

**Minutes of 1119th Meeting of the
Town Planning Board held on 19.8.2016**

Present

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

Chairman

Professor S.C. Wong

Vice-Chairman

Mr Lincoln L.H. Huang

Mr H.W. Cheung

Professor K.C. Chau

Mr Ivan C.S. Fu

Mr Sunny L.K. Ho

Mr Dominic K.K. Lam

Mr Patrick H.T. Lau

Ms Christina M. Lee

Mr H.F. Leung

Mr Stephen H.B. Yau

Dr F.C. Chan

Mr David Y.T. Lui

Dr Frankie W.C. Yeung

Mr Peter K.T. Yuen

Mr Philip S.L. Kan

Dr Lawrence W.C. Poon

Mr K.K. Cheung

Mr Wilson Y.W. Fung

Dr C.H. Hau

Mr Thomas O.S. Ho

Mr Alex T.H. Lai

Dr Lawrence K.C. Li

Mr Stephen L.H. Liu

Professor T.S. Liu

Miss Winnie W.M. Ng

Ms Sandy H.Y. Wong

Mr Franklin Yu

Deputy Director of Environmental Protection (1)

Mr C.W. Tse

Director of Lands

Ms Bernadette H.H. Linn

Principal Assistant Secretary (Transport 3), Transport and Housing Bureau

Mr Andy S.H. 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

Ms Janice W.M. Lai

Mr T.Y. Ip

In Attendance

Assistant Director of Planning/Board
Miss Fiona S.Y. Lung

Chief Town Planner/Town Planning Board
Ms Lily Y.M. Yam

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

Agenda Item 1

[Closed Meeting]

Confirmation of Minutes of the 1118th Meeting held on 5.8.2016

[The meeting was conducted in Cantonese.]

1. The Secretary reported that an amendment to paragraph 10 of the draft minutes on Matter Arising (ii) of Item 2 under confidential cover was as follows:

“Mr Franklin F.L. Yu – having current business dealings with ARUP” should read
“ Mr Franklin Yu – having past business dealings with ARUP”

2. The minutes of the 1118th meeting held on 5.8.2016 were confirmed with the amendment mentioned in paragraph 1 above.

Agenda Item 2

[Open Meeting]

Matters Arising

(i) Town Planning Appeal Decision Received

Town Planning Appeal No. 7 of 2015

Proposed Three Houses (New Territories Exempted Houses (NTEHs) - Small Houses) in “Agriculture” zone, Lots 742 S.E, 742 S.G and 742 S.H in D.D. 10, Ng Tung Chai, Tai Po

Application No. A/NE-LT/471

[The item was conducted in Cantonese.]

3. The Secretary reported that the subject appeal was against the Town Planning Board (the Board)’s decision to reject on review an application (No. A/NE-LT/471) for proposed three houses (NTEHs – Small Houses) at a site zoned “Agriculture” (“AGR”) on the Lam Tsuen Outline Zoning Plan (OZP).

4. The appeal was heard by the Town Planning Appeal Board (TPAB) on 18.4.2016 and 17.6.2016. On 10.8.2016, the appeal was dismissed by the TPAB. The main reasons for the decision were as follows:

General shortage ground

- (a) the available land in the “Village Type Development” (“V”) zone for Small House development was 2.04 hectare for the development of 81 Small Houses and the latest number of outstanding Small House applications was 20. The Appellants had not provided reliable evidence to demonstrate that the 10-Year Demand Forecast was more than 61 and failed to establish that there was a general shortage of land in meeting the demand for Small House development in the “V” zone; and

No alternative land ground

- (b) no land use survey report as proposed by the Appellants had been submitted to substantiate their case that there was no land available for Small House development. There was also no evidence to show that the Appellants had tried to find alternative sites in the “V” zone for the Small House development.

5. Members noted the decision of the TAPB on the application.

(ii) Appeal Statistics

6. The Secretary reported that as at 19.8.2016, 13 cases were yet to be heard by the Town Planning Appeal Board. Details of the appeal statistics were as follows:

Allowed	:	35
Dismissed	:	145
Abandoned/Withdrawn/Invalid	:	193
Yet to be Heard	:	13
Decision Outstanding	:	1
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Total	:	387

(iii) [Confidential Item. Closed Meeting]

7. This item was recorded under confidential cover.

[Ms Christina M. Lee, Mr Dominic K.K. Lam, Mr Philip S.L. Kan and Dr C.H. Hau arrived to join the meeting during the consideration of the confidential item.]

Sha Tin, Tai Po & North District

Agenda Item 3

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/NE-TKL/541

Proposed House (New Territories Exempted House - Small House) in "Agriculture" and "Village Type Development" zones, Lot No. 626 RP in D.D. 82, Lei Uk Tsuen, Ta Kwu Ling (TPB Paper No. 10158)

[The meeting was conducted in Cantonese.]

8. The Secretary reported that the following Member had declared interest in the item:

Mr Alex T.H. Lai - his father co-owning (with another person) two lots of land in Ping Che, Ta Kwu Ling

[Mr Alex T.H. Lai left the meeting temporarily at this point.]

9. Members noted that Mr Alex T.H. Lai had left the meeting temporarily.

10. The following representative from the Planning Department (PlanD) and the applicant's representatives were invited to the meeting at this point:

Mr C.K. Soh - District Planning Officer/Shu Tin, Tai Po and North (DPO/STN), PlanD

Applicant and Applicant's Representatives

Mr Lee Tim Sau - Applicant

Mr Li Yee Mui] Applicant's Representatives

Jim & Co., Solicitors -

Mr Lau Chun Keung]

Mr Mok Man Hin]

11. The Chairman extended a welcome and explained the procedure of the review hearing. He then invited DPO/STN to brief Members on the review application.

12. With the aid of a PowerPoint presentation, Mr C.K. Soh, DPO/STN, presented the review application as detailed in the Paper and covered the following main points:

Background

(a) on 24.2.2016, the applicant, Mr. LEE Tim Sau, represented by Jim & Co., Solicitors, sought planning permission to build a New Territories Exempted House (NTEH) - Small House on the Site, which fell mainly within an area zoned "Agriculture" ("AGR") with a minor portion within

an area zoned “Village Type Development” (“V”) on the approved Ping Che and Ta Kwu Ling Outline Zoning Plan No. S/NE-TKL/14 (the OZP);

- (b) on 22.4.2016, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (i) the proposed development was not in line with the planning intention of the “AGR” zone which was primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no strong planning justification in the current submission for a departure from the planning intention; and
 - (ii) land was still available within the “V” zone of Lei Uk Tsuen which was primarily intended for Small House development. It was considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for orderly development pattern, efficient use of land and provision of infrastructures and services;

[Ms Bernadette H.H. Linn arrived to join the meeting at this point.]

The Site and Its Surrounding Areas

- (c) the Site located to the southwest of Lei Uk Tsuen was flat and mostly fallow agricultural land, with some agricultural activities at its eastern end. Surrounding the Site were active agricultural land and to its southeast and south were a wooded area and a structure for domestic and storage of agriculture tools respectively. To the further east/northeast of the Site was the village proper of Lei Uk Tsuen;

The Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria)

- (d) the part of the Interim Criteria relevant to the application were as follows:
- (i) sympathetic consideration might be given if not less than 50% of the proposed NTEH/Small House footprint fell within the village 'environs' ('VE') of a recognized village and there was a general shortage of land in meeting the demand of Small House development in the "V" zone of the village;
 - (ii) the proposed development should not frustrate the planning intention of the particular zone in which the application site was located;
 - (iii) the proposed development should be compatible in terms of land use, scale, design and layout, with the surrounding area/development; and
 - (iv) the proposed development should not encroach onto the planned road network and should not cause adverse traffic, environmental, landscape, drainage, sewerage and geotechnical impacts on the surrounding areas. Any such potential impacts should be mitigated to the satisfaction of relevant government departments;

The Review Application

- (e) on 31.5.2016, the applicant applied for a review of the RNTPC's decision to reject the application. The applicant's justifications were summarized in paragraph 3 of the Paper and were outlined briefly below:
- (i) the applicant was an indigenous inhabitant of the New Territories and his right under Article 40 of the Basic Law (BL) should be protected against unreasonable administrative decisions of the Board and other government departments;

- (ii) the Board had failed to consider whether the application met the requirement of “sympathetic consideration” under the Interim Criteria, and whether the application should be approved subject to approval conditions;
- (iii) the Site was no longer active farmland and the overall farming development in Lei Uk Tsuen was diminished to an extent that there was no prospect for further farming activities in the area;

[Mr H.F. Leung arrived to join the meeting at this point.]

