

**Minutes of 1114th Meeting of the
Town Planning Board held on 13.6.2016**

Present

Permanent Secretary for Development
(Planning and Lands)
Mr Michael W.L. Wong

Chairman

Professor S.C. Wong

Vice-Chairman

Mr Ivan C.S. Fu

Mr Sunny L.K. Ho

Ms Janice W.M. Lai

Mr Dominic K.K. Lam

Ms Christina M. Lee

Mr Stephen H.B. Yau

Dr F.C. Chan

Mr Frankie W.C. Yeung

Mr Peter K.T. Yuen

Mr Philip S.L. Kan

Dr Lawrence W.C. Poon

Mr Wilson Y.W. Fung

Mr Thomas O.S. Ho

Mr Alex T.H. Lai

Mr Stephen L.H. Liu

Ms Sandy H.Y. Wong

Deputy Director of Environmental Protection
Mr C.W. Tse

Deputy Director of Lands (General)
Mr Jeff Y.T. Lam

Chief Engineer (Works), Home Affairs Department
Mr Martin W.C. Kwan

Director of Planning
Mr K.K. Ling

Deputy Director of Planning/District
Mr Raymond K.W. Lee

Secretary

Absent with Apologies

Dr Wilton W.T. Fok

Professor K.C. Chau

Mr H.W. Cheung

Mr Lincoln L.H. Huang

Mr Patrick H.T. Lau

Mr H.F. Leung

Mr David Y.T. Lui

Mr K.K. Cheung

Dr C.H. Hau

Mr T.Y. Ip

Dr Lawrence K.C. Li

Professor T.S. Liu

Miss Winnie W.M. Ng

Mr Franklin Yu

Principal Assistant Secretary for Transport and Housing
Ms Winnie M.W. Wong

In Attendance

Assistant Director of Planning/Board
Ms Lily Y.M. Yam

Senior Town Planner/Town Planning Board
Mr Stephen K.S. Lee

Sai Kung & Islands District

Agenda Item 1

[Open meeting]

Consideration of Further Representations on the Proposed Amendments to the Draft Po Toi Islands Outline Zoning Plan No. S/I-PTI/1 Arising from Consideration of Representations and Comments on the Draft Po Toi Islands Outline Zoning Plan No. S/I-PTI/1

(TPB Paper No. 10115)

[The item was conducted in Cantonese and English.]

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

Dr C.H. Hau - being Vice-Chairman of the Conservancy Association which was Representer R11

Mr Alex T.H. Lai - his firm having clients and persons in files with the same names as commenters or representatives of further representer, representers and commenters but himself not acting in those matters

2. Members noted that Dr C.H. Hau had tendered apologies for being unable to attend the meeting. Since Mr Alex T.H. Lai did not act in those matters of his firm involving persons with names the same as commenters or representatives of further representer, representers and commenters, Members agreed that he should be allowed to stay in the meeting.

3. The Chairman said that reasonable notice had been given to the further representers, representers and commenters inviting them to the hearing, but other than those who were present or had indicated that they would attend the hearing, the rest had either indicated not to attend or made no reply. As reasonable notice had been given to the further representers, representers and commenters, Members agreed to proceed with the hearing of

the further representations in their absence.

Presentation and Question Sessions

4. The following government representatives, further representers, representers, commenters and their representatives were invited to the meeting:

Ms Donna Y.P. Tam	-	District Planning Officer/Sai Kung & Islands (DPO/SKIs), Planning Department (PlanD)
Mr Richard Y.L. Siu	-	Senior Town Planner/Islands 1 (STP/Is1), PlanD
Mr Gary T.S. Lui	-	Town Planner/Islands 6 (TP/Is6), PlanD
Mr K.S. Cheung	-	Senior Nature Conservation Officer (South) (SNCO(S)), Agriculture, Fisheries and Conservation Department (AFCD)

Further Representers

F2 - Woo Ming Chuan

R664 - Sonny Chan

R13 and C1 - Hong Kong Bird Watching Society

Mr Yu Yat Tung]	Further Representer, Representers' and
Mr Lo Wai Yan]	Commenter's representatives
Mr G. Welch]	

F154 – Chiu Sein Tuck

F155 – Tony Nip

R16 - Kadoorie Farm & Botanic Garden Corporation

Mr Tony Nip - Further Representer and Further
Representer's and Representer's
representative

F159 – Ruy Barretto

R18 - Ruy Barretto

Mr Ruy Barretto - Further Representer and Representer

Representers

R6 - 蒲台島村公所工作關注組

Mr Law Sing]
Ms Kwok Yee Chu] Representer's representatives
Mr Lai Chak Sum]

R9 and C1202 - Great Peace Investment Ltd.

