadline for submission for approval was 26.7.2012. A six-month extension might be allowed by the CE upon application.

54. The Chairman invited the representers, commenters and their representatives for a show of hands to indicate whether they supported or opposed the deferral request. While the total number of supporters and objectors were not counted, the two camps were relatively balanced in terms of the number of hands shown but it was noted that the

objectors were mainly HKSH's representatives.

55. The representers and commenters had no further point to make and Members had no further question on the proposed deferment of the hearing. The Chairman said that the Board would deliberate on the request for deferral in the absence of the government representatives and the representers, commenters and their representatives. The Chairman requested the government representatives and the representers, commenters and their representatives to leave the meeting temporarily. They all left the meeting temporarily at this point.

Deliberation Session (Request for Deferment)

56. The Chairman said that under the TPO, the Board had to submit the draft OZP to the CE in C for approval within nine months after the expiration of the publication of the draft OZP No. S/H7/16 (in the instant case, 26.7.2012), unless an extension for not more than six months had been allowed by the CE. Members should note that the application for extension had to be supported with strong justifications and the Board could not assume that an extension would be granted by the CE. The Board should consider whether there was sufficient time for the Board to meet the statutory deadline for submission of the draft OZP to the CE in C for approval.

57. The Secretary added that there were three months before the expiry of the statutory time limit on 26.7.2012. If the hearing was only deferred for about two weeks, there might be enough time to make submission to CE in C before the statutory deadline but it would also depend on whether there was any further amendment to the draft OZP.

58. A Member asked whether the information contained in the CD-Roms could be read and whether it was the practice for the Board to distribute the TPB Paper to the representers/commenters one week before the meeting. In reply, the Secretary clarified that the TPO did not set out specific requirements on how the further information received should be distributed to the representers/commenters. Given that the supplementary submissions from HKSH contained colour plans and drawings, the documents were voluminous and there were over 1,000 representers and commenters, it was considered more appropriate to provide the information in the form of CD-Rom. Although some

representers claimed that they could not read the information contained in the CD-Rom, no representer/commenter had approached the Secretariat for a replacement despite that they had been informed of the replacement arrangement by the Secretariat via a letter dated 1.3.2012. The Secretary advised that the administrative arrangements to allow three weeks for representers/commenters to submit comments, the one-month prior notice of the meeting date and the issue of the TPB Paper one week before the meeting were all in line with the existing practice of the Board.

59. Upon the Chairman's enquiry, the Secretary explained the case concerning Man Lam Christian Church (i.e. R1024 and R1025). She said that on 8.4.2011, after consideration of the representations and comments, the Board decided that part of both R1024 and R1025 which was related to Man Lam Christian Church was invalid, and decided not to uphold the remaining part of the two representations. Since the Board had already made a decision on the two representations, according to the existing practice of the Board, R1024 and R1025 did not have the right to attend the resumed hearing. Unfortunately, the Secretariat had inadvertently sent an invitation to R1025 to attend the hearing. Although the Secretariat had explained the situation to R1024 and R1025, they both did not accept that they had no right to attend the resumed hearing. According to the advice from DoJ, the existing practice of the Board was considered legally proper, i.e. after the Board had made a decision on the representations, the representers would not be invited back to the resumed hearing.

60. As regards the distribution of HKSH's further submissions, the Secretary emphasised that this was a special case. The hearing was deferred by the Board on 8.4.2011 pending submission of further information by HKSH on traffic aspect and PlanD to seek clarification with relevant government departments on geotechnical aspect and the space requirement for proton therapy machine respectively. The further information submitted by HKSH was specifically requested by the Board to facilitate its further consideration of the representations and comments. HKSH would need to provide sufficient copies for Members of the Board and it was not obliged to provide sufficient copies for the representers and commenters. After discussion with PlanD, HKSH agreed to provide CD-Roms for distribution to the representers and commenters. The Secretary continued to say that the statutory procedures for publication of representations/comments under the TPO were not applicable to the HKSH's further submissions. Therefore, an

administrative arrangement had been adopted to ensure that all other representers and commenters would have access to and have an opportunity to comment on the further submissions. The comments received would be submitted to the Board for consideration together with the HKSH's further submissions.