- (iv) the Board should take due regard that the Site was located entirely within the ‘VE’ of Lei Uk Tsuen, and the Lands Department (LandsD) stated that the footprint of the proposed Small House fell entirely within the ‘VE’ and had no objection to the application. Besides, PlanD should adopt the ‘300-foot rule’, i.e. the ‘VE’ as a planning tool to control the spread of village development;
- (v) the applicant had encountered practical difficulties to identify suitable land in the “V” zone of Lei Uk Tsuen for development of his Small House as there was a general shortage of land in meeting the demand for Small House development; and
- (vi) the orderly development of Lei Uk Tsuen was extending from the east to the west and a balanced view of the public comments received on the subject application should be taken;

Previous applications

- (f) the Site was the subject of three previous applications No. A/NE-TKL/421, 468 and 495 for Small House development and were rejected by the Board upon review on 26.4.2013, 1.8.2014 and 10.4.2015 respectively. The

reasons for the rejections were mainly that the proposed developments were not in line with the planning intention of the “AGR” zone and no strong planning justification had been provided to merit a departure from the planning intention; land was still available within the “V” zone of Lei Uk Tsuen for Small House development and it was considered more appropriate to concentrate the proposed Small House developments close to the existing village cluster for orderly development pattern, efficient use of land and provision of infrastructure and services;

[Miss Winnie W.M. Ng arrived to join the meeting at this point.]

- (g) with respect to application No. A/NE-TKL/468, the applicant lodged, on 3.10.2014, an appeal to the Appeal Board Panel (Town Planning) (ABP) against the Board’s decision to reject on review the application. The appeal was heard by the ABP on 19.5.2015 and dismissed on 8.7.2015 mainly on the grounds that it would frustrate the planning intention of the “AGR” zone and could lead to cumulative adverse impact on the traffic; there seemed to be adequate supply of land within the “V” zone to meet the demand for Small Houses; and the same assessment criteria had been applied by the Board to consider similar applications for sites located to the west and east of the “V” zone of Lei Uk Tsuen;

Similar Applications

- (h) there were 11 similar applications involving seven sites for Small House development to the west of Lei Uk Tsuen;
- (i) all of them were rejected by the RNTPC or by the Board on review between December 2012 and April 2015 mainly for reasons the same as or similar to those previous applications No. A/NE-TKL/421, 468 and 495 and the current application. The appeal of application No. A/NE-TKL/467, with site located to the immediate west of the Site, was heard together with the appeal of application No. A/NE-TKL/468, and

was dismissed by ABP on 8.7.2015 on the same grounds mentioned above;

- (j) there were another 12 similar applications within/partly within the same “AGR” zone to the east of Lei Uk Tsuen. They were all approved with conditions by the RNTPC between June 2002 and December 2014 mainly on considerations that the applications complied with the Interim Criteria in that the concerned sites were located within the ‘VE’ of Lei Uk Tsuen where there was a general shortage of land in meeting the demand for Small House development in the “V” zone; and the proposed Small House developments would unlikely have significant adverse environmental, drainage and traffic impacts on the surrounding areas;

Planning Intention

The “AGR” zone

- (k) to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It was also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes;

The “V” zone

- (l) to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within the zone was primarily intended for development of Small House by indigenous villagers. It was also intended to concentrate village type development within the zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services;

Departmental Comments

- (m) comments from the relevant government departments were detailed in paragraph 5 of the Paper. In particular, comments of the following departments were as follows:

Director of Agriculture, Fisheries and Conservation (DAFC)

- (i) he did not support the application;
- (ii) the Site was largely an abandoned land overgrown with grasses, which could be readily returned to cultivation with simple site preparation work. The eastern most portion of the Site was part of a larger crop farm in active production. As the Site was largely surrounded by active farmland and served by footpath, the rehabilitation potential of the Site was very high;
- (iii) as announced in the 2016 Policy Address, the Government would implement the New Agriculture Policy to facilitate the sustainable agricultural development in Hong Kong. Supportive measures would be implemented to enhance the competitiveness of local farms by facilitating enhancement in productivity and business viability; and
- (iv) approval of the application would result in direct encroachment of farmland and contravene the Government's effort in promoting sustainable development of local agriculture;

Chief Town Planner/Urban Design and Landscape, PlanD

- (i) she had reservation on the application;
- (ii) the Site was surrounded by agricultural land, some of which was active farmland. There was no other Small House in close proximity; and

- (iii) approval of the application might set an undesirable precedent of spreading Small House development outside the “V” zone in an uncoordinated manner, and erode the rural landscape character of the area;

Commissioner for Transport

- (i) he had reservation on the application;
- (ii) Small House development should be confined within the “V” zone. Approval of the application would set an undesirable precedent for similar applications and result in substantial cumulative adverse traffic impact; and
- (iii) the application could be tolerated unless it was rejected on other grounds;
- (n) other relevant government departments had no objection to or no adverse comment on the application;

Public Comments

- (o) a total of five comments were received on the review application. They were submitted by:
 - (i) a North District Council member who supported the application as it was good for the villagers;
 - (ii) the Chairman of Sheung Shui District Rural Committee who indicated no comment on the application; and
 - (iii) World Wide Fund for Nature Hong Kong, Designing Hong Kong

Limited (DHKL) and an individual objecting to the application mainly on the following grounds:

- the proposed development was not in line with the planning intention;
- the Site had high potential for agricultural rehabilitation;
- the proposed Small House was incompatible with the rural landscape setting of the area;
- no relevant technical assessments had been submitted; and
- the setting of an undesirable precedent for similar applications in the area;

Planning Considerations and Assessment

- (p) the planning considerations and assessment were set out in paragraph 7 of the Paper, which were summarized below:
- (i) the proposed Small House development was not in line with the planning intention of the “AGR” zone. The applicant had not provided any strong planning justification in the review application to demonstrate that the proposed Small House was in line with the planning intention or warrant a departure from the planning intention;
 - (ii) the applicant considered that farming activities in the vicinity of the area were diminishing and the prospect of rehabilitating the Site for farming activities was low. DAFC did not agree with the applicant and did not support the application from the agricultural development point of view;

- (iii) the Site possessed very high potential for agricultural rehabilitation and was largely surrounded by active farmland and well-served by footpath and water supply. Approval of the application would result in direct encroachment of farmland and contravene the Government's effort in promoting sustainable development of local agriculture;
- (iv) although the proposed Small House footprint fell entirely within the 'VE' of Lei Uk Tsuen, and land available within the "V" zone was not sufficient to fully meet the future Small House demand (about 16.53 ha of land or 661 Small House sites), about 2.29 ha of land or equivalent to 92 Small House sites were available within the "V" zone for Small House development capable of meeting the 81 outstanding Small House applications;
- (v) it was considered more appropriate to concentrate those proposed Small Houses close to the existing village cluster within the "V" zone for orderly development pattern, efficient use of land and provision of infrastructure and services. It was noted that only 4.5% of the Site was within the "V" zone and the whole footprint of the proposed Small House was outside the "V" zone;
- (vi) the applicant considered that the Board had failed to consider his practical difficulties in identifying suitable land in the "V" zone of Lei Uk Tsuen for Small House development. Whether the landowners would sell their land to buyers for Small House development was a market decision outside the purview of the Board. Native indigenous villagers could apply to LandsD for Small House grant on government land within the "V" zone;
- (vii) regarding the similar applications located in the same "AGR" zone, there were 12 applications approved and 11 applications rejected by the Board. The same assessment criteria had been applied by the RNTPC and the Board when considering the Small House

applications to the east and west of the “V” zone, including the planning intention, Interim Criteria and whether the proposed Small House development would bring adverse environmental, drainage and traffic impacts to the surrounding environment, as such, there was no double standard;

(viii) the RNTPC of the Board had already taken into consideration the justification put forth by the applicant that he was an indigenous villager and eligible for Small House grant under the Small House Policy. Subjecting Small House development to planning controls by way of OZP under the Town Planning Ordinance (the Ordinance) had been in place before the BL came into force. Applying those controls to the area concerned was not inconsistent with the protection of the lawful traditional rights and interests of the New Territories indigenous inhabitants under Article 40 of the BL;

(ix) there had been no material change in planning circumstances for the Site and its surrounding areas since the rejection of the subject application by RNTPC. The planning considerations and assessment at the s.16 application stage were still valid; and

(x) there were both supporting and objecting public comments on the application;

PlanD's Views

(q) PlanD did not support the application for the following reasons:

(i) the proposed development was not in line with the planning intention of the “AGR” zone which was primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no strong

planning justification in the current submission for a departure from the planning intention; and

- (ii) land was still available within the “V” zone of Lei Uk Tsuen which was primarily intended for Small House development. It was considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for orderly development pattern, efficient use of land and provision of infrastructure and services.