C1229 - Joe Lee

C1240 – Ms Donny Ng

AAJP Consultants Ltd -

Ms Anna Kwong Sum Yee]
Ms Anna Lam Lai Kwan] Commenter and Representer's and
Mr Vincent Yeung] Commenters' representatives
Ms Donny Ng]
Ms Li Chui Ling]

R11 – The Conservancy Association

Mr Wick Leung - Representer's representative

R15 and C2 - World Wide Fund For Nature Hong Kong

Mr Andrew Chan - Representer's and Commenter's
Representative

5. The Chairman extended a welcome and explained the procedures of the hearing. He said that the representatives of PlanD would first be invited to make a presentation on the

background to the further representations. After that, the further representers, followed by the representers and then commenters or their authorized representatives would be invited to make oral submissions in turn. To ensure the efficient operation of the hearing, each presentation should be within the 10-minute time slot allocated to the further representer, representer or commenter and there was a timer device to alert the speaker 2 minutes before the allotted 10-minute time was to expire and when the allotted time limit was up. After the oral submission, there would be a Question and Answer (Q&A) session in which Members could direct enquiries to any attendee(s) of the meeting.

6. He then invited Mr Richard Y.L. Siu, STP/Is1, to brief Members on the background to the further representations.

7. With the aid of a PowerPoint presentation, Mr Richard Y.L. Siu made the following main points as detailed in the TPB Paper No. 10115:

Corrigendum

- (a) 'F1 to F135' in paragraph 2.2 of the Paper should read 'F1 to F134';

Introduction

- (b) after considering the representations and comments under section 6B(1) of the Town Planning Ordinance (the Ordinance), the Town Planning Board (the Board) decided on 5.11.2015 to partially uphold 741 representations by reducing the area of the "Residential (Group D)" ("R(D)") zone and rezoning it to "Coastal Protection Area" ("CPA") (Amendment Item A1) and "Green Belt" ("GB") (Amendment Item A2);
- (c) on 22.1.2016, the proposed amendments to the draft OZP were published under section 6C(2) of the Ordinance for further representation (FR). Upon expiry of the three-week exhibition period, 149 valid FRs were received. A full set of the valid FRs were deposited at the Secretariat for Members' inspection;

- (d) amongst the valid FRs, 148 FRs supported and 1 opposed the proposed amendments;

The FR Site

- (e) the reduced “R(D)” zone mainly covered private land to the southwest of Po Toi Village outside its ‘Village Environs’ (‘VE’). It was currently served by footpaths linking the area upslope and Po Toi Public Pier. There were existing one- to two-storey structures, most of which were occupied while some were ruins;
- (f) all the private lots within the reduced “R(D)” zone had building entitlements;

The Surrounding Areas

- (g) the area under proposed Amendment Item A1 was located at the western side of the reduced “R(D)” zone and was mainly covered by mature trees. The area under proposed Amendment Item A2 was located at the eastern side of the reduced “R(D)” zone and was mainly covered by vegetated slope with temporary structures;

The FRs

Supportive FRs

- (h) the 148 FRs (F1 to F134, F154, F155 and F159 to F170), which were submitted by individuals, supported the reduction of “R(D)” zone and rezoning the same to “CPA” and “GB” but expressed concerns on the proposed amendments and put forth proposals. Their concerns and proposals were summarized below:

Concerns

- (i) a large tree (T2), *Ficus microcarpa*, which crown and canopy interweaved with other mature trees, was an important habitat for birds and fell within the “R(D)” zone;
- (ii) the reduced “R(D)” zone would give false hope to the private land owner that the concerned area could still be developed via lease modification/land exchange (F2 and F3);

Proposals

Extension of conservation zonings

- (iii) to extend the “CA” zone/conservation related zonings to include T2 and its canopy (F1 to F134, F154, F155 and F160 to F166 only) and/or to include all government land within the “R(D)” zone (F1 to F134 and F159 to F166 only);

Revision to the Notes of the “R(D)” zone

- (iv) to impose a clause to put building/rebuilding on private lots under planning control; to restrict building to a maximum height of 2 storeys and lower than tree canopies, and with provisions to prevent bird strike against glass windows (F159 only);
- (v) to impose a clause not to allow works within dripline of tree canopy (F159 only);

Proposal not related to the proposed amendments

- (vi) to designate Po Toi as Country Park (F132 and F133 only);

Adverse FR

- (i) F171 submitted by Lamma Island (South) Rural Committee opposed the

proposed amendments to the draft OZP. Its grounds were summarized below:

Impact on Small House development and burial activities of indigenous villagers

- (i) rezoning “R(D)” to “CPA” would reduce land for Small House development;
- (ii) area rezoned to “GB” was close to a burial ground of indigenous villagers, having substantial implications on the burial activities;

Responses to Grounds/Concerns of FRs and their Proposals

Supportive FRs

Concerns

- (j) the proposed amendments had taken into account on-site physical features, conservation value of trees and vegetation, compatibility with the surrounding land uses, development and redevelopment right of some private lots with building entitlements as well as the planning intention for the area, as appropriate;
- (k) preservation of the only mature tree in the reduced “R(D)” zone would be dealt with by the prevailing mechanisms, e.g. by Development Bureau Technical Circular (Works) No. 7/2015 “Tree Preservation” (DEVB TC(W) No. 7/2015) for trees on government land; and via lease conditions and Lands Administration Office Practice Notes No. 7/2007 “Tree Preservation and Tree Removal for Building Development in Private Projects” (LAO PN No. 7/2007) for trees on private lot;
- (l) new residential development and redevelopment of existing houses within the “R(D)” zone were subject to planning approval and lease control

respectively;