61. A Member enquired about the timing of sending out the supplementary submissions of HKHS to the representers and commenters. By referring to a table attached to the letter dated 26.4.2012 from Sky Oasis Limited (para. 42 (d) above), which was tabled at the meeting, the Secretary said that the first and second batches of supplementary submission received were sent out to the representers and commenters on 20.2.2012 and 27.2.2012 respectively for comments by 5.3.2012. The third batch of supplementary information submitted by HKSH on 22.3.2012 was sent out to the representers and commenters on 23.3.2012 for comments by 13.4.2012. The Secretary said that comments received after 13.4.2012 would also be submitted to the Board for consideration. As the third batch of supplementary information submitted by HKSH was received on 22.3.2012, the hearing date had also been re-scheduled from 23.3.2012 to 27.4.2012. The Secretary supplemented that the Secretariat had sent out a letter on 1.3.2012 to inform the representers and commenters that if they had encountered problems in reading the CD-Roms, they could ask the Secretariat for a replacement or they could inspect the hard copy of the information at the Public Enquiry Counters (PECs) of PlanD. In this regard, all representers/commenters should have enough time to inspect the hard copy of HKSH's submissions at the PECs before the meeting if they so chose to.

62. A Member asked if it was proper to send CD-Rom instead of hard copy of the information to the representers and commenters. The Chairman said that the matter on the grounds of fairness to provide information only in the form of CD-Rom could be one to be decided by the Court. However, the representers/commenters were informed that the hard copy was available for inspection at the PECs. In response to a Member's enquiry, the Secretary confirmed that the TPB Paper was sent to the representers and commenters on 20.4.2012, i.e. a week before the hearing, which was in line with the existing practice of the Board.

63. A Member asked if any comment had been received on HKSH's further information. The Secretary said that some representers/commenters had submitted

comments to the Board. The same Member enquired when the last comment was received. The Secretary said that some comments were only received at the meeting. This Member was of the view that the grounds for deferment submitted by the representers were not strong because as a project proponent, it was reasonable to allow some time for HKSH to finalise their redevelopment proposal. It was noted that the Secretariat had followed the existing practice in distributing HKSH's further information. However, sympathetic consideration might be given by the Board to defer the consideration by two weeks taking account of the complicated matters involved.

64. Another Member considered that as the Board had followed the existing practice in distributing HKSH's submission, any decision of the Board to defer the meeting had to be based on discretion of the Board on special sympathetic grounds.

65. A Member asked if granting of deferral on sympathetic grounds would be sufficient and whether it would set an undesirable precedent for other similar cases. The Chairman said that the Board had made decisions based on sympathetic consideration before and it would not be regarded as a precedent as each case should be considered on its own circumstances.

[Mr. Maurice W.M. Lee arrived to join the meeting at this point.]

66. A Member asked whether a time limit of three weeks could be considered as a reasonable time for the representers/commenters to make comments. The Secretary explained that while the period of deferral and the time for comments that the Board might allow were not prescribed under the TPO, a three-week period for comments would normally be considered as reasonable. In considering the deferral request, the Board had to take into account the statutory time limit for submitting the draft OZP to the CE in C for approval.

67. A Member asked for information on the tasks the Board had to finish before the draft OZP could be submitted to the CE in C for approval if the deferment was allowed. The Secretary said that if the deferment was allowed, the Board would re-schedule the hearing for the representations and comments to a date to be agreed by the Board. If there was no further amendment to the OZP, then the draft OZP could be submitted to the CE in

C for approval after the hearing. However, if the Board decided to uphold any of the representations, then the draft plan would need to be amended and published for further representations. Under that circumstances, it would take about two to three months to complete the whole process. If necessary, an application for a time extension for six months could be made to CE but the Board should not assume that the CE would approve the application.