13. The Chairman then invited the applicant’s representatives to elaborate on the review application and Mr Lau Chun Keung made the following main points:

Overview

- (a) the Site fell within the ‘VE’ of Lei Uk Tsuen. The planning application had complied with the Interim Criteria and should have been given sympathetic consideration by the Board;
- (b) one of the reasons of rejection by the RNTPC was that the proposed development was not in line with the planning intention of the “AGR” zone. The rejection reason was not valid as any Small House development would not be in line with the planning intention of the “AGR” zone, otherwise planning permission for Small House development from the Board would not be required. It was also said that approval of the application would set a precedent for similar cases. The application should instead be assessed against the Interim Criteria and be approved with or without conditions to conform with the government policy for development;
- (c) setting a precedent for similar cases was not a relevant consideration. It was unreasonable to impede the implementation of relevant Policy Objective by rejecting the subject application on the ground that approval of it might set a precedent. In the current review application, Members

should not consider whether the Board's decision on the subject application was good or not but to consider whether it was an appropriate interpretation or application of the relevant Policy Objective;

[Mr Franklin Yu arrived to join the meeting at this point.]

- (d) it was ruled in a High Court case of *Leung Kam Yung Ivy V. Commissioner for Television and Entertainment Licensing* that raising the level of a standard by the Administration so as to render it unachievable by the applicant was unreasonable and illegal. As the Site under review was within the 'VE' of Lei Uk Tsuen, it should have been approved to meet the high Small House demand of the village. The 'VE' had been a basis and an effective tool for assessing Small House applications before the zoning control came into play. It was stated in the book "Land Administration and Practice" published by the Hong Kong University Press that if disapproval of Small House applications within the 'VE' persisted, it would impede development;

Government policy/statement

- (e) the Secretary for Development (SDEV)'s Policy Objective was, in gist, to (i) facilitate Hong Kong's continual development; and (ii) achieve the optimum use of land resources. The North East New Territories Development was one of the development strategies formulated under the Policy Objective;
- (f) PlanD and LandsD's respective tools, which were means of execution of part of SDEV's Policy Objective, governing the application under review were (i) the user schedules of the "V" and "AGR" zones of the OZP; (ii) the Interim Criteria; and (iii) the New Territories Small House Policy and the '300-foot rule';

Legal Challenge

- (g) the rejection of the planning application by the RNTPC on 22.4.2016 had kick-started a legal procedure. The applicant would initiate planning appeal and judicial review (JR) as appropriate subject to the Board's decision on the current review application;

- (h) the decision of the RNTPC on the planning application in April 2016, which was believed to be illegal and/or unreasonable, had provided grounds for JR. It had been established that if the Administration failed to take into account a consideration which it was required to be taken into account, the decision made would be flawed and irrational. Misinterpretation or misapplication of policy might also render a decision as flawed as if the policy was overlooked. In gist, the Board's failure to recognize that the Interim Criteria, which was a relevant consideration, had been complied with and its mistake of taking 'setting a precedent' a consideration in deciding on the current case would subject the Board to JR. In detail, the grounds of JR for the current case were as follows:

the Board had failed to:

- (i) adhere to SDEV's Policy Objective;

- (ii) consider LandsD's '300-foot rule', which was an effective tool to implement SDEV's Policy Objective;

- (iii) interpret, apply and balance all the aspects of the Interim Criteria;

- (iv) properly estimate the difficulty of the applicant of finding land within the "V" zone for Small House development and requiring the applicant to find land within the "V" zone for the proposal; and

- (v) give sympathetic consideration to the application under the principle of fairness and the doctrine of judicial precedent. Similar cases to the east of Lei Uk Tsuen were approved but not the subject one;

Detailed Elaboration of the Grounds of Review

Ground No. 1: The Applicant as an Indigenous Villager

- (i) the Board had been advised that the applicant was an indigenous inhabitant of Lei Uk Tsuen and his right should be protected under Article 40 of the BL on top of the provisions of the other ordinances. It was noted that by proper interpretation or application of the Interim Criteria, 12 similar applications, e.g. applications No. A/NE-TKL/359 and A/NE-TKL/466, which were located partly or wholly outside the “V” zone but within the ‘VE’ to the east of Lei Uk Tsuen, had been approved by the RNTPC despite DAFC did not lend his support to the applications and considered that the sites concerned should be retained for agricultural use;

[Dr Lawrence K.C. Li arrived to join the meeting at this point.]

- (j) the Board had been adopting a double standard in processing Small House applications to the east and to the west of Lei Uk Tsuen. The Board accepted the fact that there was insufficient land within the “V” zone for Small House development while approving planning applications for Small House development to the east of Lei Uk Tsuen but not those to the west of the village. Although it was said that approval of the subject application would set a precedent for similar cases, it should be noted that precedent had already been set when the Board approved the first planning application located to the east of the village in 2002;
- (k) rejecting the subject planning application, which had complied with the Interim Criteria and within the ‘VE’, was not a proper application of the Policy Objective for forward development. The rejection reasons used by the RNTPC were not part of the Interim Criteria. The RNTPC’s decision had been made upon the considerations other than those required under the Interim Criteria. The Board was affected particularly by the public

comments received, such as those from the Kadorrie Farm and Botanic Garden Corporation and DHKL which comments were almost the same as the two rejection reasons of the RNTPC. The rejection of the application was not based on a proper balance of relevant considerations;

- (l) the policy statement made in the OZP took precedence over that in the Interim Criteria when the RNTPC made the decision on the application under review. It was stated in the rejection reason that the proposed development was not in line with the planning intention of the “AGR” zone on the OZP, instead of whether it would frustrate the planning intention of the zone, which was point (f) of the Interim Criteria;

[Dr Frankie W.C. Yeung arrived to join the meeting at this point.]

- (m) the Board had caused prejudice to the applicant as the application, based on his estimates, was considered for not more than 6 minutes, which was calculated on the basis of the total duration of the RNTPC divided by the agenda items on 22.4.2016, as the Secretariat of the Board had advised that there was no record of the time spent by the RNTPC on individual items. An average of 5-6 minutes were also spent when the Board considered the previous application No. A/NE-TKL/468 on 4.4.2014. Due to the short duration, it was considered that the RNTPC had not thoroughly examined all the information that the applicant had prepared for the Board’s consideration;
- (n) it was clear that the RNTPC had misinterpreted or misapplied the Interim Criteria in rejecting the subject application. Although the Applicant had complied with the Interim Criteria in that the Site was within the ‘VE’ and there was shortage of land within the “V” zone, and had submitted justifications different from the previous ones, the Board continued to reject the application on the same grounds as those of the previous one without proper application of the Interim Criteria;

- (o) PlanD had not followed the doctrine of judicial precedent, i.e. treating all cases alike, by raising no objection to the 12 similar applications to the east of Lei Uk Tsuen and rejecting all applications to the west of the village. The rights of the applicant under the BL were not properly protected and the decision of the Board appeared to be illegal and/or unreasonable;

Ground No. 2: Meeting the Requirement of Sympathetic Consideration under the Interim Criteria

- (p) the application had generally complied with the Interim Criteria (in that more than 50% of the footprint of the proposed Small House fell within the ‘VE’ of Lei Uk Tsuen and there was a general shortage of land in the “V” zone to meet Small House demand) except (f) on whether the proposed development would frustrate the planning intention of the “AGR” zone, which was to be determined by PlanD. To deal with that criterion, approval should be given to the applicant under the doctrine of judicial precedent subject to compliance of the relevant approval conditions in relation to not frustrating the planning intention of the “AGR” zone by the applicant;