- (m) there were 158 m² of private land within the reduced “R(D)” zone, of which 81 m² had building entitlements. Sufficient space was available within the lot for development/redevelopment to the lease entitlement without affecting Tree T2;

Proposals

Extension of conservation zonings

- (n) there were existing effective mechanisms to control tree felling;
- (o) the Lands Department (LandsD) would carry out ad hoc maintenance of natural vegetation on government land regardless of zoning;

Revision to the Notes of the “R(D)” zone (F159 only)

- (p) the current Notes were consistent with the Master Schedule of Notes agreed by the Board;
- (q) bird strike prevention clause was inappropriate as Notes of OZP were generally for land use/development control;

Impact on Small House development and burial activities of indigenous villagers (Adverse FR)

- (r) under the prevailing Small House policy, land for building Small House was confined to areas within the ‘VE’. Small House development in the proposed “CPA” and “R(D)” zones would not be considered by LandsD as land within the said zones was outside the ‘VE’ of Po Toi Village;
- (s) the proposed “GB” zone was outside the permitted burial ground and had no implication on the burial activities of the indigenous villagers;

[Mr Sunny L.K. Ho arrived to join the meeting at this point.]

Proposal not related to the proposed amendments

- (t) designation of Country Park was subject to assessment by the Country and Marine Parks Authority against the established principles and criteria;
- (u) preparation of statutory plan to cover the area would not preclude any future designation of Country Park;

Summary

- (v) there was neither strong planning justification nor change in planning circumstances for a departure from the Board's decision on the proposed amendments to the OZP;
- (w) the proposed amendments could strike a balance between enhancing conservation of mature trees in the area and respecting the development rights of the private landowners and villagers;

PlanD's view

- (x) PlanD noted the supportive views of F1 to F134, F154, F155 and F159 to F170; and
- (y) PlanD did not support the remaining part of F1 to F134, F154, F155 and F159 to F170 and the opposing views of R171 and that the draft OZP should be amended by the proposed amendments.

8. The Chairman then invited the further representers, representers, commenters and their representatives to elaborate on the FRs.

R664 - Sonny Chan

R13 and C1 - Hong Kong Bird Watching Society

9. With the aid of a PowerPoint presentation, Mr Yu Yat Tung and Mr G. Welch made the following main points:

- (a) The Hong Kong Bird Watching Society (HKBWS) supported the proposed Amendment Items A1 and A2 to rezone part of the original “R(D)” zone to “CPA” and “GB” respectively as the mature trees in the area were important foraging and roosting habitats for birds;
- (b) the proposed reduction of the “R(D)” zone could not protect one of the largest trees in the area unless the conservation zoning(s) would be extended to cover the remaining “R(D)” zone to eliminate the potential development threats;

Ecological importance of the “R(D)” zone

- (c) there were over 180 species of birds recorded in the Wan Tsai area where the original “R(D)” zone was located. Among them, some were emerging species and globally endangered species. They migrated to Po Toi Island each year. Active protection of trees was essential for preserving roosting habitats for those birds and hence HKBWS supported the proposed Amendment Items A1 and A2;
- (d) although nine out of the 10 mature trees concerned were within conservation zonings due to the proposed amendments, a mature tree still remained within the reduced “R(D)” zone;
- (e) the remaining tree, T2, was a very large tree with an extensive tree crown and aerial roots. The diameter of the main tree trunk was about three metres. The tree crown of Tree T2 interweaved with crowns of other mature trees in the adjacent “CPA” and “Conservation Area” (“CA”) zones forming a connected canopy, which was an important foraging and roosting

habitat for migratory birds;

Tree T2 was not adequately protected

- (f) Po Toi Island was recognized by Bird Life International as a prime location of regional importance for millions of migratory birds from the north to the south in autumn and going back from the south to the north;
- (g) although paragraph 3.3(c) of the TPB Paper No. 10057 on “Proposed Amendments to the Draft Po Toi Islands OZP No. S/I-PTI/1 Arising from the Consideration of Representations and Comments on the Draft Po Toi Islands OZP No. S/I-PTI/1” said that preservation of Tree T2 would be dealt with under the prevailing mechanisms, the existing mechanisms could not effectively protect the mature tree;
- (h) although Amendment Items A1 and A2 protected 90% of trees of the original “R(D)” zone, they brought about only 50% of the effect of protection. The small area where Tree T2 was found within the remaining “R(D)” zone was critically important for migratory birds. It should not be included in a development zone. Tree T2 was big and should be protected;
- (i) even though Tree T2 was a potential candidate to be an Old and Valuable Tree (OVT), it might not be eligible to be listed in the register of OVT as it was partly located on private land;