68. A Member said that the matter on the redevelopment proposal of HKSH had lasted for about two years and there was no strong justification to support the deferral request. If the deferment was allowed, the relevant party might ask for a further deferment in the next hearing.

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

69. A Member enquired if the relevant District Council had been consulted on HKSH's proposal and whether they had any views on it. The Secretary confirmed that the Wan Chai District Council had been consulted and had expressed views on HKSH's proposal.

70. The Vice-chairman supported the deferment for two weeks on sympathetic consideration. However, the reasons that there was insufficient time for the representers/commenters to study the TPB Paper which was sent to them one week before the meeting should not be accepted as the reason of the Board's decision as the Board had followed the existing practice in arranging the hearing and distributing HKSH's submissions to the representers/commenters.

71. A Member considered that the deferral request could be acceded to but it was not only based on sympathetic consideration. Another Member said that the Board had also taken into account all relevant circumstances of the case, including the views of both the opposing and supporting representers/commenters in deciding whether the deferral request could be acceded to. Other Members shared the same view.

72. The Chairman concluded that the Board had considered all relevant circumstances of the case and decided to exercise its discretion to defer the hearing for two

weeks.

Notification of Decision

73. The Chairman invited the government representatives and the representers, commenters and their representatives to return to the meeting room at this point. The Chairman informed the attendees that while the distribution of further submissions from HKSH and the TPB Paper and the arrangement of the resumed hearing had followed the existing practice of the Board, after consideration of the views expressed by the attendees and all relevant circumstances of the subject case, the Board decided to exercise its discretion to defer the hearing for two weeks to 11.5.2012.

[Professor S.C. Wong arrived to join the meeting at this point.]

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

Procedural

Agenda Item 5

[Open meeting]

Request for Deferral for Review of Application No. A/NE-LT/440

Proposed Four Houses in “Agriculture” and “Village Type Development” Zones

Lots 1583, 1584, 1585, 1586, 1587, 1588, 1589 and 1590 in D.D. 10

Ng Tung Chai, Lam Tsuen, Tai Po

(TPB Paper No. 9076)

[The meeting was conducted in Cantonese.]

74. Ms. Janice W.M. Lai had declared an interest in this item as she had business dealings with the applicant’s solicitor. As the item was a request for deferral, Members agreed that Ms. Janice W.M. Lai could stay at the meeting for the item.

75. The Secretary said that on 28.2.2012, the applicant’s representative wrote to the Secretary of the Board requesting the Board to defer making a decision on the review

application for two weeks to 8.6.2012 as the applicant's representative would be attending a meeting overseas and could not attend the scheduled hearing on 25.5.2012. However, the justification for deferment did not meet the criteria for deferment as set out in the Town Planning Board Guidelines on Deferment of Decision on Representations, Comments, Further Representations and Applications (TPB PG-No. 33) in that the reason given was personal and not related to the substance of the case such as submission of supplementary information or awaiting comments from relevant government departments. It was therefore proposed that the applicant's request for deferment should not be acceded to. Should the Board decided not to accede to the applicant's request for deferment, the review application would be submitted to the Board for consideration on 25.5.2012 as scheduled.

76. After deliberation, the Board decided not to accede to the applicant's request for deferment. The review application should be submitted to the Board for consideration on 25.5.2012 as scheduled.

Agenda Item 6

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of
Further Representations to the Draft Kai Tak Outline Zoning Plan No. S/K22/3
(TPB Paper No. 9073)

[The meeting was conducted in Cantonese.]

77. Mr. Patrick H.T. Lau had declared an interest in this item as he was a member of the Kai Tak Development Taskforce of Harbourfront Commission. Members noted that Mr. Lau had tendered apology for being unable to attend the meeting.