Ground No. 3: Site no longer as Active Farmland

- (q) as shown on Plan R-3 of the Paper, the Site was no longer active farmland. As advised by the applicant and Mr Li Yee Mui, the farming activities in Lei Uk Tsuen had diminished to a level that only four farmers were carrying on their farming business at a low income level. For similar cases in the past, although DAFC raised concern on using agricultural land for development, PlanD had appropriately interpreted or applied the Interim Criteria to recommend approval of the applications. Besides, agricultural land within the ‘VE’ was mostly abandoned farmland with some used for hobby farming. Even if all agricultural land within the ‘VE’ was used for development, due to the small size of the ‘VE’, the conversion would not have significant impact on the overall development of agriculture. There were still lots of

agricultural land outside the 'VE'. If the Board continued to reject applications for Small House development to the west of Lei Uk Tsuen, the living conditions within the "V" zone of Lei Uk Tsuen would deteriorate due to overcrowding. The applicant was ready to accept approval conditions imposed by the Board to ensure that the planning intention of the "AGR" zone would not be frustrated;

Ground No. 4: the 300-feet 'VE' rule

- (r) the '300-feet rule' should be a planning tool to control the continual development of Lei Uk Tsuen. Appropriate application of the '300-feet rule', which was a material consideration, under the Interim Criteria would facilitate implementation of SDEV's Policy Objective of continual development of Hong Kong. The Board should be aware of the serious repercussions in the event that they decided to approve applications to the west of Lei Uk Tsuen in future while rejecting the current one to hold up development. The applicant had sufficient grounds to put up a JR case;

Ground No.5: Difficulty of finding land in "V" zone for Small House Development

- (s) the applicant had practical difficulty of finding land within the "V" zone for development. Availability of land elsewhere for development was not a valid consideration. Requiring the applicant to find land within the "V" zone for the proposed development was a deviation from the Interim Criteria. The Board should consider whether the proposed development would frustrate the planning intention of the "AGR" zone rather than whether there was still land within the "V" zone for development;

Ground No.6: Orderly Development of Lei Uk Tsuen

- (t) according to Plan R-2b of the Paper, there were clusters of Small House applications from the north-west of Lei Uk Tsuen all the way to the south of the village. Although orderly development was not a criterion of the

Interim Criteria, the Site, which was located to the south west of the village, was close to the village clusters and had followed the development trend/pattern of Lei Uk Tsuen. The Board's decision should be based on a balance of the various aspects of the Interim Criteria; and

Conclusion

- (u) the Board should review whether the decision made on the application under review involved any procedural or interpretation mistakes. The Board should have allotted sufficient time for thorough examination of the application. If the proposed development had met the interim Criteria, the application should be approved. The approval of the applicant's application would facilitate the optimal use of land in Lei Uk Tsuen and confining development within the 'VE' would not frustrate the planning intention of the "AGR" zone on the OZP.

14. As the presentation of the applicant's representative was completed, the Chairman invited questions from Members. The Chairman reiterated that the session was for questions from Members only. Representatives of the applicant or PlanD would be invited to respond to questions of the Members.

15. A Member asked (a) whether the Board was obliged to approve planning applications if the Interim Criteria was met; (b) whether the Board's decision had to be congruent with the government's policy; and (c) whether, as the applicant's representative had claimed, the Site formed part of the orderly pattern of Small House development outside the "V" zone to the west of Lei Uk Tsuen. Mr C.K. Soh, DPO/STN, said that the Interim Criteria was prepared to facilitate processing of NTEH/Small House applications in a consistent manner. The RNTPC had consistently taken into account the OZP requirements, the relevant Interim Criteria, departmental and public comments in considering Small House applications. Moreover, if the application was related to a certain government policy, the relevant bureaux/departments would be consulted and their comments would be conveyed for Members' consideration. Both the Interim Criteria and government policy, where appropriate, were among the relevant considerations that the RNTPC would take into account

when considering an application. For those sites, including the subject Site, to the west of Lei Uk Tsuen as shown on Plan R-2b of the Paper, they were sites of Small House grant applications submitted to LandsD for approval. As Small House development on those sites outside the “V” zone required planning permission from the Board, LandsD would not process the applications unless the relevant planning permission was obtained. In response to another Member’s similar question on whether there was an option for the Board to reject the application even if the Interim Criteria was met, Mr Soh said that compliance with the Interim Criteria was only a prerequisite for further consideration of the application. The Board would take into account all relevant considerations before making a decision on the application. The Interim Criteria had made it clear that the Board might give sympathetic consideration to the application if the Interim Criteria was met, but it should not be taken as the Board must give sympathetic consideration and approve the application.

16. Having noted in the Interim Criteria that sympathetic consideration might be given if some criteria were met, a Member asked the applicant’s representative (a) why the Board had to give sympathetic consideration to the application when there was no reason provided either in the review application submitted or in his presentation to warrant the Board to exercise such a discretion; and (b) whether there were strong justifications, which were not found in his presentation, for a departure from the planning intention of the “AGR” zone. In response, Mr Lau Chun Keung said that the Interim Criteria was a policy statement and the Board had to give sympathetic consideration to the application if the criteria laid down in the policy statement were complied with. Having complied with the Interim Criteria was also a strong justification for a departure from the planning intention of the “AGR” zone.

17. In response to a Member’s question on whether substantive responses to the two rejection reasons of the RNTPC on the application could be provided, Mr Lau Chun Keung said that whilst the proposed development was not in line with the planning intention of the “AGR” zone on the OZP, the relevant consideration was the Interim Criteria which was a policy statement used consistently for assessing similar applications. Moreover, the reason for rejection did not categorically indicate that the proposed development did not comply with the Interim Criteria. As regards the availability of land within the “V” zone for development, it had been stated in the Paper that there would not be sufficient land within the “V” zone to meet the long-term Small House demand. Besides, most of the vacant land within the “V”

zone was owned by companies, it was almost impossible for the applicant to acquire those land without paying an excessively high price.

18. In response to Members' questions on how long the applicant had been owning the Site and on whether agricultural rehabilitation, other than housing development, could be regarded as a kind of development, Mr Lau said that the Site had been under the ownership of the applicant for about five years. According to the OZP, many types of development were allowed in the "AGR" zone. As the planning application was concerned about Small House development, the consideration should not be on the type of development allowed but rather on whether the proposed Small House development had complied with the Interim Criteria. In response to another Member's question on whether the "AGR" zoning of the Site, which was currently farmland, should be retained, Mr Lau said that DAFC had objected to the use of any agricultural land for Small House development but yet many applications were still approved despite DAFC's objection. The interpretation or application of the Policy Objective and whether to retain the Site as "AGR" were matters for the decision-maker to determine.

19. A Member asked if setting a precedent was a rejection reason by the RNTPC and another Member asked how long agricultural activities had been abandoned before the first planning application for Small House development on the Site was submitted. In response, Mr C.K. Soh, DPO/STN, said that setting a precedent was not a rejection reason by the RNTPC. Mr Lau Chun Keung also advised that farming activities on the Site had been abandoned for three months before the first planning application was submitted.

20. As there was no further question from Members, the Chairman informed the applicant and the applicant's representatives that the hearing procedure for the review application had been completed. The Board would deliberate on the review application in their absence and inform the applicant of the Board's decision in due course. The Chairman thanked the applicant, applicant's representatives and DPO/STN for attending the meeting. They left the meeting at this point.

[The meeting was adjourned for a short break of 8 minutes.]

[Mr Patrick H.T. Lau left the meeting during the break.]

Deliberation

21. Members noted that Dr Frankie W.C. Yeung, Dr Lawrence K.C. Li and Mr Franklin Yu only arrived to join the meeting in the middle of the consideration of the item and agreed that they could stay at the meeting but should refrain from participation in the discussion. The Secretary also said that a skeleton submission made by the applicant's representative, which was circulated among Members for information, was received by the Secretariat in the afternoon on 18.8.2016. The main points of the submission had been covered in the oral presentation by the applicant's representative.

22. The Chairman noted that the RNTPC had rejected the application for two reasons, namely the proposed development was not in line with the planning intention of the "AGR" zone and there was no strong justification in the submission for a departure from the planning intention; and land was still available within the "V" zone for Small House development. Members were invited to consider whether the applicant had addressed the RNTPC's concerns.