The danger of the remaining “R(D)” zone

- (j) the remaining “R(D)” zone would give false hope to land owners/developers that their land or even the adjoining government land within the zone could be developed through land exchange;
- (k) it would also give false impression to government bureaux/departments that the area was a potential source of housing land supply;

Development rights of villagers

- (l) the development rights of villagers should be respected. Only the house on the northern part of the remaining “R(D)” zone away from Tree T2 was occupied. The other houses had remained derelict for many years. While development rights of genuine and existing villagers should be respected, the other areas of the “R(D)” zone, including Tree T2 should not be designated a development zone;

Recommendations

- (m) the conservation zoning(s) should be extended to all government land within the reduced “R(D)” zone as well as to cover Tree T2 and its canopy. It would limit the use of land within that sensitive area, provide better protection to the important mature tree T2 and at the same time respect the redevelopment right of the villagers;

Conclusion

- (n) HKBWS requested the Board to note that the trees on the original “R(D)” zone was of conservation importance as they provided suitable and important foraging and roosting ground for migratory birds; and that Tree T2 was one of the largest mature trees in the area and was ecologically connected to the adjacent mature trees; and
- (o) the Board was also requested to extend the conservation zoning(s) to all government land within the reduced “R(D)” zone as well as to cover Tree T2 and its canopy.

F154 – Chiu Sein Tuck

F155 – Tong Nip

R6 – Kadoorie Farm & Botanic Garden Corporation

10. With the aid of a PowerPoint presentation, Mr Tony Nip made the following main points:

- (a) Kadoorie Farm & Botanic Garden Corporation (KFBGC) welcomed Amendment Items A1 and A2 to rezone part of the “R(D)” zone to “CPA” and “GB” ;
- (b) however, the large tree, T2 was not included in a conservation zone. It was doubtful whether a detailed tree survey for trees T1 to T11 had been carried out to justify the zonings of the area. There was no photograph nor detailed assessment in TPB Paper No. 10057 in respect of Tree T2, which was comparable in size to those found in Nathan Road;
- (c) as identified in a tree survey conducted by an independent consultant commissioned by KFBGC, Tree T2 was tall, with a large diameter at breast height (DBH) and of fair health condition. As compared with the other trees in the conservation zones, such as tree T3, T5 to T8 and T10, T2 was larger, in a better condition and a native tree. However, it was not protected under the amendments;
- (d) being situated in private land should not be an excuse for not including Tree T2 in a conservation zone. Tree T1 was also in private land with building entitlement but was included in a “CA” zone;
- (e) there were only three private lots within the reduced “R(D)” zone. The other areas within the zone were government land. In the hearing of representations to the OZP, no villagers said that they had a desperate need of the “R(D)” zone for development;
- (f) the current structures around the public pier in Wan Tsai were mainly temporary structures or ruins. With the area being zoned “R(D)”, those structures might be rebuilt with large glass windows or curtain wall to capture panoramic sea view, which in turn would threaten the lives of wild birds;

- (g) according to a press report in 2006, glass barrier in Shap Pat Heung and Yuen Long had killed 50 birds in three years for accidental bumping of birds against the barrier despite the barrier had already been installed with anti-collision devices;
- (h) as compared with the more urbanized Shap Pat Heung, birds in areas around the public pier, i.e. the “R(D)” zone, were more susceptible to collision against glass curtain walls due to the rural setting. Some of those birds were rare species. The death of a few of them would be of global significance;
- (i) to conclude, Tree T2 should be protected either by rezoning the reduced “R(D)” zone to “GB”, “CPA” or “CA”, or including Tree T2 and its canopy into the “CPA” or “CA” zone. PlanD’s response that there was sufficient space for development within the private lot without affecting Tree T2 was unfounded since the dripline of T2 spread over a wide area. Any development under the dripline would cause adverse impacts on the roots of the tree; and
- (j) to protect the tree and the birds, special provision should be imposed in the Notes of the “R(D)” zone to control the height of buildings and the use of glass curtain walls.

F159 – Ruy Barretto

R18 - Ruy Barretto

11. Mr Ruy Barretto made the following main points which were largely covered by the notes circulated to Members in the meeting:

- (a) to his memory, a majority of the Board Members at the meeting in November last year was in favour of protecting the area near the pier. However, instead of following the majority view, a compromise had been made to downsize the “R(D)” zone only;

- (b) the Board was requested to avoid making decision which was contrary to the evidence of the Government, the non-governmental organizations and the private individuals, creating loopholes and making enforcement difficult. There were no government offices on the island to protect the place from tree felling. There should be rules and plans, which were simple and easy to enforce and would not lead to ‘destroy first, apply for later’, to protect the environment;
- (c) the world, including Bird Life International, was watching what happened in Po Toi, a place which was of international ecological importance;
- (d) the remaining “R(D)” zone was the Core Area of regional and international importance for bird migration. The reduced “R(D)” zone was an improvement but it remained contradictory to the evidence and the general planning intention of conservation for Po Toi. Designating the Core Area a development zone was unfound as the zoning, which encouraged development, would cause harms to the environment;
- (e) in Nature Reserves in China, the Core Area, which was of the highest conservation value, was usually the best protected area. Contrary to the national principle on conservation, the Core Area of Po Toi was zoned “R(D)”. The Director of Agriculture, Fisheries and Conservation in the Government’s Planning Report of December 2014 considered Po Toi a premium location for scientific research on migratory birds. Most of the migratory birds were found in the Wan Tsai and Tai Wan areas. Those areas provided an important foraging and roosting ground for birds. As such, zoning the Core Area “R(D)” was illogical and irrational. Despite majority of the Board on 15 November 2015 wanting to protect the Core Area, the majority view had not been taken onboard in PlanD’s Papers;
- (f) the existing mechanisms were not adequate to protect Tree T2 and other vegetation. Proper zonings, such as “CPA” or “CA” and specific notes were needed to protect the unique value of the area;