78. The Secretary briefly introduced the Paper. On 26.8.2011, the draft Kai Tak Outline Zoning Plan (OZP) No. S/K22/3 was exhibited for public inspection under s.5 of the Town Planning Ordinance (the Ordinance). During the two-month exhibition period, a total of 1,117 representations were received. On 18.11.2011, the representations were published for public comments and 159 comments were received. On 17.2.2012, after giving consideration to the representations and comments, the Board decided to propose

amendments to the draft OZP to partially meet 69 representations. On 9.3.2012, the proposed amendments were published under s.6C(2) of the Ordinance and 10 further representations were received. As the representations were considered by the full Board, it was considered more appropriate for the full Board to hear the further representations.

79. The Secretary said that further representation No. 10 (F10) indicated support to alternate transportation to the Cruise Terminal at Kai Tak and suggested to allow ferry transportation to/from the Cruise Terminal. As F10 was not related to any proposed amendment items, it should be considered as invalid.

80. After deliberation, the Board agreed to the proposed hearing arrangement for the consideration of the further representation as detailed in paragraphs 2.2 to 2.3 of the Paper and that further representation No. 10 should be considered as invalid.

Agenda Item 7

[Open meeting]

Submission of the Draft Luk Wu and Keung Shan
Development Permission Area Plan No. DPA/I-LWKS/1A
to the Chief Executive in Council for Approval
(TPB Paper No. 9075)

[The meeting was conducted in Cantonese.]

81. The Secretary briefly introduced the Paper. She said that on 2.9.2011, the draft Luk Wu and Keung Shan Development Permission Area (DPA) Plan No. DPA/I-LWKS/1 was exhibited for public inspection under s.5 of the Town Planning Ordinance (the Ordinance). During the 2-month exhibition period, 451 representations were received. On 25.11.2011, the representations were published for public comments and three comments were received. On 9.3.2012, after giving consideration to the 451 representations and three comments, the Board decided not to uphold the representations. As the plan-making process had been completed, the draft Luk Wu and Keung Shan DPA Plan is ready for submission to the Chief Executive in Council (CE in C) for approval.

82. After deliberation, the Board:

- (a) agreed that the draft Luk Wu and Keung Shan DPA Plan No. DPA/I-LWKS/1A and its Notes were suitable for submission under s.8 of the Ordinance to the CE in C for approval;
- (b) endorsed the updated Explanatory Statement (ES) for the draft Luk Wu and Keung Shan DPA Plan No. DPA/I-LWKS/1A as an expression of the planning intention and objectives of the Board on the draft DPA Plan 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 DPA Plan.

Agenda Item 8

[Confidential Item. Closed Meeting.]

83. The item was recorded under confidential cover.

Agenda Item 9

Any Other Business

[The meeting was conducted in Cantonese.]

(i) Local Site Visit

84. The Secretary informed Members that a local site visit to Po Toi and Tai O would be arranged on 24.5.2012. A Member suggested also visiting the site for the proposed integrated waste management facilities near Shek Kwu Chau. The Chairman said that as there was no suitable landing facility at Shek Kwu Chau, the Secretariat should arrange a route which could take a closer view towards the southwestern coast of Shek Kwu Chau. The Chairman said that if Members were unable to join this site visit, he/she

could always join another one to be arranged in the near future.

(ii) Amendments to the Confirmed Minutes of the 979th Town Planning Board Meeting held on 8.4.2011

85. The Secretary reported that Miss Annie Tam had previously declared an interest for hearing the representations and comments in relation to the draft Wong Nai Chung Outline Zoning Plan No. S/H7/15. The Board had noted that her property would not be affected by the Hong Kong Sanatorium and Hospital's proposal and had agreed that she could participate in the representation hearing. However, this information was not recorded in the confirmed minutes of the 979th Town Planning Board meeting held on 8.4.2011. For the record, Members agreed that the relevant minutes should be amended accordingly. Members noted that the amendments would be recorded in the form of an addendum to the confirmed minutes of 8.4.2011.

86. There being no other business, the meeting closed at 12:15 p.m.