23. A Member noted that the proposed development was not in line with the planning intention of the "AGR" zone, which was agreed by the applicant's representative, and there was no strong justification in the applicant's submission for the review application as well as his representative's presentation in the meeting for a departure from the planning intention. The applicant's representative also agreed that there was still land within the "V" zone for Small House development despite the applicant had difficulty in finding land within the "V" zone for the proposed development. As such, the Member considered that the review application should be rejected and the decision would be consistent with those that the Board had made on the other similar applications. The Chairman noted that having more than 50% of the proposed Small House footprint within the 'VE' was one of the factors that the Board might take into account when considering the question of sympathetic consideration. The Board would still have to give consideration to other relevant factors in reaching a decision.

24. Another Member concurred and said that the RNTPC had made reference to the Interim Criteria in considering the application, and the Board should also do so. It was

noted that criterion (f) of the Interim Criteria with respect to whether the proposed development would frustrate the planning intention of the “AGR” zone had not yet been addressed by the applicant in the current submission. The RNTPC had consistently taken into account whether the proposed development would be conducive to an orderly development of Lei Uk Tsuen in considering applications for Small House development in the area. Since land to the east of the village was not active farmland and the chance of agricultural rehabilitation in that part was comparatively low, the RNTPC had consistently approved Small applications to the east of Lei Uk Tsuen but not those to the west of the village where land was still under active cultivation. Approval to applications with sites located to the west of the village might only be considered in future when there were changes in planning circumstances, such as land within the “V” zone for Small House development had been exhausted and there remained a genuine demand for Small House. Given the prevailing circumstances, the application under review should be rejected.

25. In response to the Chairman, the Secretary referred to paragraph 7.6 of the Paper and said that legal advice was that, insofar as Small House development was subject to planning controls that might be imposed under the Ordinance before the BL came into force, applying those controls to the area concerned by way of the OZP and the Board’s consideration of Small House applications were not inconsistent with the protection of the rights of the indigenous villagers under Article 40 of the BL.

26. Regarding the allegation by the applicant’s representative that the RNTPC had spent only about six minutes in considering the planning application, the Chairman noted that the Secretariat had already advised the applicant that there was no record on the duration of individual items. A Member said that Members had examined the Paper and all relevant information on the application before the meeting for an effective and efficient discussion at the RNTPC. Another Member supplemented that the applicant had been given an opportunity and sufficient time to make his oral submission before the Board at the hearing of the review application.

27. A Member asked whether the non-compliance with the Interim Criteria should be specified in the rejection reasons of the subject application should the Board decide to reject the application. Two Members were of the view that the Interim Criteria had been

considered but in rejecting the application, the main reason was that there was no strong justification for a departure from the planning intention of the “AGR” zone. The Chairman noted that it should be acceptable so long as all relevant factors had been taken into account in considering the subject application. Members noted that the rejection reasons as recommended by PlanD in the Paper had already reflected the relevant considerations, including the Interim Criteria, that the Board had taken into account and therefore should be adequate.

[Ms Christina M. Lee left the meeting at this point.]

28. A Member said that area to the west of Lei Uk Tseun was still under cultivation. Although agricultural activities on the Site had been abandoned three months before the first application for Small House development was submitted, taking into account the potential of agricultural rehabilitation of the Site, the planning application under review should be rejected. The rejection would be consistent with the RNTPC’s or the Board’s previous decisions on other similar applications to the west of Lei Uk Tsuen.

29. Regarding the applicant’s claim that the ‘VE’ was a planning tool, Mr K.K. Ling, Director of Planning, said that ‘VE’ was not a land use zoning but a factor that would be taken into account by the RNTPC or the Board in considering planning applications for Small House development.

30. Members noted that there was no change in the planning circumstances and there was no strong justification in the applicant’s written and oral submissions for departing from RNTPC’s previous decision. After deliberation, the Board decided to reject the application on review based on the following reasons:

“(a) the proposed development is not in line with the planning intention of the “Agriculture” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the current submission for a departure from the planning intention; and

- (b) land is still available within the “V” zone of Lei Uk Tsuen which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for orderly development pattern, efficient use of land and provision of infrastructure and services.”

[Mr Alex T.H. Lai returned to join the meeting at this point.]

Agenda Item 4

[Open Meeting (Presentation and Question Sessions only)]

Proposed Amendments to the Draft Yi O Outline Zoning Plan No. S/I-YO/1 Arising from the Consideration of Representations and Comments on the Draft Yi O Outline Zoning Plan No. S/I-YO/1

(TPB Paper No. 10159)

[The meeting was conducted in Cantonese]

31. Ms Donna Y.P. Tam, District Planning Officer/Sai Kung and Islands, Planning Department (DPO/SKIs, PlanD) and Mr Kelvin K.H. Chan, Town Planner/Islands (1) (TP/Is(1)), PlanD were invited to the meeting at this point.

32. The Secretary reported that the following Members had declared interests in the item for having affiliations with a representer, The Conservancy Association (CA) (R16), or business dealings with the representer (R1)/commenter (C1)’s representative, Urbis Limited or knowing some of the representers:

Dr C.H. Hau - being the Vice-chairman of CA (R16)

Mr Thomas O.S. Ho - his company having current business dealings with Urbis Limited and personally knowing Mr Paul Zimmermann, C1264 and representative of

R17

Mr Ivan C.S. Fu] having current business dealings with Urbis
Ms Janice W.M. Lai] Limited

Mr Franklin Yu - having past business dealings with Urbis Limited

Professor T.S. Liu] personally knowing some of the representers/
Mr Dominic K.K. Lam] commenters

33. Since Mr Andrew S.L. Lam was mentioned repeatedly by two commenters' (C5/C885) representative in his presentation in the Town Planning Board (the Board)'s meeting on 8.7.2016 when the representations and comments on the Draft Yi O Outline Zoning Plan No. S/I-YO/1 (the draft OZP) were considered, the Secretary also reported that the following Members and himself had declared interests in the item:

Mr Michael W.L. Wong]
(the Chairman)
Professor S.C. Wong]
(the Vice-Chairman)
Mr H.W. Cheung]
Mr Ivan C.S. Fu]
Mr Patrick H.T. Lau] being acquainted with Mr Andrew S.L. Lam
Mr Philip S.L. Kan]
Mr Wilson Y.W. Fung]
Mr Alex T.H. Lai]
Mr Stephen L.H. Liu]
Ms Sandy H.Y. Wong]
Mr K.K. Ling]

34. Since amendments to the OZP were proposed after the consideration of representation R16, amongst others, Members agreed that Dr C.H. Hau's interest of being the Vice-chairman of CA (R16) was direct and he should be invited to leave the meeting

temporarily for the item.

[Dr C.H. Hau left the meeting temporarily at this point.]

35. Members noted that Ms Janice W.M. Lai had tendered apology for not being able to attend the meeting and Mr Patrick H.T. Lau had already left the meeting. As the other Members who had declared interests of having current or past business dealings with the representer/commenter's representative, personally knowing the representatives/commenters or Mr Andrew S.L. Lam had no discussion on or no involvement in the subject matter, Members agreed that their interests were indirect and they should be allowed to stay at the meeting.

36. The Chairman extended a welcome and invited DPO/SKIs to brief Members on the Paper. With the aid of a PowerPoint presentation, Ms Donna Y.P. Tam, DPO/SKIs, made a presentation and covered the following main points as detailed in the Paper:

Background

- (a) on 13.11.2015, the draft OZP was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). A total of 20 representations and 1,401 comments were received;
- (b) after giving consideration to the representations and comments on 8.7.2016, the Board decided to partially uphold Representations No. R11 to R17 by rezoning the woodlands at the western part of Yi O San Tsuen with dense tree clusters from "Agriculture" ("AGR") to "Green Belt" ("GB"); and suitably reducing the "AGR" zone along the eastern riparian of the stream and rezoning it to "GB". The proposed amendments to the draft OZP should be submitted to the Board for agreement prior to gazetting under section 6C(2) of the Ordinance;

Conditions of the Western Woodlands and Eastern Riparian of the Stream

The Western Woodlands

- (c) the two woodlands (W1 and W2) were separated by a footpath at the western part of Yi O San Tsuen with ruins and trees but no farming activities;
- (d) W1 was on government land, except a private agricultural lot No. 126 which formed part of a tree cluster in W1. The footpath separating W1 and W2 was mainly on private land with no vegetation cover;
- (e) W2 was also on government land, most of which was under government land licence (GLL) mainly for domestic and agricultural uses;
- (f) the dense tree clusters in W1 and W2, including Lot No. 126 and the GLL but excluding the footpath, were proposed to be rezoned from “AGR” to “GB”;