- (g) DEVB TC(W) No. 7/2015 was not applicable in the current case as it was for government projects. No government project was expected in the area;
- (h) LAO PN No. 7/2007 applied to private lots with specific tree preservation clause. The lots were old schedule lots and did not have the relevant clause. Even for lease with such clause, enforcement actions were seldom taken. The practice note was not effective;
- (i) planning measures were the only feasible means of protection by rezoning the remaining “R(D)” zone, including Tree T2, to “CPA” or “CA”;
- (j) another option was to zone only private lots with no trees “R(D)”. However, the best solution was an overall zoning of the area as “CPA” or “CA”, leaving existing building rights to be decided on a case by case basis;
- (k) it was not correct to say that sufficient space was available within the lot concerned for development without affecting Tree T2. The canopy of the tree extended over a wide area of the lot. It was a big tree which needed planning protection in the Notes;
- (l) Po Toi Island was an island for many rare migratory birds. Windows among trees arising from developments in the “R(D)” zone was a danger to bird flying in high speed. If the Board agreed to the “R(D)” zoning, which encouraged rebuilding, it had a duty to reduce the fatalities of birds and damages to trees by imposing specific conditions to limit height of buildings to below tree canopy, with bird strike protection clause and to introduce a Tree Protection Zone drawn up by the dripline of the canopy of the tree so that construction works, such as excavation, trenching, piling and landfilling within the dripline of the tree canopy could be avoided; and
- (m) Hong Kong had an international obligation to do proper conservation

under the International Convention of Biological Diversity. Rezoning the remaining “R(D)” zone to “CA” or “CPA”, the same as those in the adjoining areas, was a comprehensive solution to protect the area as a whole while building rights of individuals could be exercised under the supervision and control of the Board on a very careful planning basis.

12. As all further representers present at the meeting who had indicated that they wished to make an oral submission had completed their presentations, the Chairman invited the representers and commenters to make their presentations.

R6 -蒲台島村公所工作關注組

13. Mr Law Sing and Ms Kwok Yee Chu made the following main points:

- (a) while the area of Po Toi Island was 369 ha, there were only some 6 ha of land zoned “Village Type Development” (“V”). A balance should be struck between environmental protection and the villagers’ rights to build houses. Should the “R(D)” zone be removed, land had to be identified for the villagers to build their houses;
- (b) in the past, few people knew about Po Toi Island. More people had come to Po Toi Island to visit Nam Kok Tsui and appreciate the scenery and wild lives in recent years. While an increase of visitors to Po Toi Island was welcome, the proposed columbarium development was objected to because it would turn the island into a ‘dead island’;
- (c) there were festival celebrations on the island on the 15th day of the Chinese New Year and the birthday of Tin Hau, villagers, particularly the younger generations, who had moved out of the island would return to join the celebrations. However, if the proposed columbarium development was allowed to proceed, return of the younger generations to the island would be deterred. That was not the parents and members of the Management Council of the island would wish to see; and

- (d) the dragon boat race and ‘Fa Pao’ snatching were part of the cultural heritage of the island. ‘Fa Pao’ snatching might even have the potential of being listed as an ‘Intangible Cultural Heritage’ by the United Nations Educational, Scientific and Cultural Organization (UNESCO). To allow those cultural heritage to pass on, land should first be made available in Po Toi for village houses for future generations. As such, a balance should be struck between village development and protection of trees and wild birds.

R9 and C1202 – Great Peace Investment Ltd.

C1229 – Joe Lee

C1240 – Ms Donny Ng

14. With the aid of a PowerPoint presentation, Ms Anna Kwong Sum Yee made the following main points:

- (a) although the views of the other representers, such as HKBWS were respected, since there were existing structures within the “R(D)” zone, she did not see the advantages of downsizing the “R(D)” zone;
- (b) some Islands District Council (DC) members during the discussion of the draft Po Toi Islands OZP at their meeting in December 2014 requested that a balance between ecological conservation and development be made. They opined that only land of conservation value should be included in the “CA” zone. The Government should also take the interests of the local residents into account in making the zoning proposals;
- (c) taking Ping Chau as an example, the Press reports in July and September 2015 stated that residents of the island were not benefited from the island being made part of the Hong Kong UNESCO Global Geopark. Due to the lack of infrastructure, such as water and electricity supply, visitors to the island would not stay overnight or eat in the local restaurants. The lives of residents of Ping Chau had not been improved and the population of the island had dropped to only 12; and

- (d) reducing the area of the “R(D)” zone to protect trees and birds was unnecessary. By means of the planning application mechanism, the Board could consider application for development within the “R(D)” zone on its individual merits and impose approval conditions where appropriate. That was what was referred to in paragraph 3.10 of the TPB Paper No. 10115 of a balance between development rights of private landowners and conservation.

R11 – The Conservancy Association

15. With the aid of a PowerPoint presentation, Mr Wick Leung made the following main points:

- (a) The Conservancy Association supported the proposed amendments to rezone part of the original “R(D)” zone to “CPA” and “GB”;
- (b) the association was nevertheless concerned about the exclusion of the canopy of Tree T2 from conservation zoning as the tree was big, in fair health condition and was almost qualified for OVT;
- (c) Tree T2 overlapped with part of a private lot with an abandoned structure. To keep Tree T2 within the “R(D)” zone would give incentives to the land owner or developer to fell the tree for development. Development on the lot would also cause adverse impacts on the environment;
- (d) the existing mechanisms were not sufficient to protect the tree. LAO PN No. 7/2007 would only be effective if there was a tree preservation clause. As the lots in the area were old schedule lots, no relevant clause was found in the leases. Tree felling was thus not restricted;
- (e) taking Tai Ho and Kuk Po as examples, actions against vegetation clearance on private land was not enforceable. Keeping the “R(D)” zoning for the area would induce people to do the same as those in Tai Ho

and Kuk Po;

- (f) Po Toi Island was a place of high ecological value. There were 328 species of birds on the islands. However, the area did not enjoy the same level of protection as its counterparts in Mai Po, Long Valley and Tai Po Au where had been designated 'Special Area' or 'Nature Park'. Under the South West New Territories Development Strategy Review, Poi Toi Island was identified as a potential area for designation as a Country Park. The Board should have taken into account the potential of the island in planning for the area;
- (g) according to a preliminary study conducted in 2007, the number of species of birds in the Fung Shui woodland in Po Toi was double those in the scrubland and grassland;
- (h) the mature trees in the Core Protection Area, i.e. the area of and around the reduced "R(D)" zone of Po Toi were interconnected ecologically. The loss of a tree was not just the loss of a single tree. It would have consequential accumulative impact on the ecology of the area as a whole. Measures should be in place to protect the ecology formed by the interweaving tree crowns in the Core Protection Area;
- (i) it was agreed that the cultural heritage of the island had to be conserved. Even if the reduced "R(D)" zone was designated as a conservation zone, addition, alteration or rebuilding was still possible through the planning application mechanism. Under the "CA" zone, 'House (Redevelopment Only)' was a Column 2 use that might be permitted on application to the Board;
- (j) if the natural ecological environment for birds could be preserved by proper conservation zoning(s) or Country Park designation, more visitors would come and bring about long-term benefits to the island;
- (k) once trees were felled, it would take decades for regeneration. If land was

paved, recovery was almost impossible;

- (l) there were precedent cases that protection clauses could be added to the Notes of the OZP, e.g. in the Notes and Explanatory Statement for the “Village Type Development (1)” (“V(1)”) of the Pak Sha O OZP, it was stipulated that any demolition of or addition, alteration and/or modification to or replacement/redevelopment of an existing building within the zone required planning permission from the Board to avoid adverse impact on the heritage value of historic buildings and integrity and ambience of the existing village setting;
- (m) Tai Long Wan was another example that development of New Territories Exempted Houses (NTEH) within the “V” zone required planning permission from the Board to ensure that the new village houses would be in harmony with the historical houses and would not affect the integrity of the existing village setting;
- (n) suitable measures should be introduced to protect the mature trees, which provided an important foraging and roosting ground for migratory birds; and
- (o) the conservation zoning should be extended to the remaining “R(D)” zone to cover the dripline of Tree T2, or even better to rezone the remaining “R(D)” zone to “CA”.

R15 and C2 - World Wide Fund For Nature Hong Kong

16. With the aid of a PowerPoint presentation, Mr Andrew Chan made the following main points:

General view

- (a) World Wide Fund for Nature Hong Kong supported the proposed Amendment Items A1 and A2 to rezone part of the “R(D)” zone to “CPA”

and “GB”. However, it would be better if all government land within the reduced “R(D)” zone could be designated as a conservation zone;

Ecological Importance

- (b) 328 bird species had been recorded in Po Toi Islands, amounting to over 60% of the total species found in Hong Kong;
- (c) Po Toi Island lay on the migratory route of East Asia-Australasian Flyway and was an important resting and refuelling stop for migratory birds;
- (d) as mentioned by the Conservancy Association, the number of bird species found in the Fung Shui woodland was double those in the scrubland and grassland. It was shown on a habitat map that area occupied by woodland in Po Toi was very small and concentrated in and around areas of the “R(D)” zone. Land in the “R(D)” zone was very important to the migratory birds;