Eastern Riparian of the Stream

- (g) the eastern riparian was an elongated strip of land sandwiched between the stream and a footpath. There was a pond near a bridge at the north-western portion of the northern part of the eastern riparian where brackish water vegetation such as Cuban Bast was found;
- (h) the northern part was fairly flat (2mPD to 3mPD) and covered with grass and reed. That part was proposed to be rezoned to “GB”;
- (i) the southern part was higher (4mPD to 7mPD) consisting of a large piece of grassland with sporadic farming activities and farmland under cultivation at the southern end. That part was proposed to be retained as “AGR” to reflect the existing agricultural use and facilitate agricultural rehabilitation;

Proposed Amendments to the draft OZP

- (j) taking into account the conditions of the western woodlands and the eastern riparian of the stream, the following amendments to the draft OZP were proposed:
 - (i) Amendment Item A - rezoning of two sites at the western part of Yi O San Tsuen from “AGR” to “GB”; and
 - (ii) Amendment Item B - rezoning of a site at the northern part of the eastern riparian of the stream at Yi O from “AGR” to “GB”.
- (k) the Explanatory Statement (ES) for the “AGR” and “GB” zones of the draft OZP would be revised to incorporate the proposed amendments;
- (l) upon Members’ agreement to the proposed amendments to the draft OZP, the proposed amendments would be published under section 6C(2) of the Ordinance for public inspection.

37. The Chairman then invited questions and comments from Members. No question from Members was raised.

38. After deliberation, Members agreed that:

- (a) the proposed amendments to the draft Yi O OZP No. S/I-YO/1 as shown at Annex I of the Paper were suitable for publication for public inspection in accordance with section 6C(2) of the Ordinance; and
- (b) the proposed revisions to the Explanatory Statement of the draft Yi O OZP No. S/I-YO/1 at Annex II of the Paper was suitable for publication together with the draft OZP.

39. The Chairman thanked the representatives of PlanD for attending the meeting. They left the meeting at this point.

[Mr. Stephen H.B. Yau left the meeting at this point.]

Agenda Item 5

[Open Meeting (Presentation and Question Sessions only)]

Proposed Amendments to the Draft Pak Sha O Outline Zoning Plan No. S/NE-PSO/1 Arising from the Consideration of Representations and Comments on the Draft Pak Sha O Outline Zoning Plan No. S/NE-PSO/1

(TPB Paper No. 10156)

[The meeting was conducted in Cantonese]

40. The Secretary reported that since The Conservancy Association (CA) and Kaitak, Centre for Research and Development, Academy of Visual Arts of Hong Kong Baptist University (HKBU) had submitted representations No. R519 and R526 respectively on the draft Pak Sha O Outline Zoning Plan No. S/NE-PSO/1 (the draft OZP), the following Members had declared interests in the item:

- | | |
|---------------------|--|
| Dr C.H. Hau | - being the Vice-chairman of CA which had submitted representation R519 and comment C1 |
| Mr Stephen H.B. Yau | - being the Chairman of the Social Work Advisory Committee of the Department of Social Work in HKBU, and Kaitak, Centre for Research and Development, Academy of Visual Arts of HKBU had submitted representation R526 |
| Ms Christina M. Lee | - being a part-time student of HKBU |
| Mr Philip S.L. Kan | - being a former member of the Court of HKBU |

41. The proposed amendment to the draft OZP was proposed after the consideration of R519 and R526, amongst others. Members agreed that Dr C.H. Hau's interest of being the Vice-chairman of CA (R519 and C1) was direct and he should be invited to leave the meeting temporarily for the item. Members noted that Dr C.H. Hau had already left the meeting temporarily. Members also noted that Mr Stephen H.B. Yau and Ms Christina M. Lee had already left the meeting. As Mr Philip S.L. Kan had no involvement in the subject matter, Members agreed that his interest was remote and Mr Kan should be allowed to stay at the meeting.

42. Mr C.K. Soh, District Planning Officer/Shia Tin, Tai Po and North, Planning Department (DPO/STN, PlanD) and Ms Channy C. Yang, Senior Town Planner/Country Park Enclave (STP/CPE), PlanD were invited to the meeting at this point.

43. The Chairman extended a welcome and invited DPO/STN to brief Members on the Paper. With the aid of a PowerPoint presentation, Mr. C.K. Soh made a presentation and covered the following main points as detailed in the Paper:

Background

- (a) on 4.12.2015, the draft OZP was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). A total of 1,806 valid representations and 36 comments were received;

[Mr Ivan C.S. Fu left the meeting at this point.]

- (b) after considering the representations and comments on 22.7.2016, the Town Planning Board (the Board) decided to partially uphold Representations No. R516 (part) and R517 to R1807 by amending the Notes of the draft OZP to the effect that any new New Territories Exempted House (NTEH) in the "Village Type Development" ("V") zone would require planning permission from the Board. The Board also considered that the Explanatory Statement (ES) of the draft OZP should be suitably amended to explain the planning intention of the "V" zone, and the proposed amendments to the draft OZP

should be submitted to the Board for agreement prior to gazetting under section 6C(2) of the Ordinance;

- (c) Pak Sha O and Pak Sha O Ha Yeung were outstanding and well-preserved vernacular Hakka villages in the area. The heritage value of the historic buildings partly laid in their original physical environment, any change to the vernacular Hakka village setting with possible adverse impact on the heritage value of historic buildings and integrity and ambience of the existing village setting should be avoided. The existing conditions of the Hakka villages and their surrounding areas were shown on a video clip;

Proposed Amendments to the OZP

- (d) a “V” zone separated from the old villages was designated for village expansion, while the existing village clusters were zoned “V(1)” where new house development (NTEH only) and any demolition of or any addition, alteration and/or modification to or replacement/redevelopment of an existing building required planning permission from the Board;
- (e) to avoid possible adverse visual impact on the Hakka village setting, house development (NTEH only) in the separated “V” zone also required planning permission from the Board;

Proposed Amendments to the Notes of the draft OZP

- (f) under Column 1 of the “V” zone, to delete ‘House (NTEH only) (other than on land designated “V(1)”’, and ‘Eating Place’, ‘Library’, ‘School’ and ‘Shop and Services’ on the ground floor of an NTEH (other than on land designated “V(1))’. For Column 2, to replace ‘House (not elsewhere specified)’ by ‘House (NTEH only)’. Accordingly, the planning intention of the “V” zone would be revised to reflect those changes;
- (g) to ensure that new houses including rebuilding of NTEH and replacement of

existing domestic building by NTEH in other zones would not adversely affect the Hakka village setting, planning permission from the Board should also be required. In that regard, the Covering Notes and the Notes for the “Government, Institution or Community” (“G/IC”), “Agriculture” and “Green Belt” zones would be revised accordingly;

Proposed Revision to the ES of the draft OZP

- (h) the ES (paragraphs 9.1.1 and 9.1.3) of the draft OZP would be revised to explain the planning intention and planning control for the “V” zones aiming to preserve the vernacular Hakka village setting of Pak Sha O and Pak Sha O Ha Yeung;
- (i) upon Members’ agreement to the proposed amendments to the draft OZP, the proposed amendments would be published under section 6C(2) of the Ordinance for public inspection.

44. The Chairman then invited questions and comments from Members.

45. The Secretary reminded Members that those Members who had not taken part in the deliberation part of the hearing should refrain from discussing the subject matter.

46. In response to three Members’ questions on the different requirement of the “V” and “V(1)” zones with respect to village type house development, the rationale for planning control of the “V” and “V(1)” zones, planning control on developments in the “G/IC” zone and sewage treatment of the area, Mr C.K. Soh, DPO/STN, said that in the “V(1)” zone designated for the vernacular Hakka villages, any new development, demolition of or addition, alteration and/or modification to or replacement/redevelopment of an existing building required planning permission from the Board while in the “V” zone, new and redevelopment of house (NTEH only) required planning permission. The “V(1)” zone was to preserve the Hakka villages which were of heritage value. Prior consultation with the Antiquities and Monument Office (AMO) of the Leisure and Cultural Services Department (LCSD) should be made if any development or redevelopment might affect the historic buildings. To avoid the

possible adverse visual impact on the vernacular Hakka village setting, house development/redevelopment in the separated “V” zone and other zones including the “G/IC” zone required planning permission from the Board. The requirements for development in the “V” and “V(1)” zones had been detailed in paragraph 9.1.3 of the revised ES. Since the area fell entirely within the upper indirect water gathering ground, it should be demonstrated in a planning application that any village type development would not affect the water quality of the area. The use of septic tank and soakaway systems for sewage treatment and disposal was generally not acceptable. The project proponent should demonstrate to the satisfaction of relevant government departments that the proposed sewage treatment facilities would meet the relevant standards and requirements. The requirements on sewage treatment had been stipulated in paragraph 9.1.9 of the revised ES. With respect to the pollution issue of the Hoi Ha Wan Marine Park raised by some representers, the Director of Agriculture, Fisheries and Conservation had already engaged a consultant to look into the matter.

[Mr K.K. Cheung left the meeting at this point.]

47. In response to two Member’s respective questions on the possible impacts of the “V” zone on the trees of the area and how the development and redevelopment of the existing buildings, which were neither historic nor graded buildings, in the “V(1)” zone would be handled, Mr C.K. Soh said that as the existing tree groups would serve as a buffer between the “V” and “V(1)” zones, the delineation of the “V” zone had avoided encroaching upon the area covered by trees. For development and redevelopment of the historic and graded buildings within the “V(1)” zone, prior consultation with AMO of LCSD was required and such work should be carried out in accordance with the requirements laid down by the relevant departments. As for those buildings which were neither historic nor graded buildings, planning permission from the Board was still required for any development, redevelopment, addition, alteration or demolition works.

48. Due to the low-lying nature of the area zoned “V”, a Member expressed concern on the risk of flooding and enquired if site formation would be required for village type development. In response, Mr C.K. Soh said that some form of site formation would not be unusual but such works which formed part of the house development thereon would be subject to planning permission of the Board. The Member cautioned that if landfilling in the

form of the site formation works was carried out within the “V” and “V(1)” zones, it would not be subject to planning control under the OZP, and might increase the risk of flooding. Mr K.K. Ling said that in some low-lying “V” zones in north-west New Territories, landfilling activities within the zones required planning permission from the Board. As a precautionary measure, it would be advisable to add in Remarks (d) of the “V” zone that planning permission would be required for any filling of land so as to allow the Planning Authority to take enforcement action against unauthorized landfilling activities within the “V” zone, which also covered the “V(1)” zone. Members agreed to the proposed amendment and noted that the Secretariat of the Board would make necessary refinement to the Notes and ES of the draft OZP as appropriate.

49. After deliberation, Members agreed that subject to the addition of the requirement for planning permission for landfill activities in Remarks (d) of the Notes and ES of the “V” zone which also covered the “V(1)” zone:

- (a) the proposed amendments to the draft Pak Sha O OZP No. S/NE-PSO/1 as shown at Annex I of the Paper were suitable for publication for public inspection in accordance with section 6C(2) of the Ordinance; and
- (b) the proposed revisions to the Explanatory Statement of the draft Pak Sha O OZP No. S/NE-PSO/1 at Annex II of the Paper was suitable for publication together with the draft OZP.

50. The Chairman thanked the representatives of PlanD for attending the meeting. They left the meeting at this point.

[Dr C.H. Hau returned to join the meeting while Mr Andy S.H. Lam and Ms Bernadette H.H. Linn left the meeting at this point.]

Fanling, Sheung Shui & Yuen Long East District

Agenda Item 6

[Open Meeting]

Request for Deferment of Review of Application No. A/YL-KTS/685

Temporary Open Storage (Concrete from Demolished Buildings) for a Period of 3 Years in “Agriculture” zone, Lots 355 RP (Part), 356 S.B, 356 RP, 359 RP, 360 RP (Part), 361, 362 (Part), 363, 364 (Part), 435RP (Part) in D.D. 103, and Adjoining Government Land, Ko Po Tsuen, Kam Tin, Yuen Long

(TPB Paper No. 10163)

[The meeting was conducted in Cantonese]

51. The Secretary reported that Ms Janice W.M. Lai had declared interest in the item as her family member owned a property at Cheung Po Tsuen, Kam Tin South. Members noted that Ms Janice W.M. Lai had tendered apology for not being able to attend the meeting.

52. The Secretary reported that on 3.6.2016, the Town Planning Board (the Board) agreed to defer a decision on the review application, as requested by the applicant, to allow two months’ time for preparation of further information (FI) to support the review application. The review application was originally scheduled for consideration by the Board on 19.8.2016, i.e. the current meeting.

53. On 3.8.2016, the applicant’s representative wrote to the Secretary of the Board to request for deferment for considering the review application for another two months to allow the applicant to prepare drainage proposal and landscape proposal to address departmental comments. It was the second request from the applicant for deferment of the review application.

54. Members noted that the justification for deferment met the criteria for deferment as set out in the Town Planning Board Guidelines on Deferment of Decision on Representations, Comments, Further Representations and Applications made under the Town Planning Ordinance (TPB PG-No. 33) in that the applicant needed more time to prepare

further information in response to departmental comments, the deferment period was not indefinite, and the deferment would not affect the interests of other relevant parties.

55. The Board agreed to defer a decision on the review application as requested by the applicant pending the submission of FI by the applicant. The Board also agreed that the review application would be submitted to the Board for consideration within three months upon receipt of FI from the applicant. If the submission by the applicant was not substantial and could be processed within a shorter time, the application could be submitted to an earlier meeting for the Board's consideration. The Board further agreed to advise the applicant that since it was the second deferment of the review application and the Board had allowed a total of four months for preparation of submission of FI, no further deferment would be granted unless under very special circumstances.

Procedural Matters

Agenda Item 7

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Representation on the Draft Tsz Wan Shan, Diamond Hill and San Po Kong Outline Zoning Plan No. S/K11/28
(TPB Paper No. 10160)

[The meeting was conducted in Cantonese]

56. The Secretary reported that Ms Christina M. Lee had declared interest in the item for being a director of a company which owned a flat at Fung Cheung House, Wong Tai Sin.

57. Members noted that Ms Christina M. Lee had already left the meeting.

58. The Secretary reported that on 24.3.2016, the draft Tsz Wan Shan, Diamond Hill and San Po Kong Outline Zoning Plan No. S/K11/28 was exhibited for public inspection under section 5 of the Town Planning Ordinance. During the two-month exhibition period, one representation was received. On 3.6.2016, the representation was published for 3 weeks

for public comments and no comment was received.

59. The representation (R1) supported the amendments to the Notes for “Other Specified Uses” annotated “Business” zone and proposed to relax the definition of ‘Art Studio’ which excluded any premises to be used for teaching art subjects, so as to allow art class which was not operated as ‘school’ under the Education Ordinance to be held in the premises of ‘Art Studio’.

60. Since there was only one representation, the full Board was recommended to hear the representation without resorting to the appointment of a Representation Hearing Committee.

61. Consideration of the representation by the full Board was tentatively scheduled for 7.10.2016.

62. The Board agreed that the representation should be considered by the Board itself.

Agenda Item 8

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Representations and Comments on the Draft Kuk Po, Fung Hang and Yung Shue Au Outline Zoning Plan No. S/NE-KP/1

(TPB Paper No. 10161)

[The meeting was conducted in Cantonese]

63. The Secretary reported that Mr Thomas O.S. Ho had declared interest in the item for personally knowing commenter C1, Mr Paul Zimmerman.

64. As the item was procedural in nature and no discussion was required, Members agreed that Mr Ho should be allowed to stay at the meeting.

65. The Secretary reported that on 19.2.2016, the draft Kuk Po, Fung Hang and Yung Shue Au Outline Zoning Plan No. S/NE-KP/1 (the draft OZP) was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). A total of 97 representations and two comments were received.