Tree T2

- (e) Tree T2 remained in the reduced “R(D)” zone was a very tall tree with its canopy spreading over a wide area of a private lot. It was the largest among the mature trees within the reduced “R(D)” zone. Its extensive canopy interweaved with other mature trees in the surrounding areas bringing about an important connection between the “CPA” zone to its north and the “CA” zone to its south. Since the tree was luxuriantly grown with a wide crown, the loss of the tree would have serious repercussions on the foraging and roosting ground for migratory birds;

Concerns on the “R(D)” zone

- (f) Tree T2 was partly on a private lot which was zoned “R(D)”. To keep the tree within the “R(D)” zone would give false expectation to land owners that development could be extended onto government land through land exchange. Future development in the “R(D)” zone was a potential threat

to the tree;

- (g) the loss of T2 and its canopy would significantly affect the foraging and roosting site for migratory birds and the ecological connectivity of woodland between the “CPA” and “CA” zones would be damaged;

Views on PlanD’s responses

- (h) DEVB TC(W) No. 7/2015 would apply to tree works/preservation of government projects only. It was not applicable to Tree T2 which was on private land;
- (i) LAO PN No. 7/2007 would only apply to those leases which contained a tree preservation clause. Since the private lot concerned was an old schedule lot, applicability of the practice notes was doubtful;
- (j) in view of the lack of an existing mechanism to handle tree felling in the private lot concerned, the protection of Tree T2 against future development was inadequate;

Recommendations

- (k) planning and zoning measures would have to be in place in order to protect Tree T2;
- (l) consideration should be given to extend the conservation zoning(s) to cover the government land within the “R(D)” zone, to cover Tree T2 and its canopy up to its dripline. A conservation zoning could eliminate development threat; and
- (m) one of the attractions of Po Toi Island was its ecological environment. To protect the natural ecology of the island would help promote eco-tourism and its associated economic activities in Po Toi.

17. As the presentations of the further representers, representers, commenters and their representatives had been completed, the Chairman invited questions from Members.

18. A Member asked if there was any means to protect Tree T2 on the private lot concerned noting that the lot was an old schedule lot with no tree preservation clause. In response, Ms Donna Y.P. Tam, DPO/SKIs said that there were existing mechanisms to protect the tree. For new developments within the “R(D)” zone, planning permission from the Board was required and any rebuilding on the lot had to follow the requirements stipulated in the government lease concerned and other relevant government requirements.

19. In response to a Member’s question on the measures taken to protect Long Valley, Mr Wick Leung said that Long Valley was zoned “Other Specified Uses” annotated “Nature Park”. Since the planning intention of the zone was to protect and enhance existing wetland habitats, new developments, unless for conservation purposes, were in general discouraged. The zoning was a disincentive to developers and operators of unauthorized development (UD) as no development was in general allowed.

[Mr Stephen L.H. Liu left the meeting at this point.]

20. In response to the questions of the Chairman and the Vice-Chairman on the redevelopment potential of the area, whether planning permission for development was required, whether any application for redevelopment had been received and what the restrictions on redevelopment were, Ms Donna Y.P. Tam said that the three private old schedule lots within the reduced “R(D)” zone were all with building entitlements. The land owners could rebuild the structures/buildings within the lots. As rebuilding was a use always permitted in the “R(D)” zone, no planning permission was required. New residential development within the “R(D)” zone would need planning approval. No redevelopment proposal within the “R(D)” zone had been received. For the lot where Tree 2 stood, the existing structure(s) could be rebuilt up to an area of about 80 m² under the lease. Rebuilding was also subject to various government controls. For rebuilding of NTEHs, it was subject to the Buildings Ordinance (Application to the New Territories) Ordinance. For buildings other than NTEH, they were subject to control of the Buildings Ordinance. Besides, according to the Notes of the Po Toi Islands OZP, redevelopment, other than NTEH, was restricted to a maximum building area of 37.2 m² and a maximum building height of 2

storeys (6 m), or those of an existing building, whichever was the greater in the “R(D)” zone.

21. A Member noted that the crown of Tree T2 covered a large part of a private lot and asked if house development on the lot would harm the tree. In response, Mr Tony Nip said that roots of tree would spread across an area by and large the same area as delineated by the dripline of the tree. The use of heavy machinery during construction would compress soil affecting tree growth and acidity of soil would change if land was paved. All those works would have adverse impacts on trees. Mr Andrew Chan added that excavation within dripline of tree during redevelopment would damage tree roots. Transplanting for big tree, such as T2, was not recommended.

22. In replying to a Member’s question on whether the company Ms Anna Kwong Sum Yee represented had any redevelopment proposal in the “R(D)” zone, Ms Kwong said that it was not the subject matter of discussion of the hearing and hence her presentation had not covered such information. A Member noted that the lot where Tree T2 stood was an old schedule lot with no tree preservation clause. Tree felling was not forbidden either under the lease or the Buildings Ordinance. The Member asked if Tree T2 would survive if redevelopment took place in the lot. Ms Donna Y.P. Tam said that even if a conservation zoning was designated for the lot, if the lot was under the old lease, the land owner could still decide to fell a tree on the lot despite no development was involved. To clarify, Mr Ruy Barretto said that the lot concerned was an old schedule lot, DDPT Lot 84. The lease of the lot had no tree preservation clause.