66. The representations could be categorized into two groups. The first group comprised eight representations (R1 to R8) submitted by green/concern groups including World Wide Fund For Nature Hong Kong (R1), The Hong Kong Bird Watching Society (R2), Kadoorie Farm & Botanic Garden Corporation (R3), Designing Hong Kong Limited (R4) and individuals. Whilst most of them were supportive to the “Conservation Area” (“CA”) zone proposed, some considered that the “CA” zone or in form of “Green Belt (1)” (“GB(1)”) zone should be extended to cover most of the Area. They were also concerned about the adverse environmental impacts of Small House development and agricultural activities. The second group comprised the remaining 89 representations (R9 to R97) submitted by the Heung Yee Kuk (HYK) (R9), an Executive Member of the Sha Tau Kok District Rural Committee (STKDRC) (R10), Indigenous Inhabitant Representatives (IIRs) (R10 to R12), villagers and individuals opposing the draft OZP for reasons including inadequate “Village Type Development” (“V”) and “Agriculture” (“AGR”) zones. They proposed to expand the “V” zones, designate agricultural lots as “AGR” zone and provide compensation and infrastructure like access road for the villagers.

67. Comments C1 and C2 were submitted by two individuals objecting to representations in the second group (R9 to R97) on similar grounds of those in the first group (R1 to R8).

68. It was recommended that the representations and comments should be considered by the full Board. As the concerns of the representations from the green/concern groups, related organization/IIRs, villagers and individuals were different, it was suggested to consider the representations and comments in two groups and to allot a maximum of 10 minutes presentation time to each representer/commenter in the hearing session to ensure efficiency of the hearing:

Group 1

- (a) collective hearing of the first group comprising eight representations (R1 to R8) and two comments (C1 and C2) submitted by the green/concern groups and individuals mainly in relation to nature conservation concerns; and

Group 2

- (b) collective hearing of the second group comprising 89 representations (R9 to R97) submitted by HYK, Executive Member of the STKDRC, IIRs, villagers and individuals mainly in relation to inadequate “V” and “AGR” zones, and designation of private land as conservation zones.

69. Consideration of the representation by the full Board was tentatively scheduled for October 2016.

70. The Board agreed that:

- (a) the representations and comments should be considered by the Board itself; and
- (b) the Chairman would, in liaison with the Secretary, decide on the need to impose a 10-minute presentation time for each representer and commenter, so as to ensure efficiency of the hearing.

Agenda Item 9

[Open Meeting]

Application to the Chief Executive Under Section 8(2) of the Town Planning Ordinance for Extension of Time Limit for Submission of the Draft Pak Sha O Outline Zoning Plan No. S/NE-PSO/1 to the Chief Executive in Council for Approval
(TPB Paper No. 10157)

[The meeting was conducted in Cantonese]

71. The Secretary reported that since The Conservancy Association (CA) and Kaitak, Centre for Research and Development, Academy of Visual Arts of Hong Kong Baptist University (HKBU) had submitted representations No. R519 and R526 respectively on the draft Pak Sha O Outline Zoning Plan No. S/NE-PSO/1 (the draft OZP), the following Members had declared interests in the item:

Dr C.H. Hau - being the Vice-chairman of CA which had submitted representation R519 and comment C1

Mr Stephen H.B. Yau - being the Chairman of the Social Work Advisory Committee of the Department of Social Work in HKBU, and Kaitak, Centre for Research and Development, Academy of Visual Arts of HKBU had submitted representation R526

Ms Christina M. Lee - being a part-time student of HKBU

Mr Philip S.L. Kan - being a former member of the Court of HKBU

72. Members noted that Mr Stephen H.B. Yau and Ms Christina M. Lee had already left the meeting. As the item was procedural in nature and no discussion was required, Members agreed that Dr C.H. Hau and Mr Philip S.L. Kan should be allowed to stay at the meeting.

73. The Secretary reported that on 4.12.2015, the draft OZP was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). A total of 1,806 valid representations and 36 comments were received.

74. After considering the representations and comments on 22.7.2016, the Town

Planning Board (the Board) decided to partially uphold Representations No. R516 (part) and R517 to R1807 by amending the Notes of the draft OZP to the effect that any new New Territories Exempted House in the “Village Type Development” zone would require planning permission from the Board. The proposed amendments would be published under section 6C(2) of the Ordinance for three weeks for public inspection and further representation.

75. According to section 8(2) of the Ordinance, the draft OZP should be submitted to the Chief Executive in Council (CE in C) for approval on or before 4.11.2016. Taking into account the time required for publication of the proposed amendments and processing of further representation, if any, it was unlikely that the plan-making process could be completed within the 9-month statutory time limit for submission of the draft OZP to the CE in C for approval (i.e. before 4.11.2016). In view of the above, there was a need to apply to the CE for an extension of the statutory time limit for six months to allow sufficient time to complete the plan-making process.

76. The Board agreed that the CE’s agreement should be sought under section 8(2) of the Ordinance to extend the time limit for submission of the draft Pak Sha O OZP No. S/NE-PSO/1 to the CE in C for a period of six months from 4.11.2016 to 4.5.2017.

Agenda Item 10

[Open Meeting]

Application to the Chief Executive Under Section 8(2) of the Town Planning Ordinance for Extension of Time Limit for Submission of the Draft Yi O Outline Zoning Plan No. S/I-YO/1 to the Chief Executive in Council for Approval

(TPB Paper No. 10162)

[The meeting was conducted in Cantonese]

77. The Secretary reported that the following Members had declared interests in the item for having affiliations with a representer, The Conservancy Association (CA) (R16), or business dealings with the representer (R1)/commenter (C1)’s representative, Urbis Limited or knowing some of the representers:

- Dr C.H. Hau - being the Vice-chairman of CA (R16)
- Mr Thomas O.S. Ho - his company having current business dealings with Urbis Limited and personally knowing Mr Paul Zimmermann, C1264 and representative of R17
- Mr Ivan C.S. Fu] having current business dealings with Urbis
Ms Janice W.M. Lai] Limited
- Mr Franklin Yu - having past business dealings with Urbis Limited
- Professor T.S. Liu] personally knowing some of the representers/
Mr Dominic K.K. Lam] commenters

78. Since Mr Andrew S.L. Lam was mentioned repeatedly by two commenters' (C5/C885) representative in his presentation in the Town Planning Board (the Board)'s meeting on 8.7.2016 when the representations and comments on the Draft Yi O Outline Zoning Plan No. S/I-YO/1 (the draft OZP) were considered, the Secretary also reported that the following Members and himself had declared interests in the item:

- Mr Michael W.L. Wong]
(the Chairman)
- Professor S.C. Wong]
(the Vice-Chairman)
- Mr H.W. Cheung] being acquainted with Mr Andrew S.L. Lam
- Mr Ivan C.S. Fu]
- Mr Patrick H.T. Lau]
- Mr Philip S.L. Kan]
- Mr Wilson Y.W. Fung]
- Mr Alex T.H. Lai]
- Mr Stephen L.H. Liu]

Ms Sandy H.Y. Wong]
Mr K.K. Ling]

79. Members noted that Ms Janice W.M. Lai had tendered apology for not being able to attend the meeting and Messrs Ivan C.S. Fu and Patrick H.T. Lau had already left the meeting. As the item was procedural in nature and no discussion was required, Members agreed that the other Members who had declared interests in the item should be allowed to stay at the meeting.

80. The Secretary reported that on 13.11.2015, the draft OZP was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). A total of 20 representations and 1,401 comments were received.

81. After considering the representations and comments on 8.7.2016, the Board decided to partially uphold Representations No. R11 to R17 by rezoning the woodlands at the western part of Yi O San Tsuen with dense tree clusters from “Agriculture” (“AGR”) to “Green Belt” (“GB”); and suitably reducing the “AGR” zone along the eastern riparian of the stream and rezoning it to “GB”. The proposed amendments would be published under section 6C(2) of the Ordinance for three weeks for public inspection and further representation.

82. According to section 8(2) of the Ordinance, the draft OZP should be submitted to the Chief Executive in Council (CE in C) for approval on or before 13.10.2016. Taking into account the time required for publication of the proposed amendments and processing of further representation, if any, it was unlikely that the plan-making process could be completed within the 9-month statutory time limit for submission of the draft OZP to the CE in C for approval before 13.10.2016. In view of the above, there was a need to apply to the CE for an extension of the statutory time limit for six months to allow sufficient time to complete the plan-making process.

83. The Board agreed that the CE’s agreement should be sought under section 8(2) of the Ordinance to extend the time limit for submission of the draft Yi O OZP No. S/I-YO/1 to the CE in C for a period of six months from 13.10.2016 to 13.4.2017.

Agenda Item 11

Any Other Business

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

84. There being no other business, the meeting was closed at 12:40 p.m.