23. As Members had no further question to raise, the Chairman said that the hearing procedures had been completed. The Chairman thanked the government representatives as well as the further representers, representers, commenters and their representatives for attending the meeting and said that the Board would deliberate on the FRs in their absence and would inform the further representers, representers and commenters of the Board’s decision in due course. The government representatives, the further representers, commenters and their representatives left the meeting at this point.

[The meeting was adjourned for a short break of 5 minutes and Messrs Alex T.H. Lai and Frankie W.C. Yeung left the meeting at this point.]

Deliberation

24. A Member noted that the main discussion of the hearing was on Tree T2. As the tree sat on private land, regardless of the zoning of the site, the land owner could decide whether to fell the tree. On the other hand, most of the further representers, representers, commenters or their representatives were in support of the proposed Amendment Items A1 and A2. The proposed amendments had struck a balance and hence no further amendment was considered necessary.

25. Mr Jeff Y.T. Lam, Deputy Director of Lands (General), said that for trees sitting on a private lot that was governed by an old lease containing no tree preservation clause, there was not much that the Government could do in respect of their felling from a lease enforcement perspective. Mr K.K. Ling, Director of Planning, said that as the area had previously been covered by a Development Permission Area Plan, the Planning Authority (PA) had enforcement power against any UD found within the area. However, mere clearance of vegetation, including felling of trees but involving no excavation or land filling, did not constitute a UD under the Town Planning Ordinance and the PA could not take action against such activities. Mr Ling used the vegetation clearance in Tai Ho as an example to illustrate that even if land was zoned “CPA”, the PA could not take enforcement actions against vegetation clearance activities.

26. The Chairman noted that Members should consider whether the reduced “R(D)” zone had struck a balance between development and conservation. New developments and redevelopments on land within the “R(D)” zone might not necessarily cover the whole site area due to various restrictions, and it might be premature to conclude whether such developments would inevitably cause the felling of all trees within the site. In response to a Member’s question on whether the private lot concerned could be exchanged with the adjacent government land for redevelopment by the land owner, the Chairman said that this would be highly conjectural, and would involve negotiations and agreements by parties outside the purview of the Board. The Chairman also recalled that, at earlier discussion of the Board, it had been noted that the private lots, the abandoned housing and ruins within the lots and the adjoining government land were zoned “R(D)” so as to improve the existing structures for a better living environment, while at the same time minimise any adverse impact that might be caused to the surrounding environment.

27. A Member opined that a balance had been struck with the reduced “R(D)” zoning and noted that most of the further representers, representers and commenters supported the proposed amendments. The reduced “R(D) zone was appropriate. In response to a Member’s enquiry, the Secretary said that there was no information to indicate whether the land owner of the lot where Tree T2 stood had made presentations to the Board, but it appeared that no attendee had indicated that his or her presentation was made on behalf of the owner. Members generally agreed that the proposed Amendments A1 and A2 had struck a proper balance between development and conservation by reducing the area of the original “R(D)” zone.

28. Members also noted that as Further Representer F159 was also Representer R18, his representation in the capacity of F159 should be treated as not having been made in accordance with the Town Planning Ordinance. His representation as R18 would continue to be regarded as valid.

29. The Board noted the supportive views of F1 to F134, F154, F155 and F160 to F170, and decided not to uphold the remaining views of F1 to F134, F154, F155 and F160 to F170 and the opposing view of F171, and considered that the draft OZP should be amended by the proposed amendments for the following reasons:

- “(a) the existing mechanisms to control felling of trees are considered effective for tree preservation purpose;
- (b) the boundary of the “Residential (Group D)” (“R(D)”) zone has been revised taking into account on-site physical features, conservation value of trees and vegetations, compatibility with the surrounding land uses, expert advice from concerned government departments, views from relevant stakeholders as well as the planning intention for the area as appropriate. The proposed amendments could strike a balance between enhancing the conservation of mature trees in the area and respecting the development rights of the private landowners;
- (c) under the prevailing Small House policy administrated by the Lands

Department, land for building Small House is confined to areas within 'Village Environs' ('VE'). The proposed "Coastal Protection Area" zone and the reduced "R(D)" zone would not affect Small House development by indigenous villagers as both areas are outside 'VE' of Po Toi Village;

- (d) burial activities within the permitted burial grounds would not be affected by the proposed "Green Belt" zoning as they are generally tolerated under the draft Outline Zoning Plan. Other 'Burial Ground' use outside the permitted burial grounds would require planning permission from the Town Planning Board; and
- (e) the designation of Country Park is under the jurisdiction of the Country and Marine Parks Authority governed by the Country Parks Ordinance (Cap. 208). Preparation of statutory plan covering the area would not preclude any future designation of Country Park."

30. The meeting was adjourned at 4:40 p.m.